

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

(articles 19, 22 and 35 of the Constitution)

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

Report III (Part 1A)

General Report
and observations concerning particular countries

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

- (a) The **Reader's note** provides indications on the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference (their mandate, functioning and the institutional context in which they operate) (**Part 1A, pages 1–4**).
- (b) **Part I: the General Report** describes the manner in which the Committee of Experts undertakes its work and the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards, and it draws the attention to issues of general interest arising out of the Committee's work (**Part 1A, pages 5–41**).
- (c) **Part II: Observations concerning particular countries** cover the sending of reports, the application of ratified Conventions (see section I), and the obligation to submit instruments to the competent authorities (see section II) (**Part 1A, pages 43–703**).
- (d) **Part III: General Survey**, in which the Committee of Experts examines the state of the legislation and practice regarding a specific area covered by a given number of Conventions and Recommendations. This examination covers all member States regardless of whether or not they have ratified the given Conventions. The General Survey is published as a separate volume (Report III (Part 1B)) and this year it examines the Occupational Safety and Health Convention, 1981 (No. 155), the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, and the Occupational Safety and Health Recommendation, 1981 (No. 164) (**Part 1B**).

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

The report of the Committee of Experts is also available at:
www.ilo.org/ilolex/gbe/ceacr2009.htm.

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List of Conventions by subject

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

1 Freedom of association, collective bargaining, and industrial relations

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

2 Forced labour

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

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

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

4 Equality of opportunity and treatment

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

5 Tripartite consultation

C144	<i>Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)</i>
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6 Labour administration and inspection

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

7 Employment policy and promotion

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

8 Vocational guidance and training

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

9 Employment security

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

10 Wages

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

11 Working time

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

12 Occupational safety and health

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

13 Social security

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

14 Maternity protection

- ★ C003 Maternity Protection Convention, 1919 (No. 3)
- C103 Maternity Protection Convention (Revised), 1952 (No. 103)
- C183 Maternity Protection Convention, 2000 (No. 183)

15 Social policy

- ★ C082 Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82)
- C117 Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)

16 Migrant workers

- C021 Inspection of Emigrants Convention, 1926 (No. 21)
- C066 Migration for Employment Convention, 1939 (No. 66)
- C097 Migration for Employment Convention (Revised), 1949 (No. 97)
- C143 Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

17 Seafarers

- ★ C007 Minimum Age (Sea) Convention, 1920 (No. 7)
- C008 Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
- ★ C009 Placing of Seamen Convention, 1920 (No. 9)
- C016 Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
- C022 Seamen's Articles of Agreement Convention, 1926 (No. 22)
- ★ C023 Repatriation of Seamen Convention, 1926 (No. 23)
- C053 Officers' Competency Certificates Convention, 1936 (No. 53)
- ◆● C054 Holidays with Pay (Sea) Convention, 1936 (No. 54)
- C055 Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
- C056 Sickness Insurance (Sea) Convention, 1936 (No. 56)
- ◆● C057 Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
- ★ C058 Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
- C068 Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
- C069 Certification of Ships' Cooks Convention, 1946 (No. 69)
- ◆● C070 Social Security (Seafarers) Convention, 1946 (No. 70)
- C071 Seafarers' Pensions Convention, 1946 (No. 71)
- ◆● C072 Paid Vacations (Seafarers) Convention, 1946 (No. 72)
- C073 Medical Examination (Seafarers) Convention, 1946 (No. 73)
- C074 Certification of Able Seamen Convention, 1946 (No. 74)
- ◆● C075 Accommodation of Crews Convention, 1946 (No. 75)
- ◆● C076 Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
- 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 Maritime Labour Convention, 2006

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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 and promoting their ratification and application in its member States and supervision of this application as a fundamental means of achieving its objectives. In order to monitor the progress of its member States in the application of international labour standards, the ILO has developed supervisory mechanisms which are unique at the international level.¹

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

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

Role of employers' and workers' organizations

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

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

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

² Reports are submitted every two years for so-called fundamental and priority Conventions, and every five years for others. Since 2003, reports have been due for groups of Conventions according to subject matter.

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

During the early years of the ILO, both the adoption of international labour standards and the regular supervisory work were undertaken within the framework of the plenary sitting of the annual International Labour Conference. However, the considerable increase in the number of ratifications of Conventions rapidly led to a similarly significant increase in the number of annual reports submitted. It soon became clear that the plenary of the Conference would not be able to examine all these reports at the same time as adopting standards and discussing other important matters. In response, the Conference in 1926 adopted a resolution³ 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,⁴ who are outstanding legal experts at the national and international levels. The members of the Committee are appointed by the Governing Body upon the proposal of the Director-General. Appointments are made in a personal capacity from among completely impartial persons of competence and independent standing drawn from all regions of the world, in order to enable the Committee to have at its disposal first-hand experience of different legal, economic and social systems. The appointments are made for renewable periods of three years. In 2002, the Committee decided that there would be a limit of 15 years' service for all members, representing a maximum of four renewals after the first three-year appointment. At its 79th Session (November–December 2008), the Committee decided that its Chairperson would be elected for a period of three years which would be once renewable for a further three years. At the start of each session, the Committee would also elect a Reporter.

Mandate

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

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

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.⁷

The comments of the Committee of Experts on the fulfilment by member States of their standards-related obligations take the form of either *observations or direct requests*. Observations contain comments on fundamental questions raised by the application of a particular Convention by a member State. These observations are reproduced in the annual report of the Committee of Experts, which is then submitted to the Conference Committee on the Application of Standards in June every year. Direct requests usually relate to questions of a more technical nature or of lesser importance, or contain

³ Appendix VII, proceedings of the Eighth Session of the International Labour Conference, 1926, Vol. 1.

⁴ There are currently 16 experts appointed.

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

⁶ Article 35 covers the application of Conventions to non-metropolitan territories.

⁷ In its 1987 report, the Committee stated that in its evaluation of national law and practice in relation to the requirements of international labour Conventions: "... its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations, which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out this work, the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States".

requests for information. They are not published in the report of the Committee of Experts, but are communicated directly to the government concerned.⁸ In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given number of Conventions and Recommendations chosen by the Governing Body. This 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 occupational safety and health.

Report of the Committee of Experts

As a result of its work, the Committee produces an annual report. The structure of the report is divided into the following 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 (Report III (Part 1A)).
- **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 (Report III (Part 1A)).
- **Part III: the General Survey** is published as a separate volume (Report III (Part 1B)).

Furthermore, an *Information document on ratifications and standards-related activities* (Report III (Part 2)) accompanies the report of the Committee of Experts.⁹

Committee on the Application of Standards of the International Labour Conference

Composition

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

Mandate

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

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

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

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

The Conference Committee on the Application of Standards discusses the General Report and the General Survey of the Committee of Experts, and the documents submitted by governments. The work of the Conference Committee starts with a general discussion on the standards system, as well as a discussion on the General Survey. The Conference Committee subsequently examines cases of serious failure to fulfil reporting and other standards-related obligations. Finally, the Conference Committee embarks upon its main task, which is to examine a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. The Conference Committee invites the Government representatives concerned to attend one of its sessions to discuss the observations in question. After listening to these Government representatives, the members of the Conference

⁸ Observations and direct requests are accessible through the ILOLEX database which is available on CD-ROM and via the ILO web site (www.ilo.org/normes).

⁹ This document provides an overview of recent developments relating to international labour standards, the implementation of special procedures and technical cooperation in relation to international labour standards. It also contains, in the form of tables, full information on the ratification of Conventions, together with "country profiles" containing key information on standards for each country.

Committee may ask questions or make comments. At the end of the discussion, the Conference Committee adopts conclusions on the case in question. Furthermore, in accordance with a resolution adopted by the Conference in 2000,¹⁰ the Conference Committee holds, at each of its sessions, a special sitting on the application by Myanmar of the Forced Labour Convention, 1930 (No. 29).

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

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

In numerous reports, the Committee of Experts has emphasized the importance of the spirit of mutual respect, cooperation and responsibility that has always existed in relations between the Committee of Experts and the Conference Committee. In recent years, it has 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 for that purpose.

¹⁰ International Labour Conference, 88th Session, 2000; *Provisional Record* Nos 6-1 to 5.



Part I. General Report

1. 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 79th Session in Geneva from 27 November to 12 December 2008. The Committee has the honour to present its report to the Governing Body.

Composition of the Committee

2. The composition of the Committee is as follows: Mr Mario ACKERMAN (Argentina), Mr Anwar Ahmad Rashed AL FUZAIE (Kuwait), Mr Denys BARROW, SC (Belize), Ms Janice R. BELLACE (United States), Mr Lélío BENTES CORRÊA (Brazil), Mr Halton CHEADLE (South Africa), Ms Laura COX, QC (United Kingdom), Ms Blanca Ruth ESPONDA ESPINOSA (Mexico), Mr Abdul G. KOROMA (Sierra Leone), Ms Robyn A. LAYTON, QC (Australia), Mr Pierre LYON-CAEN (France), Ms Angelika NUSSBERGER, MA (Germany), Ms Ruma PAL (India), Mr Raymond RANJEVA (Madagascar), Mr Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain), Mr Yozo YOKOTA (Japan). The appendix of the General Report contains brief biographies of all the Committee members.

3. The Committee noted with regret that Ms Esponda Espinosa was unable to participate in its work this year.

4. Ms Robyn Layton, QC, informed the Committee that she would not seek a renewal of her mandate which was due to expire at the end of the year. The Committee would like to express its deep appreciation for the outstanding manner in which she carried out her duties during her 15 years of service on the Committee and, in particular, commends her warmly for the excellent and inspired way in which she carried out the important and exacting task of leading the Committee during the five years she served as Chairperson of the Committee.

5. During its session, the Committee welcomed Mr Raymond Ranjeva, nominated by the Governing Body at its 302nd Session (June 2008).

6. The Committee was deeply saddened to learn of the deaths of three of its former members. Mr Semion Aleksandrovich Ivanov (Russian Federation, member of the Committee from 1981 to 1993) devoted most of his professional life to the Institute of State and Law of the Academy of Sciences of the Russian Federation and, through his deep knowledge of Russian and international labour law, became the First President of the Russian Society of Labour Law and Social Security. Mr Antti Suviranta (Finland, member of the Committee from 1984 to 1993), was both professor of labour law and a high-level magistrate, exercising important functions as President of the Supreme Court of Finland. Mr Toshio Yamaguchi (Japan, member of the Committee from 1991 to 2002), was professor of law and a specialist in industrial relations, with a wealth of knowledge of comparative law. The Committee wishes to express its profound recognition of the outstanding contribution to its work demonstrated by these three former members as well as their devotion and competence in the service of social justice and international labour standards at both the national and international levels.

7. In accordance with the decision taken by the Committee at its 78th Session (November–December 2007), the mandate of Ms Bellace as Chairperson of the Committee took effect at the beginning of its present session. The Committee re-elected Mr Al-Fuzaie as Reporter.

Working methods

8. The Committee has in recent years undertaken a thorough examination of its working methods. In order to guide this reflection on working methods efficiently, a subcommittee was set up in 2001. The mandate of the subcommittee includes examining the working methods of the Committee and any related subjects, in order to make appropriate

recommendations to the Committee.¹ The subcommittee met on three occasions between 2002 to 2004. During its sessions in 2005 and 2006, issues relating to its working methods were discussed by the Committee in plenary sitting. The subcommittee met once again in 2007.

9. This year the subcommittee met under Mr Yokota, the Chairperson, who was re-elected to that function by the Committee. Following consideration of the recommendations made by the subcommittee, the Committee agreed on the following:

- (1) The question of the measures to be taken to help governments follow-up on the comments of the Committee of Experts was examined once again with a view to supplementing the measures adopted in recent years. The Committee therefore gave instructions to the secretariat that, as appropriate and taking into account the length and substance of the comments, an indication should henceforth be given of the urgency of the issues raised by the Committee so that governments could better prioritize the action to be taken on all of the comments that they receive concerning the application of ratified Conventions.
- (2) The Committee, during its 78th Session (November–December 2007), decided to develop a process of identifying and highlighting examples of “**good practices**” in countries which come to its attention in the course of reviewing and assessing compliance by member States with Conventions. This process is seen as being beneficial to member States as “good practices” could serve as inspiration for governments and/or as models for the emulation of similar practices. This year, the Committee gave specific consideration to the criteria that it will apply to identify “good practices”. These criteria are set out at paragraph 58 of the Committee’s General Report.
- (3) The Committee was informed by the secretariat of the discussions held at the 303rd Session (November 2008) of the Governing Body on the implications of the ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference at its 97th Session (May–June 2008). In particular, explanations were provided on its possible implications for the General Survey and the new format of the questionnaire under article 19 of the Constitution, adopted on an experimental basis for the next General Survey on employment, as well as the possible implications of the 2008 Declaration for the reports requested under article 22 of the Constitution. The Committee set up a working group, composed of five of its members, to assist the Office in the preparation of the next article 19 questionnaire that would be submitted to the Governing Body at its 304th Session (March 2009). On the basis of the discussions held by this working group during the session of the Committee of Experts, the Committee provided guidance to the Office for the preparation of the aforementioned article 19 questionnaire. The Committee will continue to contribute to the revision of the article 22 report forms and will, as appropriate, provide guidance on the preparation of future article 19 questionnaires through the members who have initial responsibility for the respective Conventions.
- (4) With respect to the other matters raised by the Committee on the Application of Standards at the 97th Session (May–June 2008) of the International Labour Conference, the Committee agreed: (1) new arrangements to enhance the visibility of cases that the Committee decides warrant the insertion of special notes (see paragraphs 45, 46 and 47 of the General Report); (2) to shorten the section of its General Report dealing with collaboration with other international organizations and functions relating to other international instruments to focus on its own interaction with other international bodies (section IV of the present General Report); and (3) to invite the Office to expand the country profiles set out in the information document on ratifications and standards-related activities.

Relations with the Conference Committee on the Application of Standards

10. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee’s relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts takes the proceedings of the Conference Committee on the Application of Standards into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in particular of specific matters concerning the way in which States fulfil their standards-related obligations. In this context, the Committee again welcomed the participation of Ms Layton, QC, as an observer in the general discussion of the Committee on the Application of Standards of the 97th Session (May–June 2008) of the International Labour Conference. It noted the request by the Conference Committee for the Director-General to renew this invitation for the 98th Session (June 2009) of the Conference. The Committee of Experts accepted this invitation.

11. The Chairperson of the Committee of Experts once again invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards of the 97th Session of the International Labour Conference (Mr Edward Potter and Mr Luc Cortebeek, respectively) to participate in a special sitting of the Committee at its present session. Both accepted this invitation and discussed matters of mutual interest with the Committee.

12. The special sitting addressed two issues: matters of common interest; and the implications of the ILO Declaration on Social Justice for a Fair Globalization (the 2008 Declaration) for the work of both Committees with regard

¹ The subcommittee comprises a core group but its meetings are open to any other member of the Committee wishing to participate.

to General Surveys. On the first issue, information was exchanged on the examinations by both Committees of their respective working methods, and particularly the identification by the Committee of Experts of cases in which governments are required to provide full particulars to the Conference (the so-called “double footnotes”) and the selection by the Conference Committee of individual cases relating to the application of ratified Conventions. Second, an exchange of views took place on the recent decisions taken by the Governing Body concerning General Surveys within the framework of the follow-up to the 2008 Declaration. It was emphasized that the current authoritative value of the General Surveys should be preserved. At the same time, it was recognized that the new approach could open many possibilities to increase the impact of the standards system, in particular by providing a holistic view of national situations and a clearer understanding of gaps in law and practice concerning the implementation of international labour standards as well as gaps in standard-setting action. In this context, and in order to optimize the work of both Committees in relation to future General Surveys, it was also acknowledged that certain aspects of their respective organization of work would have to be reviewed.

II. Compliance with obligations

Follow-up to cases of serious failure by member States to fulfil reporting and other standards-related obligations mentioned in the report of the Committee on the Application of Standards

13. The Committee recalls that, at the instigation of the Committee on the Application of Standards at the 93rd Session (June 2005) of the International Labour Conference, the two committees, with the assistance of the Office, strengthened the follow-up given to cases of serious failure by member States to fulfil reporting and other standards-related obligations with a view, in so far as possible, to identifying more accurately the difficulties underlying these failures and enabling appropriate solutions to be identified. As both committees have recalled on numerous occasions, such failures hinder the functioning of the supervisory system, which is based primarily on the information provided by governments in their reports. Cases of failure to fulfil reporting obligations therefore have to be given the same level of attention as those relating to the application of ratified Conventions.

14. The Committee notes the discussions held in the Committee on the Application of Standards at the 97th Session (May–June 2008) of the International Labour Conference, with particular reference to the general discussion and the discussions and conclusions of the special sitting on cases of serious failure by member States to fulfil their reporting and other standards-related obligations. It notes in particular that the members of the Conference Committee as a whole recalled that both the sending of the majority of reports late and the decrease in the total number of reports received jeopardize the functioning and credibility of the supervisory system.

15. The Committee was informed that, to follow up on the discussions of the Conference Committee, the Office sent targeted letters to the 55 member States mentioned in the relevant paragraphs of the report of the Conference Committee concerning their failure to fulfil the respective obligations (there were 45 such member States in 2007, 49 in 2006 and 53 in 2005). Although 32 of these 55 member States had already been mentioned for the same failures in the 2007 report of the Conference Committee (and even, in some cases, in the 2005 and 2006 reports), it is nevertheless the case that some of them have made significant progress in resolving most of the shortcomings for which they were mentioned. The technical assistance activities undertaken in the context of this individualized follow-up were continued through a close coordination between all the Office units concerned. The standards specialists in subregional offices, who play a crucial role in this respect, have continued to provide assistance and advice to each of the countries concerned. In addition, practical steps were taken this year to ensure an individualized follow-up, both before the session of the Conference, based on the report of the Committee of Experts, and after its session, on the basis of the report of the Conference Committee. Measures have also been taken on a systematic basis, where appropriate, to include issues relating to the sending of reports into the ILO's broader technical cooperation programmes. The work of the two Committees have accordingly contributed to determining the priorities of the technical assistance provided. The external offices were accordingly invited to contact on a priority basis the 32 member States confronted with persistent difficulties: 20 of them have received Office technical assistance since the Conference, or will do so very shortly.

16. The information available this year (discussions of the Committee on the Application of Standards, information from external offices) confirms the Committee's observation in its last report that the difficulties most commonly experienced by member States in fulfilling their obligations are of an institutional nature. These difficulties are caused both by the lack of resources of the authority principally responsible for sending reports (inadequate staff numbers or staff with little knowledge of reporting procedures, frequent staff movements requiring renewed assistance from the Office) and

inadequate coordination between this authority and the other authorities required to contribute to the reports, or a lack of clarity in the allocation of responsibilities. Other difficulties were reported by governments, including a lack of translations of documents relating to international labour standards in their national language or the small size of certain units responsible for reporting, and therefore their limited financial and human resources. This latter difficulty affects, amongst others, the authorities of non-metropolitan territories, whose difficulties were specifically noted by the Committee in its previous report. In isolated cases, even authorities with more significant resources may indicate that they are unable to cope with both the sending of reports and other significant tasks. Finally, less frequently, the difficulties can be explained by more deep-rooted reasons relating to national circumstances which prevent the provision of any information on the application of international labour standards and the implementation of technical assistance activities.

17. The Committee notes that, certain of the 55 member States referred to above have, frequently with the assistance of the Office, fulfilled their reporting and other standards-related obligations, in full or in part, since the end of the session of the Conference. In this respect, as it has done systematically for the past three years, the Committee wishes firstly to welcome the action taken by the member States to make up the accumulated backlog in the sending of reports by submitting all the reports due.² It also welcomes the fact that other member States have made use of the period between the Conference and the present session of the Committee of Experts to make up in part for their failings.³ Furthermore, the Committee has been informed that, in view of the efforts made to raise awareness of the importance of the sending of reports by the two Committees, and supplemented by the Office's follow-up, almost all the member States concerned have taken initiatives to overcome their difficulties and that it is rare to find that no action has been taken on the matter. The Committee wishes to note in particular the support provided by certain governments to non-metropolitan territories for the preparation of reports, following the appeal made by the two Committees. Such action to raise the awareness of member States is important as it appears to generate among the governments concerned the necessary will to overcome the difficulties, which is indispensable if technical assistance activities are to be undertaken successfully. It could be at the origin of the rise in the total number of reports received this year.⁴

18. The Committee reminds governments that they are required to comply with all the reporting and other standards-related obligations that they accept upon becoming Members of the Organization. Compliance with these obligations is essential for dialogue between the supervisory bodies and member States on the effective implementation of ratified Conventions. Governments that request technical assistance may benefit from it, yet such assistance can only be useful and adapted to national circumstances if governments are prepared to inform the Office of their specific problems and have the will to adopt lasting solutions. The Committee hopes that the Office will maintain the sustained technical assistance that it has been providing to member States for four years, and without which the difficulties encountered could not be overcome in the long term. Finally, the Committee welcomes the good collaboration that it maintains with the Committee on the Application of Standards on this matter of mutual interest which is essential to the proper discharge of their respective tasks.

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

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

20. In accordance with the procedure adopted by the Governing Body in November 2001 and March 2002,⁵ particularly with a view to facilitating the collection of information on related subjects at the national level, requests for reports on Conventions covering the same subject are grouped together and addressed simultaneously to each country.⁶ In addition, in the case of the 12 fundamental and priority Conventions, as well as for certain other groups of Conventions containing a large number of instruments, reports are requested, with a view to balancing their submission, in accordance with the English alphabetical order, the first year by member States beginning with the letters A to J, and the second year

² **Iraq, Tajikistan and Uzbekistan.**

³ **Albania** (submission of first report on Convention No. 171 due since 2006), **Antigua and Barbuda** (submission of first reports on Conventions Nos 122, 131, 135, 142, 144, 150, 151, 154, 155 and 158 due since 2004 and first report on Convention No. 100 due since 2005), **Bolivia** (submission of some of the reports due), **Georgia** (submission of first report on Convention No. 163 due since 2006), **Kyrgyzstan** (submission of first report on Convention No. 133 due since 2005), **Nigeria** (submission of first reports on Conventions Nos 137, 178 and 179 due since 2006), **Solomon Islands** (submission of some of the reports due), **Tajikistan** (submission of some of the reports due), **(United Kingdom (St Helena))** (submission of some of the reports due). The following countries have since replied to all or the majority of the Committee's comments: **Afghanistan, Ethiopia, France (Réunion), Haiti, Jamaica, Lesotho, Malaysia (Sabah), Mali, Mongolia, Seychelles, Sudan, Tajikistan and Zambia.**

⁴ See paragraph 24 of the present report. The Committee's observations concerning compliance with reporting obligations by certain member States and information concerning the submission of the instruments adopted by the Conference to the competent authorities are contained in Part II of the report.

⁵ Documents GB.282/LILS/5, GB.282/8/2, GB.283/LILS/6 and GB.283/10/2.

⁶ Information concerning requests for reports by country and by Convention is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

by those whose names begin with the letters K to Z, or the converse⁷ (for a list of Conventions grouped by subject see page v).

21. The Committee also had before it reports especially requested from certain governments on other Conventions for one of the following reasons:

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

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

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

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

Reports requested and received

24. A total of 2,517 reports were requested from governments on the application of Conventions ratified by member States (article 22 of the Constitution). At the end of the present session of the Committee, **1,768** of these reports had been received by the Office. This figure corresponds to **70.24** per cent of the reports requested, representing a clear increase in relation to the previous year, when the figure was 65.04 per cent and the total number of reports requested was lower than this year.

25. In addition, 351 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (article 35 of the Constitution). Of these, **217** reports, representing **61.82** per cent, had been received by the end of the Committee's session, representing an important increase in relation to last year, when the figure was 35.86 per cent.

26. The Committee firmly hopes that this increase in the number of reports received, which also includes reports received under article 19 of the Constitution on the occupational safety and health instruments covered by the General Survey,⁸ is the beginning of a lasting positive trend. It requests governments and the Office to continue their respective efforts in this respect. The Committee will continue to follow the issue closely and will specifically draw the attention of the Conference Committee on the Application of Standards to it, where necessary.

Compliance with reporting obligations

27. Most of the governments from which reports were due on the application of ratified Conventions have supplied most or all of the reports requested (see Appendix I). However, no reports due have been received for the past two or more years from the following 11 countries: **Cape Verde, Denmark** (Faeroe Islands), **Guinea, Guinea-Bissau, Lao People's Democratic Republic, Sierra Leone, Somalia, United Republic of Tanzania** (Zanzibar), **Togo, Turkmenistan, United Kingdom** (Anguilla), **United Kingdom** (British Virgin Islands) and **United Kingdom** (Falkland Islands (Malvinas)). In addition, all or the majority of the reports due this year have not been received from the following 40 countries: **Armenia, Barbados, Belize, Bolivia, Botswana, Burundi, Chad, Comoros, Côte d'Ivoire, Czech Republic, Denmark** (Greenland), **Dominica, Equatorial Guinea, Eritrea, France** (French Southern and Antarctic Territories), **Gambia, Guyana, Hungary, Islamic Republic of Iran, Ireland, Liberia, Malta, Namibia, Netherlands** (Aruba), **Nicaragua, Nigeria, Norway, Panama, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Solomon Islands, Tajikistan, United Republic of Tanzania, United Republic of Tanzania** (Tanganyika), **Thailand, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom** (Isle of Man), **United Kingdom** (St Helena) and **Vanuatu**.

28. The Committee urges the governments of these countries to make every effort to supply the reports requested on ratified Conventions. As it emphasized in paragraph 16 above, the Committee is aware that where no reports have been sent for some time, it is likely that administrative or other problems are preventing the government concerned from fulfilling its obligations under the ILO Constitution. In this respect, the Committee is bound to recall the importance of the assistance provided by the Office, in particular through the specialists on international labour standards in the subregional offices, in helping the governments concerned to overcome these difficulties.

⁷ Information concerning the regular reporting schedule by country and by Convention is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/schedules/index.cfm>.

⁸ See paragraph 98 of the General Report.

Late reports

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

30. The Committee observes that by 1 September 2008, the proportion of reports received was 32.4 per cent, compared with 34.2 per cent at its previous session, this latter percentage, as the Committee emphasized, represented a clear increase, as this proportion had remained below 30 per cent of the total reports due for many years. Nevertheless, the number of reports received in time is still fairly low, even though efforts are made by a given number of member States to submit them in time. The Committee is therefore bound to recall that the supervisory system can function adequately only if reports are communicated in due time. This is particularly true in the case of first reports or reports on Conventions where there are serious or continuing discrepancies, which the Committee has to examine in greater depth. The Committee firmly hopes that the Office will continue to provide technical assistance to help member States send more reports by 1 September.

31. Furthermore, the Committee notes that a number of countries sent some or all of the reports due by 1 September 2007 on ratified Conventions during the period between the end of the Committee's December 2007 session and the beginning of the May–June 2008 session of the International Labour Conference, or even during the Conference.⁹ The Committee emphasizes that this practice also disturbs the regular operation of the supervisory system and makes it more burdensome. It wishes to provide herein the list of countries which followed this practice in 2007–08, as requested by the Conference Committee on the Application of Standards: **Angola** (Convention No. 29); **Antigua and Barbuda** (Conventions Nos 14, 17, 87, 98, 138); **Armenia** (Conventions Nos 111, 176); **Bahamas** (Conventions Nos 26, 29); **Belize** (Conventions Nos 81, 94, 95, 138, 141, 154); **Brazil** (Conventions Nos 122, 160, 168); **Cambodia** (Convention No. 138); **Central African Republic** (Convention No. 6); **Chad** (Conventions Nos 87, 98, 100, 111, 182); **China – Hong Kong Special Administrative Region** (Conventions Nos 97, 98); **Congo** (Conventions Nos 6, 11, 13, 26, 29, 81, 87, 95, 98, 100, 105, 111, 119, 138, 152, 182); **Cyprus** (Conventions Nos 97, 143, 183); **Democratic Republic of the Congo** (Conventions Nos 11, 26, 27, 87, 98, 100, 102, 111, 118, 138, 182); **Denmark** (Convention No. 152); **Djibouti** (Conventions Nos 19, 24, 37, 87, 100, 111, 125, 126, 138, 144, 182); **Equatorial Guinea** (Convention No. 111); **Estonia** (Conventions Nos 12, 19, 27, 81, 87, 100, 111, 122); **Fiji** (Convention No. 169); **France** (Conventions Nos 87, 88, 96, 97, 98, 152); **France – French Guiana** (Conventions Nos 5, 6, 12, 17, 19, 24, 29, 35, 36, 37, 38, 42, 81, 95, 105, 124, 144); **France – Guadeloupe** (Conventions Nos 12, 17, 19, 24, 42, 87, 98, 100, 111, 115, 144); **France – Martinique** (Conventions Nos 5, 6, 10, 12, 17, 19, 24, 35, 36, 37, 38, 42, 81, 87, 94, 95, 100, 105, 111, 123, 124, 129, 131, 144); **France – Réunion** (Convention No. 144); **France – St Pierre and Miquelon** (Conventions Nos 12, 17, 19, 24, 42, 87, 98, 100, 111, 122, 144); **Gambia** (Convention No. 29); **Hungary** (Convention No. 24); **Iraq** (Conventions Nos 13, 22, 23, 42, 94, 95, 98, 100, 108, 115, 120, 136, 147, 167); **Kiribati** (Conventions Nos 87, 98); **Liberia** (Conventions Nos 29, 87, 98); **Malawi** (Conventions Nos 29, 97, 105, 138, 182); **Malaysia** (Conventions Nos 29, 81, 95, 123, 138, 182); **Malaysia – Sabah** (Conventions Nos 94, 97); **Malaysia – Sarawak** (Conventions Nos 19, 94); **Malta** (Conventions Nos 32, 77, 78, 95, 124, 131); **Mongolia** (Convention No. 29); **Netherlands – Netherlands Antilles** (Conventions Nos 10, 29, 33, 90, 94, 95, 105); **Nigeria** (Conventions Nos 26, 29, 81, 95, 105, 111); **Pakistan** (Convention No. 32); **Panama** (Conventions Nos 81, 94); **Papua New Guinea** (Conventions Nos 26, 27, 29, 99, 105, 138, 182); **Peru** (Conventions Nos 26, 27, 29, 59, 71, 77, 78, 79, 81, 90, 99, 105, 138, 152); **San Marino** (Conventions Nos 98, 100, 111, 119, 138, 142, 144, 148, 150, 151, 154, 156, 159, 161); **Senegal** (Conventions Nos 6, 10, 13, 26, 95, 102, 120, 121, 182); **Seychelles** (Convention No. 155); **Slovakia** (Conventions Nos 27, 182); **Slovenia** (Conventions Nos 27, 29, 32, 81, 90, 97, 105, 129, 131, 138, 143, 173); **United Republic of Tanzania** (Convention No. 94); **Uganda** (Conventions Nos 17, 138, 162, 182); **United Kingdom – Bermuda** (Conventions Nos 10, 29, 59, 94, 105); **United Kingdom – Gibraltar** (Conventions Nos 29, 59, 81, 87, 100); **Uzbekistan** (Conventions Nos 29, 98, 100, 105, 111, 122).

Supply of first reports

32. A total of 94 of the 164 first reports due on the application of ratified Conventions were received by the time that the Committee's session ended, compared to last year when 118 of the 212 first reports due had been received. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received for a certain number of years from the following 16 member States:

- since 1992 – **Liberia** (Convention No. 133);
- since 1994 – **Kyrgyzstan** (Convention No. 111);
- since 1998 – **Equatorial Guinea** (Conventions Nos 68, 92);
- since 1999 – **Turkmenistan** (Conventions Nos 29, 87, 98, 100, 105, 111);

⁹ For the reports received and not received by the end of the Conference, see report of the Committee on the Application of Standards, Part Two, II, Appendix I (*Provisional Record* No. 19, 97th Session, ILC, 2008). See also information on article 22 reports requested and received on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

- since 2002 – **Gambia** (Conventions Nos 105, 138), **Saint Kitts and Nevis** (Conventions Nos 87, 98), **Saint Lucia** (Convention No. 182);
- since 2003 – **Dominica** (Convention No. 182), **Gambia** (Convention No. 182);
- since 2004 – **Antigua and Barbuda** (Conventions Nos 161, 182), **Dominica** (Conventions Nos 144, 169), **The former Yugoslav Republic of Macedonia** (Convention No. 182);
- since 2005 – **Liberia** (Conventions Nos 81, 144, 150, 182);
- since 2006 – **Dominica** (Conventions Nos 135, 147, 150), **Kyrgyzstan** (Conventions Nos 17, 184); and
- since 2007: **Armenia** (Conventions Nos 14, 150, 160, 173); **Chad** (Convention No. 138); **Lao People's Democratic Republic** (Conventions Nos 138, 182); **Saint Kitts and Nevis** (Convention No. 138); **Sao Tome and Principe** (Conventions Nos 135, 138, 151, 154, 155, 182, 184); **Seychelles** (Conventions Nos 73, 144, 147, 152, 161, 180); **Tajikistan** (Convention No. 182) and **The former Yugoslav Republic of Macedonia** (Convention No. 144).

33. The Committee, like the Conference Committee on the Application of Standards, wishes to emphasize the importance of first reports. They provide the basis on which the Committee makes its initial assessment of the observance of ratified Conventions by member States. The Committee urges the governments concerned to make a special effort to supply these reports.

Replies to the comments of the supervisory bodies

34. Governments are requested to reply in their reports to the observations and direct requests made by the Committee. The majority of governments have provided the replies requested. In accordance with the established practice, the Office has written to all the governments which failed to provide such replies requesting them to supply the necessary information. Of the 35 governments to which such letters were sent, only five have provided the information requested.

35. The Committee regrets that there are still many cases of failure to reply to its comments in which, either:

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

36. In all, there were 519 cases of no response (concerning 46 countries).¹⁰ There were 555 such cases (concerning 49 countries) last year. Under these conditions, the Committee is bound to repeat the observations or direct requests already made on the Conventions in question.

37. The failure of the governments concerned to fulfil their obligations considerably hinders the work of the Committee of Experts and that of the Conference Committee on the Application of Standards. The Committee cannot overemphasize the importance of ensuring the dispatch of the reports and replies to its comments.

¹⁰ **Barbados** (Conventions Nos 97, 98, 100, 102, 105, 111, 118, 122, 128, 138, 144, 147, 172, 182); **Belize** (Conventions Nos 14, 29, 89, 97, 98, 100, 105, 111, 115, 140, 150, 151, 155, 156, 182); **Bolivia** (Conventions Nos 1, 14, 19, 20, 30, 77, 78, 81, 89, 95, 96, 102, 103, 106, 117, 118, 121, 122, 124, 128, 129, 130, 131, 136, 156); **Botswana** (Conventions Nos 98, 138, 144, 182); **Burundi** (Conventions Nos 14, 29, 52, 81, 89, 101, 105, 138, 182); **Cape Verde** (Conventions Nos 17, 19, 29, 81, 87, 98, 100, 111, 118, 182); **Chad** (Conventions Nos 14, 29, 41, 81, 100, 105, 111, 132, 144, 182); **Congo** (Conventions Nos 29, 81, 87, 89, 98, 105, 138, 149, 152, 182); **Côte d'Ivoire** (Conventions Nos 3, 14, 29, 41, 52, 81, 110, 129, 182); **Czech Republic** (Conventions Nos 1, 14, 111, 132, 140, 171, 182); **Denmark: Faeroe Islands** (Conventions Nos 14, 106); **Denmark: Greenland** (Conventions Nos 14, 106); **Dominica** (Conventions Nos 14, 19, 26, 29, 81, 95, 105, 138); **Equatorial Guinea** (Conventions Nos 1, 29, 30, 87, 98, 100, 103, 105, 138, 182); **France: French Southern and Antarctic Territories** (Conventions Nos 98, 111); **France: St Pierre and Miquelon** (Conventions Nos 14, 100, 106, 111, 129, 149); **Gambia** (Conventions Nos 87, 98, 100, 111); **Guinea** (Conventions Nos 3, 26, 29, 81, 87, 89, 90, 94, 95, 98, 99, 105, 111, 113, 115, 117, 118, 119, 121, 122, 132, 134, 136, 138, 140, 142, 143, 144, 148, 149, 150, 152, 156, 159, 182); **Guinea-Bissau** (Conventions Nos 12, 14, 17, 18, 19, 29, 81, 89, 98, 105, 106, 111); **Guyana** (Conventions Nos 19, 29, 42, 81, 97, 100, 111, 129, 137, 138, 140, 142, 144, 149, 172, 175, 182); **Hungary** (Conventions Nos 14, 81, 105, 129, 132, 138, 140, 142, 182, 183); **Islamic Republic of Iran** (Conventions Nos 14, 19, 29, 95, 106); **Ireland** (Conventions Nos 14, 81, 98, 122, 132, 138, 144, 172, 177, 178, 179, 180, 182); **Kyrgyzstan** (Conventions Nos 14, 52, 77, 78, 79, 81, 87, 95, 98, 100, 122, 124, 148, 149); **Lao People's Democratic Republic** (Conventions Nos 4, 29); **Liberia** (Conventions Nos 22, 53, 55, 58, 92, 105, 111, 112, 113, 114, 133, 147); **Malta** (Conventions Nos 1, 14, 32, 87, 98, 100, 106, 111, 117, 132, 149); **Namibia** (Conventions Nos 98, 111, 144, 158); **Netherlands: Aruba** (Conventions Nos 14, 87, 89, 94, 106, 122, 140, 142, 144); **Nicaragua** (Conventions Nos 3, 4, 87, 98, 100, 110, 111, 117, 122, 140, 142, 144); **Nigeria** (Conventions Nos 8, 19, 32, 81, 87, 94, 97, 98, 100, 123, 138, 144, 182); **Norway** (Conventions Nos 30, 94, 100, 111, 144, 149, 169); **Panama** (Conventions Nos 3, 17, 30, 87, 89, 98, 100, 107, 110, 111, 117, 122); **Papua New Guinea** (Conventions Nos 87, 98, 100, 103, 111, 122, 138, 158); **Paraguay** (Conventions Nos 81, 89, 99, 100, 111, 120, 122, 169); **Russian Federation** (Conventions Nos 81, 100, 103, 106, 122, 142, 149, 156); **Rwanda** (Conventions Nos 12, 14, 17, 87, 89, 94, 98, 100, 111, 132); **Saint Kitts and Nevis** (Conventions Nos 29, 100, 105, 111, 144, 182); **Saint Lucia** (Conventions Nos 14, 87, 97, 98, 100, 101, 108, 111); **Sao Tome and Principe** (Conventions Nos 87, 98, 100, 106, 111, 144); **Sierra Leone** (Conventions Nos 17, 26, 29, 59, 81, 87, 94, 95, 98, 99, 100, 101, 111, 125, 126, 144); **Solomon Islands** (Conventions Nos 14, 26, 29, 81, 94, 95); **United Republic of Tanzania** (Conventions Nos 87, 98, 105, 140, 142, 144, 149); **Thailand** (Conventions Nos 14, 100, 122, 182); **The former Yugoslav Republic of Macedonia** (Conventions Nos 87, 98, 135); **Togo** (Conventions Nos 26, 29, 87, 100, 105, 111, 138, 143, 144, 182); **Uganda** (Conventions Nos 11, 26, 94, 95, 98, 122, 123, 124, 143, 144, 158); **United Kingdom: Anguilla** (Conventions Nos 8, 17, 22, 23, 26, 29, 59, 82, 94, 97, 99, 140); **United Kingdom: Bermuda** (Conventions Nos 17, 59, 82, 98); **United Kingdom: British Virgin Islands** (Conventions Nos 26, 59, 82, 94, 97); **United Kingdom: Falkland Islands (Malvinas)** (Conventions Nos 59, 82); **United Kingdom: Gibraltar** (Conventions Nos 59, 81, 82, 100); **United Kingdom: St Helena** (Conventions Nos 17, 29, 108).

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

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

Observations and direct requests

39. In many cases, the Committee has found that no comment is called for regarding the manner in which a ratified Convention has 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 either of "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.¹¹

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

Special notes

41. As in the past, the Committee has indicated by special notes at the end of the observations (traditionally known as footnotes) the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2009.

42. 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 three general considerations. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these 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. Finally, 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 that case in the Conference Committee on the Application of Standards.

43. 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.

44. 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.

45. This year, under the present reporting cycle¹² the Committee has requested early reports after an interval of either one or two years, according to the circumstances, in the following cases:

¹¹ ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev., 2006. These comments appear in the CD-ROM version of the ILOLEX database. This database is also available via the ILO web site (www.ilo.org/normes).

¹² After the first report, subsequent reports are requested every two years for fundamental and priority Conventions and every five years for other Conventions (GB.258/6/19).

List of the cases in which the Committee has requested early reports after an interval of either one or two years:	
State	Conventions Nos
Algeria	42
Angola	17, 88
Argentina	169
Australia	42
Barbados	122, 144
Benin	143
Brazil	169
Cameroon	143
China – Hong Kong Special Administrative Region	97
Colombia	17, 169
Comoros	99
Congo	95, 152
Democratic Republic of the Congo	102, 119
Djibouti	19, 26
Ecuador	81, 103, 152
El Salvador	107
France	88, 94, 96, 97, 102
Guatemala	1, 169
Hungary	24
Israel	97
Italy	143
Japan	88
Madagascar	144
Malaysia – Peninsular Malaysia	19
Malaysia – Sabah	97
Mauritius	17, 19
Mexico	169
Niger	95
Pakistan	144
Paraguay	95
Peru	44, 169
Philippines	94
Portugal	117
Russian Federation	126
Saint Kitts and Nevis	144
Sao Tome and Principe	18
Slovenia	97, 143
Sri Lanka	103

List of the cases in which the Committee has requested early reports after an interval of either one or two years:	
State	Conventions Nos
Tunisia	107
Uganda	158
Uruguay	121
Bolivarian Republic of Venezuela	102, 111, 118, 121, 142, 158
Yemen	131
Zambia	103
Zimbabwe	99

46. The Committee has also requested governments to supply full particulars to the Conference at its next session in June 2009 in the following cases:

List of the cases in which the Committee has requested to supply full particulars to the Conference at its next session in June 2009:	
State	Conventions Nos
Belarus	87
Chile	35
Islamic Republic of Iran	111
Kuwait	111
Malaysia	138
Myanmar	87
Paraguay	87
Russian Federation	182

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

List of the cases in which the Committee has requested to furnish detailed reports when simplified reports would otherwise be due:	
State	Conventions Nos
Croatia	162
Ghana	119
Paraguay	98
Sao Tome and Principe	87
Sudan	98
Uruguay	128
Bolivarian Republic of Venezuela	128, 130

Practical application

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

49. The Committee notes that 347 reports received this year contain information on the practical application of Conventions. Of these, 43 reports contain information on case law. The Committee also notes that 304 of the reports contain information on statistics and labour inspection.

50. In the same way as the Committee on the Application of Standards of the 97th Session of the Conference (May–June 2008), the Committee wishes to emphasize to governments the importance of submitting such information,

since it is indispensable for completing the examination of national legislation and for helping 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 the Conventions in practice.

Cases of progress

51. 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. Over the years, the Committee has developed a general approach, described below, concerning the identification of cases of progress. First, the Committee emphasizes that an expression of progress can refer to different kinds of measures. In the final instance, the Committee will exercise its discretion in noting progress having regard in particular to the nature of the Convention, as well as to the specific circumstances of the country.

52. Since first identifying cases of **satisfaction** in its report in 1964,¹³ 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 an amendment to the legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions. 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. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. In so doing, the Committee must emphasize that an expression of satisfaction is limited to the particular issue at hand and the nature of the measure taken by the government concerned. Therefore, in the same comment, the Committee may express satisfaction on a particular issue, while raising other important issues which in its view have not been addressed in a satisfactory manner. Further, if the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up on its practical application.

53. As regards the visibility and impact that cases of progress may have, the Committee welcomed the discussion at the Conference Committee on the Application of Standards at the 97th Session (May–June 2008) of the application of the Labour Inspection Convention, 1947 (No. 81), in Sweden.

54. Details concerning these cases are to be found in Part II of this report and cover 49 instances in which measures of this kind have been taken in 40 countries. The full list is as follows:

List of the cases in which the Committee has been able to express its satisfaction at certain measures taken by the governments of the following countries:	
State	Conventions Nos
Algeria	81
Argentina	138
Australia	42
Bahamas	17, 103
Bangladesh	106
Belgium	111
Bulgaria	106
Burkina Faso	3
China – Hong Kong Special Administrative Region	97
Colombia	87
Croatia	162
Cyprus	105
Denmark	81
Djibouti	100
Ecuador	138

¹³ See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

List of the cases in which the Committee has been able to express its satisfaction at certain measures taken by the governments of the following countries:	
State	Conventions Nos
Finland	128, 130
France	81, 158
Georgia	138
Honduras	138
Jordan	29, 81
Kenya	100, 138
Latvia	81
Liberia	87
Malaysia	98
Mauritius	94
Netherlands	98, 103
Nicaragua	138
Panama	98
Portugal	103, 132
Romania	14
Senegal	6, 120
Slovenia	129
Spain	87
Switzerland	173
Turkey	138
Uganda	17, 105
Ukraine	111
United Kingdom – Isle of Man	180
United Kingdom – Jersey	98
Zambia	138

55. Thus the total number of cases in which the Committee has been led to **express its satisfaction** at the progress achieved following its comments has risen to 2,669 since the Committee began listing them in its report.

56. Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979.¹⁴ 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. This may include: draft legislation before parliament, or other proposed legislative changes not yet forwarded or available to the Committee; consultations within the government and with the social partners; new policies; and 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 was a compelling reason to note a particular judicial decision as a case of satisfaction. The Committee may also note as cases of interest progress made by a State, province or territory in the framework of a federal system. The Committee's practice has developed to such an extent that cases in which it expresses interest may now also encompass a variety of new or innovative measures which have not necessarily been requested by the Committee. The

¹⁴ See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention.

57. Details concerning the cases in question are to be found either in Part II of this report or in the requests addressed directly to the governments concerned, and include 213 instances in which measures of this kind have been adopted in 103 countries. The full list is as follows:

List of the cases in which the Committee has been able to note with interest various measures taken by the governments of the following countries:	
State	Conventions Nos
Afghanistan	111
Albania	81, 138, 182
Algeria	81
Antigua and Barbuda	81
Argentina	81, 100, 111, 138, 182
Australia	87, 98
Austria	81
Azerbaijan	103, 111, 129
Bahamas	103
Bangladesh	182
Barbados	81
Belarus	182
Belgium	100, 182
Belize	81, 97, 100, 138
Benin	81, 138, 143, 182
Bolivia	29, 182
Bosnia and Herzegovina	81, 111, 129
Brazil	97, 100
Bulgaria	29, 32, 111, 182, 183
Burkina Faso	29, 81, 97, 143, 182
Burundi	42
Cambodia	138, 182
Canada	100, 111
Central African Republic	81
Chile	111, 138, 182
China – Macau Special Administrative Region	111, 182
Colombia	24, 81, 138
Comoros	81
Congo	81
Costa Rica	182
Croatia	111
Cuba	81
Cyprus	81, 182
Democratic Republic of the Congo	26, 81, 98, 138, 182

List of the cases in which the Committee has been able to note with interest various measures taken by the governments of the following countries:	
State	Conventions Nos
Djibouti	88, 122
Ecuador	81, 97, 100, 111, 138, 182
Egypt	81
El Salvador	29, 81, 138, 182
Eritrea	138
Estonia	111, 182
Fiji	138, 182
Finland	182
France	129
Gabon	182
Georgia	29, 138, 182
Germany	182
Ghana	103, 182
Grenada	138
Guatemala	182
Honduras	81, 108, 138, 169, 182
Hungary	17
India	81, 122
Indonesia	182
Ireland	111
Italy	97, 143
Jamaica	81, 138, 182
Japan	81
Jordan	81, 182
Kenya	29, 81, 98, 142, 182
Kiribati	87, 98
Korea, Republic of	111, 144
Kyrgyzstan	100
Latvia	3, 81, 111
Lebanon	150
Lesotho	138, 182
Liberia	87
Madagascar	98
Mauritius	87, 98
Mexico	87
Moldova, Republic of	81, 98, 129
Nepal	98, 144

List of the cases in which the Committee has been able to note with interest various measures taken by the governments of the following countries:	
State	Conventions Nos
Netherlands	111
New Zealand	52
Nicaragua	138, 182
Norway	97, 100, 111, 143
Pakistan	182
Panama	81, 107
Paraguay	169
Peru	29, 81, 98, 138
Poland	101, 111, 129, 144
Portugal	29, 97, 143
Qatar	81, 138
Romania	1, 81, 129
Rwanda	81
Senegal	10, 81, 182
Serbia	81
Slovakia	182
Slovenia	81, 129, 143
South Africa	144
Sri Lanka	100, 111
Sudan	81
Syrian Arab Republic	81, 129
Tanzania, United Republic of	98, 111
The former Yugoslav Republic of Macedonia	29
Turkey	81, 138, 155, 161, 182
Uganda	98, 162
United Arab Emirates	29, 81
United Kingdom	97
United Kingdom – Gibraltar	100
United Kingdom – Jersey	87, 98
Uruguay	144
Yemen	81
Zambia	100, 103, 111, 122, 138, 182

Cases of good practices

58. In accordance with the decision taken at its 78th Session (November–December 2007), the Committee will henceforth highlight cases of good practices to enable governments to emulate these in advancing social progress and to serve as a model for other countries to assist them in the implementation of ratified Conventions. At its 79th Session (November–December 2008), the Committee, on the recommendation of its subcommittee on working methods, agreed on general criteria that it would apply to identify cases of good practices. This is set out below. The Committee also agreed to apply the two-stage process used by it for the identification of cases with respect to governments that are required to supply full particulars to the Conference (the so-called “double footnotes”) and referred to in paragraph 44 above.

59. In agreeing on the criteria for cases of good practices, the Committee noted that mere compliance with the requirements of the Convention would not be sufficient as this is what the obligation of the member State requires. At the same time, such an identification of a case of good practices does not in any way add to the obligations that member States have under the Conventions they have ratified. The Committee also recognized that a certain caution would need to be exercised in the identification of good practices so as to minimize the possibility that such practices might in hindsight be viewed as unsatisfactory. Bearing in mind these aspects, the Committee agreed on the following three criteria, on the understanding that they were indicative and not exhaustive. First, the practice should indicate a new approach to improve or achieve compliance with the Convention and could be used as a model for other countries in implementing the particular Convention. Second, the practice reflects an innovative or creative way of either implementing the Convention or addressing difficulties which arise in its application. Third, recognizing that Conventions lay down minimum standards, the practice provides an example of a country extending the application or coverage of the Convention to enhance the objectives of the Convention, in particular where it contains flexibility clauses.

60. Details concerning the cases in question are to be found in Part II of this report. The full list is as follows:

List of the cases of good practices:	
State	Conventions Nos
Argentina	138
Belgium	111
Bulgaria	182
Cyprus	81
Denmark	81, 122
Finland	122
France	122
India	122
Japan	122
Jordan	81

Cases in which the need for technical assistance has been highlighted

61. The combination of the work of the supervisory bodies and the practical guidance given to member States through technical cooperation and assistance has always been one of the key dimensions of the ILO supervisory system. Further, since 2005, at the initiative of the Conference Committee on the Application of Standards, there has been heightened attention given to the complementarity between the examination by the ILO supervisory bodies and the Office's technical assistance. As pointed out in paragraphs 1318 of the General Report, this has led to an enhanced follow-up of cases of serious failure by member States to fulfil reporting and other standards-related obligations. In addition, the Conference Committee has made more systematic references to technical assistance in its conclusions regarding individual cases concerning the application of ratified Conventions. The aim of this strengthened combination between the work of the supervisory bodies and the Office's technical assistance is to provide an effective framework to member States for full compliance with their standards-related obligations including in the implementation of the Conventions which they have ratified.

62. In this context, the Committee has decided to highlight the cases for which, in the Committee's view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions. Details of these cases can be found in Part II of the report of the Committee of Experts. The full list is as follows:

List of the cases for which, technical assistance would be particularly useful in helping member States:	
State	Conventions Nos
Angola	88, 122
Antigua and Barbuda	87, 94
Armenia	94
Bangladesh	111

Barbados	98, 102
Benin	81
Bolivia	1, 14, 30, 98, 106
Bosnia and Herzegovina	122
Bulgaria	17
Burkina Faso	129, 170
Cambodia	87
Cape Verde	98, 100, 111
Central African Republic	94, 122, 158
Colombia	169
Comoros	81
Congo	29, 152
Costa Rica	89
Democratic Republic of the Congo	94
Djibouti	81, 106, 122
Dominica	95
Dominican Republic	81
Ecuador	81, 152
Egypt	81
Equatorial Guinea	87, 98
Gabon	81
Ghana	107, 119
Grenada	81
Guinea	100, 111
Guinea-Bissau	18, 100, 111
Guyana	42, 129
Haiti	14, 81
Indonesia	81, 105
Islamic Republic of Iran	29
Iraq	98
Kenya	81, 129
Lebanon	98
Lesotho	138, 182
Malawi	81, 97, 100, 107
Malaysia	138, 182
Mali	100
Mauritania	87, 98, 100, 111
Mauritius	100
Mozambique	87

Niger	87
Panama	81, 94
Paraguay	87, 98, 169
Philippines	94
Romania	87, 98
Russian Federation	87, 98
Rwanda	98
Saint Vincent and the Grenadines	95
Sao Tome and Principe	18, 19, 98, 100
Saudi Arabia	89
Senegal	81, 87, 89, 144
Seychelles	87, 98
Sierra Leone	17, 100, 125, 144
Sri Lanka	100
Swaziland	87, 98
Syrian Arab Republic	98, 100
Tajikistan	142
Trinidad and Tobago	87, 98
Tunisia	87
Turkey	87, 98
Uganda	162
United Arab Emirates	111
Yemen	81
Zambia	138

Questions concerning the application of certain Conventions

63. A general observation, which appears as an introduction to the individual examination of reports due on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), deals with the issue of the application of this Convention to the export processing zones' (EPZ) workers.

64. A general observation, which appears as an introduction to the individual examination of reports due on the application of the Minimum Age Convention, 1973 (No. 138), deals with the issue of light work activities that may be undertaken by children.

65. A general observation, which appears as an introduction to the individual examination of reports due on the application of the Termination of Employment Convention, 1982 (No. 158), deals with the application of this Convention.

66. A general observation, which appears as an introduction to the individual examination of reports due on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), addresses the issue of the establishment of appropriate and effective mechanism for the consultation and participation of indigenous and tribal people regarding matters that concern them.

67. A general observation, which appears as an introduction to the individual examination of reports due on the application of the social security Conventions, deals with the application of these Conventions in the context of the global financial crisis.

Comments made by employers' and workers' organizations

68. At each session, the Committee draws the attention of governments to the important role of employers' and workers' organizations in the application of Conventions and Recommendations. Moreover, it highlights the fact that

numerous Conventions require consultation with employers' and workers' organizations, or their collaboration in a variety of measures. The Committee notes that almost all governments have indicated in the reports supplied under articles 19 and 22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the Office. However, the Committee notes an increase this year in the number of governments which did not indicate in their reports the representative organizations of employers and workers to which copies of the reports shall be communicated. It emphasizes in this respect that, for the first time, it had to make an observation to two countries which had failed to provide this indication for the third consecutive year.¹⁵ The Committee hopes that in the future all of the governments concerned will comply with this constitutional obligation.

69. Since its last session, the Committee has received 630 comments (compared to 532 last year), 57 of which were communicated by employers' organizations and 573 by workers' organizations. The Committee recalls the importance it attaches to this contribution by employers' and workers' organizations to the work of the supervisory bodies. This contribution is essential for the Committee's evaluation of the application of ratified Conventions in law and in practice.

70. Of the majority of the comments received, 596 relate to the application of ratified Conventions (see Appendix III).¹⁶ Some 352 of these comments relate to the application of fundamental Conventions and 244 concern the application of other Conventions. Moreover, 34 comments concern reports provided by governments under article 19 of the Constitution on the Occupational Safety and Health Convention, 1982 (No. 155), the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, and the Occupational Safety and Health Recommendation, 1981 (No. 164).¹⁷

71. The Committee notes that, of the comments received this year, 457 were transmitted directly to the Office which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. The Committee emphasizes that comments submitted by employers' and workers' organizations should be received by the Office by 1 September at the latest to allow governments to have a reasonable time to respond, thereby enabling the Committee to examine the issues in question at its session in November the same year. Comments received later than 1 September will be examined by the Committee at its session the following year. In 173 cases, the governments transmitted the comments with their reports, sometimes adding their own comments.

72. The Committee also examined a number of other comments by employers' and workers' organizations, consideration of which had been postponed from its previous session because the comments of the organizations or the replies of the governments had arrived just before, during or just after the session. It again had to postpone until its next session the examination of a number of comments when they were received too close to or even during the Committee's present session, in particular to allow reasonable time for the governments concerned to make comments.

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

74. At its 77th Session (November–December 2006), the Committee gave the following guidance to the Office as to the usual procedure to be followed in determining the treatment of comments received from workers' and employers' organizations in a non-reporting year.

75. Where these comments simply repeat comments made in previous years, or refer to matters already raised by the Committee, they will be examined in the normal two-year or five-year cycle, when the government's report is due, and there will be no request for a report outside that cycle. This procedure will also apply in the case of comments which provide additional information on law and practice concerning matters already raised by the Committee, or on minor legislative changes.

76. The position is different where the comments raise serious allegations of important acts of non-compliance with particular Conventions. In this case, where the allegations appear sufficiently substantiated, there will be a request for the government to reply to these allegations outside the normal cycle and the Committee will consider the comments in the year in which they have been received. This procedure will also apply to comments referring to important legislative changes, or to proposals which have a fundamental impact on the application of a Convention; and, further, to comments which refer to minor, new legislative proposals or draft laws, not yet examined by the Committee, where its early examination may assist the government at the drafting stage.

77. The aim of this guidance is to provide assistance and to achieve consistency in dealing with such comments.

¹⁵ See Part II of the present report, pp. 43–703.

¹⁶ An indication of the observations made by employers' and workers' organizations on the application of Conventions received during the current year is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

¹⁷ See Report III (Part 1B) of the present report containing the General Survey.

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

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

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

- (a) information on the steps taken to submit to the competent authorities the instruments adopted by the Conference at its 95th Session (Convention No. 187 and Recommendations Nos 197 and 198) on 16 June 2006;
- (b) information on the steps taken to submit to the competent authorities the instruments adopted by the Conference at its 96th Session (Convention No. 188 and Recommendation No. 199) on 14 June 2007;
- (c) replies to the observations and direct requests made by the Committee at its 78th Session (November–December 2007).

80. Appendix IV of Part Two of the report contains a summary indicating, where appropriate, the name of the competent authority to which the instruments adopted by the Conference at its 95th and 96th Sessions were submitted and the date of submission.

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

95th Session

82. The Promotional Framework for Occupational Safety and Health Convention (No. 187) and Recommendation No. 197 and the Employment Relationship Recommendation (No. 198) were to be submitted to the competent authorities within 12 months or, under exceptional circumstances, within 18 months of the closure of the session of the Conference, that is by 16 June 2007 or 16 December 2007, respectively. In all, 26 governments out of the 178 member States concerned have sent information on the steps taken in this regard: **Australia, Austria, Azerbaijan, Belgium, Cyprus, Cuba, Dominican Republic, Eritrea, Estonia, Finland, Grenada, Guyana, India, Republic of Moldova, Namibia, Nicaragua, Netherlands, Peru, Serbia, Singapore, South Africa, Sweden, Switzerland, Trinidad and Tobago, United States and Zimbabwe.**

83. The Committee welcomes the entry into force on 20 February 2009 of Convention No. 187, following the registration of seven ratifications (**Cuba, Czech Republic, Finland, Japan, Republic of Korea, Sweden and United Kingdom**).

96th Session

84. At its 96th Session in May–June 2007, the Conference adopted the Work in Fishing Convention (No. 188) and Recommendation No. 199. The 12-month period for submission to the competent authorities of Convention No. 188 and Recommendation No. 199 ended on 14 June 2008, and the 18-month period on 14 December 2008. In all, 62 governments out of the 178 member States concerned have sent new information on the steps taken in this regard: **Armenia, Austria, Bahrain, Belarus, Benin, Brazil, Bulgaria, Cameroon, China, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Islamic Republic of Iran, Israel, Italy, Japan, Republic of Korea, Lebanon, Lithuania, Luxembourg, Malawi, Mauritania, Mauritius, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Oman, Philippines, Poland, Romania, San Marino, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Switzerland, United Republic of Tanzania, Thailand, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Zambia and Zimbabwe.**

Cases of progress

85. The Committee notes with interest the information sent in 2008 by the Governments of **Grenada, Namibia** and **Peru**. It welcomes the efforts made by these two Governments to make up for the significant delay in submission and thus fulfil their obligation to submit to their parliamentary bodies the instruments adopted by the Conference over a number of years.

Special problems

86. To facilitate the work of the Committee on the Application of Standards, this report only mentions the governments which have not provided any information on submission to the competent authorities of instruments adopted

by the Conference for at least the seven sessions held from May–June 2000 (i.e. from the 88th Session to the 95th Session in May–June 2006). This time frame was deemed long enough to warrant inviting Government delegations to a special sitting of the Conference Committee so that they could account for the delays in submission.

87. The Committee notes that at the closure of its 79th Session, on 12 December 2008, 50 governments are in this category: Antigua and Barbuda, Bahrain, Bangladesh, Bosnia and Herzegovina, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Comoros, Congo, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gambia, Georgia, Ghana, Guinea, Haiti, Ireland, Kazakhstan, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Mozambique, Nepal, Papua New Guinea, Paraguay, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, Somalia, Spain, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan and Zambia.

88. The Committee is aware of the exceptional circumstances that have affected these countries for many years and knows that they often lack the appropriate institutions to discharge the obligation of submission.

89. In this regard, the Committee previously noted its concern about the fact that by submitting and ratifying the Worst Forms of Child Labour Convention, 1999 (No. 182), a very large number of governments avoided being placed in the category of States that had not submitted any of the instruments adopted over the "last seven sessions" of the Conference, even though they were significantly behind with regard to submission.

90. The present report shows that 50 governments have failed to provide information on the submission to the competent authorities of the instruments adopted by the Conference over the seven sessions considered as the period of reference in 2008 (i.e. from the 88th Session in May–June 2000 to the 95th Session in May–June 2006).

91. These countries have been identified in the observations published in this report and the instruments which have not been submitted are indicated in the statistical appendices. The Committee therefore considers it useful to draw the attention of these countries, listed in paragraph 87, to this matter so that they can immediately, as a matter of urgency, take the appropriate measures to bring themselves up to date.

92. The Committee also hopes that the government authorities and the social partners in these countries will be the first to benefit from the measures that the Office will take to assist them in the steps required for the rapid submission to the legislative body of the pending instruments.

Comments of the Committee and replies from governments

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

94. The Committee hopes that the 79 observations and 41 direct requests that it is addressing this year to governments will enable them to better discharge their constitutional obligation of submission, thereby contributing to the promotion of the standards adopted by the Conference.

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

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

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

97. In accordance with the decision taken by the Governing Body,¹⁸ governments were requested to supply reports under article 19 of the Constitution on the Occupational Safety and Health Convention, 1981 (No. 155), the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, and the Occupational Safety and Health Recommendation, 1981 (No. 164).

¹⁸ Document GB.291/9(Rev.), para. 73.

98. A total of 492 reports were requested and 262 were received.¹⁹ This represents 53.25 per cent of the reports requested.

99. 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 has been received from the following 21 countries: **Cape Verde, Democratic Republic of the Congo, Gambia, Guinea, Kyrgyzstan, Liberia, Russian Federation, Saint Kitts and Nevis, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Turkmenistan, Uganda, Uzbekistan, Vanuatu.**

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

101. Part III of this report (issued separately as Report III (Part 1B)) contains the General Survey on occupational safety and health. 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 three members of the Committee.

¹⁹ ILO: Report III (Part 1B), ILC, 97th Session, 2008.

III. Highlights and major trends

102. In accordance with its decision at its 78th Session (November–December 2007),²⁰ the Committee considers that it is useful to draw attention to the following highlights and major trends in relation to topical issues arising from the reports that it has examined this year.

103. As a preliminary note, the Committee wishes to highlight the adoption by the International labour Conference at its 97th Session (May–June 2008) of the ILO Declaration on Social Justice for a Fair Globalization. The Committee welcomes the reaffirmation of the decisive role that the ILO has to play in promoting and achieving progress and social justice in the current context of globalization, and the particular importance of international labour standards for this purpose. The Committee further notes the adoption by the Conference, also at its 97th Session, of a resolution on strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization, in accordance with which "the provisions of the Declaration and its implementation should not duplicate the ILO's existing supervisory mechanisms, and ... its implementation should not increase the reporting obligations of member States".²¹ In the context of the discussion of its working methods, and also in the special sitting with the Vice-Chairpersons of the Conference Committee on the Application of Standards, the Committee of Experts discussed the issue of the implications of the 2008 Declaration mainly in relation to the General Surveys.

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

104. In the 60th anniversary year of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee of Experts wishes to emphasize the fundamental importance it attaches to freedom of association as a core enabling right, essential to the meaningful attainment of all other rights at work. This has been firmly anchored in the 2008 Declaration on Social Justice for a Fair Globalization, which highlights this right as particularly important to the attainment of the four strategic objectives of the ILO. Respect for freedom of association at the workplace goes hand in hand with respect for the basic civil liberties and human rights inherent to human dignity. Yet the Committee regrets to observe that billions of workers in the world remain deprived of this fundamental right in law or in practice. In the first instance, the Committee deeply regrets that Convention No. 87 lags behind as the least ratified of the fundamental Conventions. Moreover, among the 33 member States that have not ratified this Convention, one can find several of the most populous nations of the world. The Committee echoes the Director-General's solemn call to all those countries that have not yet ratified the Convention to make concerted efforts to do so by 2015, the proposed goal for the universal ratification of the fundamental Conventions. Recognizing significant organizational deficits in law and in practice for workers in export processing zones and for those making up the informal economy, among many other groups of vulnerable workers, the Committee has also decided to make a general observation in its report this year to highlight its concern and requests further information from governments in this regard.

²⁰ Report of the Committee of Experts, General Report, Report III (Part 1A), ILC, 97th Session, 2008, para. 8(2).

²¹ Resolution on strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization, ILC, 97th Session, 2008, para. 1.

B. Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

105. This year, the Committee celebrates the 50th anniversary of the adoption of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Convention was forward-looking in 1958, and remains the most comprehensive, dedicated international instrument on non-discrimination and equality in employment and occupation. It is intrinsically linked to the ILO's mission to promote social justice through securing decent work for all, as most recently reaffirmed in the 2008 ILO Declaration on Social Justice for a Fair Globalization. On this 50th anniversary of the Convention, it is appropriate to highlight some of the progress that has been made in its implementation and to reflect on means of overcoming the remaining obstacles to equality.

The starting point

106. In the process of applying the Convention, it is essential to acknowledge that no society is free from discrimination and that continuous action is required to address it. However, a few governments continue to assert that discrimination does not exist in their countries and declare that no action is required to apply the Convention. The Committee considers that such a position is contrary to the spirit of the Convention and is a considerable obstacle to its implementation. As already stated in its 1988 General Survey, the promotion of equality of opportunity and treatment is not aimed at a stable situation but achieved in successive stages in the course of which the national equality policy must be adjusted to newly emerging forms of discrimination for which solutions must be found.

National policy on equality of opportunity and treatment

107. Progress made. When assessing whether a given country has declared and is pursuing a national policy on equality of opportunity and treatment in accordance with the Convention, the Committee has been guided by the criteria of effectiveness, taking into account the specific circumstances of each country. In this context, the Committee wishes to recall that under Article 3(f) of the Convention, ratifying States have the obligation to provide information regularly on the measures taken to promote equality and also to indicate "the results secured by such action". While information is often provided on the various measures taken, the Committee is obliged regularly to request information on the impact of these measures. The Committee notes that an increasing number of countries apply the Convention through a combination of legislative and administrative measures, public policies, practical programmes aimed at preventing discrimination and redressing de facto inequalities, and through the establishment of national equality commissions or other specialized bodies mandated to promote equality and to deal with complaints.

Legislation

108. Important legislative developments. The Committee has been able to note considerable progress in the adoption of legal provisions on equality and non-discrimination based on the grounds enumerated in the Convention. Article 1(1)(a) of the Convention requires ratifying countries to ensure protection against discrimination on all the seven enumerated grounds, namely race, colour, sex, religion, political opinion, national extraction and social origin; Article 1(1)(b) acknowledges that new manifestations of discrimination will arise or be recognized, and envisages ratifying States determining additional grounds to be addressed under the Convention. Countries are increasingly making use of the possibility to determine additional grounds, and are taking measures, including legislative protection, to address discrimination based on additional grounds, such as age, health, disability, HIV/AIDS status, nationality, family status or responsibilities and sexual orientation. The Committee observes that in many cases discrimination in employment and occupation is not limited to discrimination on solely one ground. For example, sex-based discrimination frequently interacts with other forms of discrimination or inequality based on race, national extraction or religion or even age, migrant status, disability or health. In this regard, the Committee wishes to draw attention to the particular situation of migrant workers, including female domestic workers, indigenous women, and persons suffering from HIV/AIDS.

109. Though a number of countries already have general constitutional provisions regarding equality, these provisions, while important, have generally not proven to be sufficient in order to address specific cases of discrimination in employment and occupation. Some countries have more recently opted for comprehensive anti-discrimination legislation or have addressed discrimination in broader human rights legislation, while others have introduced new anti-discrimination and equality provisions into the existing labour laws. Given persisting patterns of discrimination, the Committee considers that in most cases comprehensive anti-discrimination legislation is needed to ensure the effective application of the Convention. The Committee has had the opportunity to examine a range of legislation, and notes a number of features that have effectively contributed to addressing discrimination and promoting equality: covering the broadest group of workers; providing a clear definition of direct and indirect discrimination; prohibiting discrimination at all stages of the employment process; explicitly assigning supervisory responsibilities to competent national authorities; providing dissuasive sanctions and appropriate remedies; shifting or reversing the burden of proof; providing protection

from retaliation; allowing for affirmative action measures; and providing for the adoption and implementation of equality policies or plans at the workplace, as well as the collection of relevant data at different levels. The Committee has also welcomed the adoption in a number of countries of initiatives such as codes of practice or guidelines which provide further guidance concerning the prohibition and prevention of discrimination at work to complement the legislation.

110. Implementation gaps. The Committee still observes some important gaps in the implementation of the Convention. For example –

- Certain categories of workers such as casual workers, domestic workers and migrant workers often remain excluded from the protection against discrimination enshrined in national legislation.
- Some anti-discrimination laws do not cover all the grounds set out in the Convention.
- A ground frequently omitted in the legislation is social origin, which remains of importance as new forms of rigid social stratification develop.
- Protection against discrimination does not cover all aspects of employment and occupation, from recruitment to termination.

111. Another important implementation gap concerns sexual harassment, which is a serious form of sex discrimination and a violation of human rights at work. The Committee therefore recalls its 2002 general observation highlighting the importance of taking effective measures to prevent and prohibit both *quid pro quo* and hostile environment sexual harassment at work. Laws on sexual harassment often lack clear definitions and appropriate responses in terms of remedies and complaints mechanisms. Confining sexual harassment to criminal procedures has generally proven inadequate, as they may deal with the most serious cases, but not with the range of conduct in the context of work that should be addressed as sexual harassment, the burden of proof is higher and there is limited access to redress.

112. Discriminatory laws: Not yet relegated to the past. Despite the requirement under the Convention to repeal discriminatory legal provisions, such provisions still exist in a number of countries. For instance, laws still place limitations on the type of work women can do or exclude them from certain sectors or occupations, for instance in the judiciary or the police. Protective measures still exclude women from certain occupations based on stereotyped assumptions regarding their role and capabilities. In this regard, the Committee has pointed out that restrictions relating to the access of women to certain types of work should be related to maternity protection and not aimed at protecting women because of their sex or gender, based on stereotyped assumptions. Laws governing personal and family relations not yet providing for equal rights of men and women continue to impact on the enjoyment of equality with respect to work and employment, notably laws authorizing a husband to object to his wife working outside the home, or requiring the husband's permission before his wife can accept certain jobs.

Enforcement

113. A continuing challenge. The implementation of anti-discrimination legislation remains a challenge almost everywhere. Where no cases or a negligible number are being lodged, the Committee has queried whether this could indicate a lack of awareness of the principle of the Convention, lack of confidence in or absence of practical access to procedures, or fear of reprisals. It has invited member States to raise awareness of the legislation, to enhance the capacity of the responsible authorities, including judges, labour inspectors and other public officials, to identify and address such cases, and also to examine whether the applicable substantive and procedural provisions, in practice, allow victims of discrimination to bring their claims successfully. The Committee has also consistently stressed the need to collect and publish information on the nature and outcome of discrimination cases addressed by the competent bodies, including the courts, national human rights or equality institutions and the labour inspectorate, as a means of raising awareness of the legislation and of the avenues for dispute resolution, and as a basis for examining their effectiveness.

De facto inequality

114. Repealing discriminatory legislation and enacting and enforcing non-discrimination legislation, while clearly important, are not sufficient to eliminate *de facto* inequality in employment and occupation, which often results from discrimination that is deeply entrenched in tradition and societal values and manifests itself in a systematic and structural manner.

115. The many faces of sex discrimination. The gender pay gap remains high as well as occupational sex segregation, women are over-represented in informal and atypical jobs, they face greater barriers in gaining access to posts of responsibility, and continue to bear the unequal burden of family responsibilities. The Committee is concerned about the high participation of women in the informal economy in a number of countries, which often means that they are excluded from most of the legal and social protection and benefits available to those working in the formal sector. Such protection and benefits are also unavailable in some countries to workers in export processing zones, where the Committee has noted serious discriminatory practices against women. Discrimination against women still takes many forms and the Committee has found that in access to or retention of employment, criteria relating to marital status, family situation and family responsibilities still disproportionately affect women. Also, stereotyped assumptions regarding women's

aspirations and capabilities, as well as their suitability for certain jobs, continue to lead to the segregation of men and women in education and training and consequently in the labour market.

116. Social justice for all: Still elusive. The Committee has also observed that labour market inequalities along ethnic and religious lines and discriminatory practices against indigenous and tribal peoples, members of ethnic minorities and migrant workers persist. Caste- and class-based discrimination remains pervasive in a number of countries. Women belonging to these groups are often disproportionately vulnerable to discrimination. The Committee notes that addressing discrimination against these groups, and the inequality in training, education, employment and occupation that affects them, is critical to development processes and to achieving social justice for all, especially given recent indications of re-emerging racism and intolerance, including religious intolerance.

A way forward

117. Proactive measures. Tackling de facto inequalities requires proactive approaches and measures, to achieve gender equality and to overcome discrimination of particularly vulnerable groups. Such measures have included affirmative action, awareness raising and training, and ensuring coherent policies in areas affecting equality of opportunity and treatment in employment and occupation. Indirect discrimination and tackling structural disadvantage remains a serious concern. The special circumstances, human rights and needs and aspirations of the groups concerned need to be taken into account in the design and implementation of policies and programmes in the areas of training, skills development and employment promotion.

118. The need for more and better data. Some countries have put in place laws, policies and procedures that allow for the collection of appropriate sex-disaggregated statistical data as a means of identifying social and economic gaps between different groups of the population. At a global level, however, relevant data are available only to a limited extent. While data on the situation of men and women exist more often, data on ethnic or other social groups are being collected and made available by a far smaller number of countries. As appropriate data are crucial in order to set priorities and design appropriate measures to address discrimination and de facto inequalities, and are also indispensable in order to monitor and assess the impact and results achieved by the measures taken, the Committee has systematically called upon governments to collect and analyse relevant data.

The role of workers' and employers' organizations

119. Key players. In keeping with the spirit of the Convention, workers' and employers' organizations are playing an important role in promoting understanding, acceptance and the realization of the principle of equality of opportunity and treatment in employment and occupation through the development and implementation of workplace policies and measures to ensure equality of opportunity and treatment and promote diversity at work. Trade unions in all regions have taken up anti-discrimination work, ranging from designing internal procedures to joining national public campaigns. Employers and employers' organizations have developed codes of conduct and implemented diversity management and training activities in a considerable number of countries. Collective bargaining has also been instrumental in securing the rights under the Convention in practice. The Committee stresses the need for full respect for freedom of association as a precondition to enable workers' and employers' organizations to carry out their important role in the context of the Convention, as social dialogue is key to addressing legislative and implementation gaps.

Conclusion

120. The application of the Convention has clearly contributed to the promotion and realization of equality of opportunity and treatment in employment and occupation and thus to social justice. Yet the goal of eliminating all discrimination in employment and occupation remains a distant one. Noting that at present 14 ILO member States have not yet ratified Convention No. 111, an instrument of fundamental and enduring importance, the Committee hopes that universal ratification will be achieved by 2015, as called for by the ILO Director-General.

C. Highlights concerning the Minimum Age Convention, 1973 (No. 138)

121. Convention No. 138 is one of the eight fundamental Conventions of the ILO. It has currently been ratified by 151 countries. The Convention defines the ages under which it is prohibited to work or to let minors work. However, out of a concern to cover the multiplicity of situations, it introduces many elements of flexibility, allowing States various options and enabling them to exclude from the application of the Convention limited categories of employment or work "in respect of which special and substantial problems of application arise" (Article 4). The Convention is accordingly complex in its implementation, as it establishes specific ages and conditions for light work, hazardous types of work and the participation of minors in artistic performances.

122. The Committee has made a general observation on the Convention this year. It follows its previous general observation in 2003, which emphasized the gravity of the problem of child labour, the efforts needed for its eradication

and the possibility of ILO technical assistance, also for the compilation of statistical data on the actual situation in each of the countries concerned. This year's general observation only covers the issue of "light work", which is authorized by the Convention (Article 7) in principle between the ages of 13 and 15 years and exceptionally between the ages of 12 and 14 years, under certain conditions and for certain types of work. The Committee believes that certain explanations on these aspects, backed up by tangible examples, are warranted because age conditions, the need to determine the types of light work that are authorized and the related conditions are often poorly understood by States and therefore likely to give rise to abuse.

123. This year, 97 reports were requested on the Convention and 72 were received. The reports received gave rise to 29 observations and 67 direct requests, including repetitions, with certain reports being covered by both an observation and a direct request: in total, the comments concern 69 countries. Of these, action taken in 11 cases was noted "with satisfaction" and in 30 cases "with interest". However, unfortunately, the progress noted is often very modest when compared with the global situation. According to the ILO's global figures, a total of 182 million children under 14 years of age work, or one in five in this age group.

124. Two related factors are bound to influence the situation of children who are compelled to work, the first of which is the economic situation of their country. In this respect, a report on 26 August 2008 by the World Bank indicates that the number of people earning less than US\$1.25 a day fell by 500 million, from 52 per cent of the total population in 1981 to 26 per cent in 2005. However, this spectacular fall is not evenly distributed and has not benefited sub-Saharan African countries. This is undoubtedly the reason why this global decline in poverty has not yet resulted in a substantial decrease in child labour according to the reports received by the Committee of Experts.

125. The second factor relates to primary-school attendance rates. According to UNICEF, the total number of children in primary education rose from 647 million in 1999 to 688 million in 2005, with a clear improvement in sub-Saharan Africa (+36 per cent) and in South and West Asia (+22 per cent). This progress is essentially due to the efforts of the international community, with the commitment to eradicate illiteracy by 2015. The consequences for child labour are evident. Some countries are very likely to achieve the objective of universal primary education by 2015 (such as Benin and Zambia, where the school attendance rate has risen by 20 per cent in six years, but where there are still 450,000 children between the ages of 10 and 14 who work, and Uganda, where the number of children in school rose from 2.9 million to 7.2 million in 2002, although with 1.4 million children between 10 and 14 years still working). In contrast, the UNESCO Global Monitoring Report of 2008 entitled Education for All indicates that it is already clear that other countries will not achieve universal primary-school attendance by 2015 (such as Burkina Faso and the Dominican Republic).

126. Emphasis should also be placed on the role of the International Programme on the Elimination of Child Labour (ILO-IPEC), which carries out action in agreement with the countries concerned in the context of ILO technical assistance. In addition to the Time-bound Programmes (TBPs), which focus on the worst forms of child labour, ILO-IPEC has formulated "contributions to the elimination of child labour" in African French- and Portuguese-speaking countries, Latin America and in certain other countries, such as Albania and Cambodia. But there are still countries in which the basis for action, in terms of statistical knowledge of the real situation, has not yet been achieved, such as China, Indonesia, Malaysia, Cameroon and Sudan.

127. Finally, even where the very positive action of ILO-IPEC offers tangible outcomes, its results, however welcome, may still appear derisory in quantitative terms. For example, in Peru the remarkable objective of ILO-IPEC is to remove 5,000 children from work between 2006 and 2010. But there are 1,219,000 working children between the ages of 6 and 13 years, some of whom, including girls, are down the mines! This amply illustrates the gigantic efforts that are still needed in the long term from the countries of the world which have the resources to do so.

D. Application of the ILO social security standards in the context of the global financial crisis

128. Many national economic indicators are giving the convergent message that the impact of the current financial crisis may be severe, long-lasting and global, thereby posing a real threat to the financial viability and sustainable development of social security systems and undermining the application of ILO social security standards. Banking, insurance and pension fund failures, followed by the closure of enterprises in the other sectors of the economy, are causing growing unemployment and reduced pensions. Social safety nets will come under increasing stress as the number of claimants increase while taxes and contributions to social security schemes decline. The huge cost of bank bailouts and stabilization measures taken by governments leaves national treasuries with little room for manoeuvre and constrains social spending. The Committee is led to observe that social security systems are set to experience the worst financial and economic crisis since the systems were first created. In this situation, the Committee is bound to remind governments that, under the ILO Conventions on social security, governments must accept general responsibility for the proper administration of the national social security institutions and for the due provision of the benefits; to enable them to

effectively discharge this general responsibility, the Conventions place them under the obligation to “take all measures required for this purpose”.²²

Making enhanced social protection part of the solution

129. During the economic turbulence of the 1990s, financial pressures led some governments to adopt hasty measures and make cuts in social security expenditure. The Committee emphasized at that time that immediate financial pressures, however important, should not take precedence over the need to preserve the stability and effectiveness of social security systems, and that any reduction in their expenditure should be carried out within the framework of a coherent policy aimed at achieving viable long-term solutions ensuring the levels of protection guaranteed by the ILO standards. The Committee now wishes to reiterate this concern with even greater force: unless major countries adopt a coherent and comprehensive response to the global financial crisis, social protection mechanisms may be severely jeopardized and pushed well below the minimum levels established by Convention No. 102 over 50 years ago. Depending on how this crisis is managed, it has the potential to turn into a full-scale social and political crisis, resulting in a major setback for social progress worldwide.

130. Experience shows that social security and the overall economy are inseparable, particularly in periods of crisis, and need to be governed and managed together, at both the national and global levels. It means that bringing the economy out of the crisis requires enhanced measures of social protection and, indeed, making social security part of the solution. The Committee recommends basing these measures on the requirements of ILO Conventions, which have been drawn up by governments and social partners with the interests of the economy in mind so as to keep it working effectively. It cannot repeat too often that taking economic and social issues together in a synergetic approach is a precondition for good governance, in which international labour standards are instrumental. The Committee hopes that out of this crisis will emerge an understanding of the need to ensure full integration of the social dimension into the emerging post-crisis financial and economic order.

Rebalancing the public and private tiers of social security systems

131. In the 1990s, many governments reduced their role in discharging the responsibilities in relation to social security down to the mere provision of basic safety nets, while at the same time expanding the role of private insurers, enterprises and insured persons themselves. In these countries, the move to privatization led to the gradual reduction of the public tier of social security, particularly in sickness and pension insurance. The Committee has emphasized that this transfer of responsibilities is not always compatible with the principle of collective financing and the general responsibility of the State for the proper administration of the system and the due provision of benefits. One of the negative consequences involved was the exclusion of the public authorities, social partners and insured persons from participating in the administration of social security schemes, thereby exposing their members to greater financial risks while removing state guarantees.

132. In the light of the recent developments, the Committee is bound to reaffirm that collective financing and the sharing of risks on as broad a basis as possible, combined with the transparent, accountable and participatory management of social security schemes under the overall responsibility and direct oversight of the State offer the best guarantees of the financial viability and sustainable development of social security. With the rapidly diminishing trust in private saving schemes, which have sustained severe financial losses, public opinion is becoming once again more receptive to the principles of social cohesion, collective risk sharing and the stability of public insurance schemes as preferable to the uncertainty of private systems. This may compel governments to find the new balance between the public and private tiers in the post-crisis social order.

Rebuilding the State’s institutional and regulatory capacity

133. When private schemes face the prospect of being unable to pay out expected benefits and with some even facing bankruptcy, governments must be ready to accept increased responsibility for the proper administration and supervision of such schemes, which may include taking them over in extreme cases. The global financial crisis calls for a State that is willing and able to effectively regulate markets by all appropriate means. In some countries, governments have already been forced to take on once again the responsibilities that they had previously ceded to private actors, particularly in the pension insurance sector. Rebuilding the State’s institutional and regulatory capacity to manage their expanding responsibilities now needs to be identified as a priority objective of international cooperation in the field of

²² Articles 71(3) and 72(2) of Convention No. 102; Articles 24(2) and 25 of Convention No. 121; Article 35 of Convention No. 128; Article 30 of Convention No. 130; and Article 28 of Convention No. 168.

social security. The Director-General of the ILO has recently brought this issue to the fore in the multilateral system: “The capacity of governments has been reduced over the past decades with the belief that markets could deliver better development results on their own. It is now painfully clear that inclusive markets function best alongside a strong State. ... The multilateral system should identify rebuilding of state institutional capacity as a priority objective of development cooperation and emergency assistance.”²³ The prospects of overcoming the crisis are linked to more, and not less government regulation and, in this process, States can fully rely on the basic principles and provisions of the ILO social security standards.

Protecting social security resources

134. While it is clear that in the unprecedented conditions of the global financial crisis there is a manifold increase in the role of the State, the manner in which the State fulfils these responsibilities and obligations also takes on primary importance. Governments must see national social security schemes, both public and private, through the period of crisis in such a way as to ensure the lowest possible level of losses. They must manage the skyrocketing levels of budgetary deficit in such a way as not to endanger the social guarantees of the population. It is the view of the Committee that measures taken by governments to salvage private providers cannot be taken at the expense of cutting the resources available to public social security schemes. In seeking to manage the financial crisis by increasing public debt, governments must preserve the sustainability of social security funds. The Committee notes that a further increase in the social security deficit, which in many countries is already extremely high, will mean carrying over to future generations an even more significant proportion of the cost of social protection, which runs counter to the logic of sustainable development that underpins ILO social security standards. Continually rising levels of public debt are incompatible with the principles of good governance established by them. On the contrary, these principles require the State to clear former social security debts as soon as possible, make sufficient budgetary provision for future commitments and introduce governance rules to prevent the recurrence of debt in the future.

135. In conditions of financial and economic crisis, it may also be very tempting to tap the social security funds for many types of urgent measures intended to salvage enterprises, preserve jobs and kick-start economic growth. The Committee observes in this context that the diversion of social security resources for other purposes, however important they may be, is liable to adversely affect in the long term the sound management and financial balance of the system. There is therefore a pressing need for more thorough control to ensure that social allowances and subsidies granted out of public or social insurance funds, as well as various advantages and exemptions from the social security contributions, are used effectively and efficiently.

Bringing social insurance schemes back to normal parameters

136. During periods of crisis, no member State can discharge its general responsibility under ILO Conventions for the viability of its social security system without, at the same time, being committed to the obligation to achieve time-bound results and measurable outcomes for the people concerned. The Committee trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the State to ensure the viability and sustainable development of social security. It considers that returning to the financial equilibrium of social financing must constitute a priority for public authorities. While it is true that the provisions of ILO social security Conventions were not designed for the management of social security in a crisis situation, they nevertheless establish parameters compliance with which is intended to ensure the stability and sound governance of the system. A good policy to exit out of the crisis would consist of bearing these parameters in mind so as to allow the progressive return of the system to its normal condition, even though emergency measures may temporarily introduce significant corrections into these parameters. The role of the ILO social security standards takes on particular importance in ensuring the concerted recovery from the crisis by helping countries to bring their social security systems back to the initial internationally agreed parameters. Setting aside the diversity of national situations, it is in safeguarding these common parameters and values through periods of financial and economic turbulence that the system of international obligations that bind member States under the ILO social security Conventions has proved its full worth.

²³ Social consequences and responses to the financial and economic crisis, Discussion paper by Juan Somavia, Director-General of the International Labour Office, to the United Nations system Chief Executives Board (CEB), New York, United States, Oct. 2008.

IV. Collaboration with other international organizations and functions relating to other international instruments

A. Cooperation in the field of standards with the United Nations, the specialized agencies and other international organizations

137. In the context of collaboration with other international organizations on questions concerning supervision of the application of international instruments relating to subjects of common interest, the United Nations, certain specialized agencies and other intergovernmental organizations with which the ILO has entered into special arrangements for this purpose, are asked whether they have information that might be useful for the Committee to examine how certain Conventions are being applied. This year, information has been received from the United Nations regarding the Indigenous and Tribal Populations Convention, 1957 (No. 107) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and from the United Nations Education, Science and Culture Organization (UNESCO) as regards the migrant workers Conventions, which the Committee took into account when examining the application of these instruments.

B. United Nations treaties concerning human rights

138. 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 view of the approach to development based on human rights adopted by the United Nations.

139. The Committee appreciates the efforts made by the Office to provide information on the application of international labour standards to the United Nations treaty bodies on a regular basis, in accordance with the existing arrangements between the ILO and the United Nations. The Committee considers that coherent international monitoring is an important basis for action to enhance the enjoyment of and compliance with economic, social and cultural rights at the national level. The Committee itself had the opportunity to continue its collaboration with the United Nations Committee on Economic, Social and Cultural Rights in the context of the annual meeting between the two Committees which took place on 27 November 2008, at the invitation of the Friedrich Ebert Stiftung. This year, the meeting was dedicated to the 60th anniversary of the Universal Declaration of Human Rights and the 50th anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The right to equality and non-discrimination was selected as the theme for discussion.

140. With regard to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights adopted by the Human Rights Council on 18 June 2008, the Committee notes that the Committee on Economic, Social and Cultural Rights, when examining communications from individuals or groups of individuals claiming to be victims of a violation of rights set forth in the Covenant, may consult relevant documentation emanating from other United Nations bodies, as well as specialized agencies. The Committee considers it essential that its collaboration with the Committee on Economic, Social and Cultural Rights be strengthened in particular when the Optional Protocol will enter into force.

C. European Code of Social Security and its Protocol

141. In accordance with the supervisory procedure established under Article 74, paragraph 4 of the Code, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 20 reports on the application of the European Code of Social Security and, as appropriate, its Protocol. At the sitting in which the Committee examined the reports on the Code and its Protocol, the Council of Europe was represented by Ms Ana Gomez Heredero. The conclusions of the Committee regarding these reports will be sent to the Council of Europe for examination by its Committee of Experts on Standard-setting Instruments in the Field of 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.

142. With its dual responsibility for the application of the Code and international labour Conventions relating to social security, the Committee seeks 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 of the Council of Europe and the Office may prove to be an effective means of improving the application of the Code.

* * *

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

Geneva, 12 December 2008.

(Signed) Janice R. Bellace
Chairperson

Anwar Ahmad Rashed Al-Fuzaie
Reporter

Appendix to the General Report

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

Mr Mario ACKERMAN (Argentina),

Director of the Labour Law and Social Security Department and Professor, Labour Law Chair, University of Buenos Aires; former adviser to the Parliament of Argentina; former Director of the Labour Police of the National Ministry of Labour and Social Security of the Republic of Argentina.

Mr Anwar Ahmad Rashed AL-FUZAIE (Kuwait),

Docteur en droit; Professor of Law; Professor of Private Law of the University of Kuwait; attorney; former member of the International Court of Arbitration of the International Chamber of Commerce (ICC); member of the Administrative Board of the Centre of Arbitration of the Chamber of Commerce and Industry of Kuwait; Member of the Governing Body of the International Islamic Centre for Mediation and Commercial Arbitration (Abu Dhabi); former Director of Legal Affairs of the Municipality of Kuwait; former Director of Legal Affairs of the Bank KFH; former Adviser to the Embassy of Kuwait in Paris.

Mr Denys BARROW SC (Belize),

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

Ms Janice R. BELLACE (United States),

Samuel Blank Professor and Professor of Legal Studies, Business Ethics and Management of the Wharton School, University of Pennsylvania; Trustee and Founding President, Singapore Management University; Senior Editor, Comparative Labor Law and Policy Journal; President-elect of the International Industrial Relations Association; member of the Executive Board of the US branch of the International Society of Labor Law and Social Security; member of the Public Review Board of the United Automobile, Aerospace and Agricultural Implements Workers' Union; former Secretary of the Section on Labor Law, American Bar Association.

Mr Lelio BENTES CORRÊA (Brazil),

Judge at the Labour Federal High Court (Tribunal Superior do Trabalho) of Brazil; former Labour Public Prosecutor of Brazil; Professor (Labour Team and Coordinator of the Human Rights Centre) at the Instituto de Ensino Superior de Brasília.

Mr Halton CHEADLE (South Africa),

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

Ms Laura COX, QC (United Kingdom),

Justice of the High Court, Queen's Bench Division and Judge of the Employment Appeal Tribunal; LL B, LL M of the University of London; previously a barrister specializing in employment law, discrimination and human rights; Head of Cloisters Chambers, Temple (1995–2002); Chairperson of the Bar Council Sex Discrimination Committee (1995–99) and Equal Opportunities Committee (1999–2002); Bencher of the Inner Temple; member of the Independent Human Rights Organization Justice (former Council member) and one of the founding Lawyers of Liberty (the National Council for Civil Liberties); previously a Vice-President of the Institute of Employment Rights and member of the Panel of Experts advising the Cambridge University Independent Review of Discrimination Legislation; Chairperson of the Board of INTERIGHTS, the International Centre for the Legal Protection of Human Rights (2001–04) and Chairperson of the Equality and Diversity Advisory Committee of the Judicial Studies Board (since 2003); appointed Honorary Fellow of Queen Mary College, London University (2005); member of Council of the University of London (2003–06); Honorary President of the Association of Women Barristers and Vice-President of the United Kingdom Association of Women Judges.

Ms Blanca Ruth ESPONDA ESPINOSA (Mexico),

Doctor of Law; Professor of International Public Law at the National Autonomous University of Mexico; member of the National Federation of Lawyers and of the Lawyers' Forum of Mexico; recipient of the award for Juridical Merit "the Lawyer of the Year (1993)"; Social Counsellor and member of the Governing Body of the National Institute for Women; President of the Planned Parenthood Federation/Western Hemisphere (IPPF/WHR). She has been: President of the Senate of Mexico and of the Foreign Relations Committee; Secretary of the House of Representatives; President of the Population and Development Committee and member of the Labour and Social Security Committee; President of the Congress of the State of Chiapas; President of the Inter-American Parliamentary Group on Population and Development (IPG); Vice-President of the Global Forum of Spiritual and Parliamentary Leaders; Director-General of the National Institute for Labour Studies; Commissioner of the National Immigration Institute and editor of the *Mexican Labour Review*.

Mr Abdul G. KOROMA (Sierra Leone),

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

Ms Robyn A. LAYTON, QC (Australia),

Justice of the Supreme Court of South Australia; LL B, LL M; Chairperson of the Advisory Panel for the Australian Centre for Child Protection; member of the Gender Committee and member of the Child Witness Handbook Committee of the Judicial College of Australia; patron of the South Australian Migrant Resource Centre; previously a Barrister-at-Law; Judge and Deputy President of the South Australian Industrial Court and Commission; Deputy President of the Federal Administrative Appeals Tribunal; Reporter on a Child Protection framework for South Australia; Chairperson of the Human Rights Committee of the Law Society of South Australia; Director, National Rail Corporation; Commissioner on the Health Insurance Commission; Chairperson of the Australian Health Ethics Committee of the National Health and Medical Research Council; Honorary Solicitor for the South Australian Council for Civil Liberties; Solicitor for the Central Aboriginal Land Council; Chairman of the South Australian Sex Discrimination Board.

Mr Pierre LYON-CAEN (France),

Honorary Advocate-General, Court of Cassation (Social Division); member of the National Security Ethics Commission; President, Journalists Arbitration Commission; Former Deputy Director, Office of the Minister of Justice; Public Prosecutor at the Nanterre Tribunal de Grande Instance (Hauts de Seine); former President of the Pontoise Tribunal de Grande Instance (Val d'Oise); graduate of the Ecole Nationale de la Magistrature.

Ms Angelika NUSSBERGER, MA (Germany),

Doctor of Law; Professor of Law at the University of Cologne; Director of the Institute for Eastern European Law of the University of Cologne; substitute member of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe; member of the Pontifical Academy of Social Sciences (since 2008); former legal adviser in the Directorate-General of Social Cohesion of the Council of Europe (2001–02).

Ms Ruma PAL (India),

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

Mr Raymond RANJEVA (Madagascar),

Member of the International Court of Justice (1991–2009); Vice-President (2003–06), President (2005) of the Chamber formed by the International Court of Justice to deal with the case concerning the Frontier Dispute; senior judge of the Court since February 2006; Bachelor's degree in law (1965), University of Madagascar, Antananarivo; Doctorate of Law, University of Paris II; Agrégé of the Faculties of Law and Economics, Public Law and Political Science section, Paris (1972); Doctor honoris causa of the Universities of Limoges and Strasbourg.

Professor at the University of Madagascar (1981–91) and other institutions; a number of administrative posts held, including First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegations to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties, Vienna (1976–77); First Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the International Court of Arbitration of the International Chamber of Commerce; member of numerous international and national professional and academic societies.

Mr Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain),

Doctor of Law; President of the Second Section of the Council of State (Legal, Labour and Social Matters); Professor of Labour Law; Doctor honoris causa of the University of Ferrara (Italy) and the University of Huelva (Spain); President Emeritus of the Constitutional Court; member of the European Academy of Labour Law, the Ibero-American Academy of Labour Law, the Andalusian Academy of Social Sciences and the Environment, and the European Institute of Social Security; Director of the review *Relaciones Laborales*; President of the SIGLO XXI Club; recipient of the gold medallion of the University of Huelva, and of the Labour Gold Medallion; former President of the National Advisory Commission on Collective Agreements and President of the Andalusian Industrial Relations Council; former Dean of the Faculty of Law of the University of Seville; former Director of the University College of La Rábida; President ad honorem of the Spanish Association of Labour Law and Social Security.

Mr Yozo YOKOTA (Japan),

Professor, Chuo Law School; Special Adviser to the Rector, United Nations University; President, Centre for Human Rights Affairs (Japan); Commissioner, International Commission of Jurists; Board Member, Japan Association of International Human Rights Law and Japan Association of World Law; former Professor, University of Tokyo and International Christian University; former member, UN Subcommission on the Promotion and Protection of Human Rights.

Part II. Observations concerning particular countries

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

General observations

Antigua and Barbuda

The Committee notes that the great majority of reports due on the application of ratified Conventions have been received, including 11 first reports due since 2004 and 2005. It notes in this respect that the Government benefited from the technical assistance of the Office in the context of a workshop organized in June–July 2008. The Committee welcomes the efforts made by the Government. It firmly hopes that the Government, where appropriate with the assistance of the Office, will soon submit the two first reports that are still due since 2004 on the application of Conventions Nos 161 and 182, in accordance with its constitutional obligation.

Armenia

The Committee notes that the majority of the reports due on the application of ratified Conventions have not been received, including the first reports on Conventions Nos 14, 150, 160 and 173 (due since 2007). A total of 14 reports are still due. It notes that the tripartite working group responsible for the preparation of reports received technical advice from the Office in May 2008. The Committee hopes that the sustained technical assistance which has been provided to the Government for some time, as a result of which it has been able to overcome a significant backlog in the transmission of the reports due in previous years, will be continued, so that the efforts made by the Government can have a sustainable effect. The Committee firmly hopes that the Government will soon provide the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Bangladesh

The Committee notes that, for the third consecutive year, the Government has not indicated, in the majority of the reports received, the representative organizations of employers and workers to which reports on the application of ratified Conventions shall be communicated in accordance with article 23, paragraph 2, of the Constitution. It also refers to the observations that it has been making for several years on the application of Convention No. 144. The Committee hopes that the Government will be in a position to organize without delay consultations with the social partners concerning the preparation and communication of reports in accordance with its obligations under the Constitution and the aforementioned Convention.

Cape Verde

The Committee notes that, for the third consecutive year, the reports due on the application of ratified Conventions have not been received and that, as a result, 11 reports are now due. In its letter of 17 July 2008 following up on the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour

Conference (May–June 2008), the Office took the initiative of offering its technical assistance to the Government in light of the persistence of the difficulties relating to the sending of reports. According to the information provided to the Committee, this technical assistance should be provided in 2009. The Committee firmly hopes that, with the support of the Office, the Government will provide the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligation.

Chad

The Committee notes that the majority of the reports due on the application of ratified Conventions have not been received, including the first report on the application of Convention No. 138, due since 2007. As a result, eight reports are now due. It notes that the Government and the social partners benefited from the Office's technical assistance in August 2008 in the context of a subregional training seminar on the preparation of reports due on the application of ratified Conventions, in which emphasis was placed on Conventions Nos 138 and 182. The Committee has been informed that the remaining reports have been sent by the Government. The Committee firmly hopes that the reports concerned will be received in the near future and that the Government will accordingly have discharged in full its constitutional obligation.

Denmark

Faeroe Islands

The Committee notes with regret that, for the fourth consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received and that 15 reports are therefore still due.

Greenland

The Committee notes that the reports due on the application of Conventions declared applicable to this non-metropolitan territory have not been received and that four reports are still due.

* * *

The Committee takes due note of the explanations provided by the Government representative to the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008) on the progress achieved in the dialogue that is being held with the second non-metropolitan territory referred to above. As the Office emphasized in its letter of 15 July 2008 following up the conclusions adopted by the Committee on the Application of Standards, the two Committees are following with heightened attention the question of the sending of reports concerning the application of Conventions declared applicable to non-metropolitan territories. The Committee recalls that the Government can have recourse to the Office's assistance, so that these non-metropolitan territories can benefit from the training programmes provided on the sending of reports. The Committee requests the Government to take the necessary measures without further ado so that lasting solutions can be identified for the provision of the reports due on the application of Conventions declared applicable to these territories, in accordance with its constitutional obligation.

Dominica

The Committee notes that the reports due on the application of ratified Conventions have not been received, including the six first reports on the application of the following Conventions: Convention No. 182 (due since 2003); Conventions Nos 144 and 169 (since 2004); and Conventions Nos 135, 147 and 150 (since 2006). A total of 15 reports are still due. The Committee notes that the Government has not called upon the Office's technical assistance this year, even though it was invited to do so by the letter of 21 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008). The Government has also failed to reply to the letter from the standards specialist in the subregion drawing its attention once again to the matter in September 2008. The Committee requests the Government to take the necessary measures without further ado, including having recourse to the Office's technical assistance, for the provision of the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Equatorial Guinea

The Committee notes that only one report on the application of ratified Conventions has been received this year and that 13 reports are still due, including the first reports on Conventions Nos 68 and 92, which have been due since 1998. In its letter of 17 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office took the initiative of offering its technical assistance to the Government in light of the persistence of the difficulties related to the sending of reports. The Committee notes in this respect that the Government and the social partners benefited in August 2008 from a subregional

training seminar on the preparation of reports due on the application of ratified Conventions, in which emphasis was placed on Conventions Nos 138 and 182. The Committee requests the Government to take the necessary measures without delay so as to send in good time all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Gambia

The Committee notes that only one report on the application of ratified Conventions has been received this year and that seven reports are still due, including the first reports due since 2002 on Conventions Nos 105 and 138 and since 2003 on Convention No. 182. It takes due note of the statement by the Government representative to the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), referring to the problems of the capacity of the unit responsible and indicating that the Government would continue to seek the Office's technical assistance. In its letter of 17 July 2008, following up the conclusions adopted by the Committee on the Application of Standards, the Office indicated its availability to organize a tripartite seminar on the sending of reports. The Committee invites the Office to renew its offer of technical assistance and requests the Government to take the necessary measures without delay for the provision of the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Guinea

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received and that 39 reports are therefore still due. In its letter of 11 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office took the initiative of offering its technical assistance to the Government in light of the persistent difficulties related to the sending of reports. The Committee requests the Government to take the necessary measures without delay, including having recourse to the Office's technical assistance, so as to send all the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligation.

Guinea-Bissau

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received and that 16 reports are therefore now due. It also notes that the Government benefited from the Office's technical assistance in May 2008 in the context of a training programme on the sending of reports. In its letter of 21 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office took the initiative of once again offering its technical assistance in light of the persistence of the difficulties related to the sending of reports. The Committee requests the Government to take the necessary measures without delay, including having recourse to the Office's technical assistance, with a view to sending all the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligation.

Kyrgyzstan

The Committee notes that twenty-three reports due on the application of ratified Conventions have been received, including the first report on Convention No. 133, which has been due since 1995. The Government is accordingly pursuing the efforts undertaken since the previous year to make up the accumulated backlog in the sending of reports. A total of 17 reports are still due, including the first reports on Convention No. 111 (due since 1994) and on Conventions Nos 17 and 184 (due since 2006). The Committee welcomes the Government's commitment, which is resulting in tangible action to send the reports due with the support of the Office, from which it received technical assistance on three occasions this year. The Committee firmly hopes that the Government will manage to provide all the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligation.

Lao People's Democratic Republic

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received, including the two first reports due since 2007 on Conventions Nos 138 and 182. Five reports are still due. The Committee requests the Government to take the necessary measures without delay, including having recourse to the Office's technical assistance for the sending of the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Liberia

The Committee notes that the Government has once again started sending reports this year after an interruption of eight years due to the national situation. As a result, 18 reports are still due, including the first reports due since 1992 on

Convention No. 133 and since 2005 on Conventions Nos 81, 144, 150 and 182. As it indicated in its letter of 17 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office provided technical assistance to the Government and the social partners in October 2008 in the context of a tripartite workshop on the sending of reports. The Committee firmly hopes that the Government will maintain the efforts made this year, where appropriate with the Office's assistance, and that it will be in a position to provide the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligation.

Saint Kitts and Nevis

The Committee notes that the reports due on the application of ratified Conventions have not been received, including the first reports on Conventions Nos 87 and 98, due since 2002, and on Convention No. 138, due since 2007. As a result, nine reports are now due. The Committee takes due note of the statement by the Government representative to the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008) reporting a lack of resources. The Government has since reaffirmed its will to fulfil its obligations. In its letter of 21 July 2008 following up the conclusions adopted by the Committee on the Application of Standards, the Office took the initiative of once again offering its technical assistance to the Government in light of the persistence of difficulties relating to the sending of reports. The Committee requests the Government to take the necessary measures without delay, including having recourse to the Office's technical assistance, so as to provide all the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligation.

Saint Lucia

The Committee notes that the efforts made last year have not been maintained this year and that the reports due on the application of ratified Conventions have not been received, including the first report on Convention No. 182, due since 2002, with the result that nine reports are now due. In its letter of 21 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office took the initiative of once again offering its technical assistance to the Government. The Government has not replied to this offer and has also failed to reply to the letter from the standards specialist in the subregion once again drawing its attention to the matter in September 2008. The Committee requests the Government to take the necessary measures without delay, including having recourse to the Office's technical assistance, with a view to sending all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Saint Vincent and the Grenadines

The Committee notes that, for the third consecutive year, the Government has not indicated the representative organizations of employers and workers to which reports on the application of ratified Conventions shall be communicated in accordance with article 23, paragraph 2, of the Constitution. It hopes that the Government will be in a position to discharge without delay its constitutional obligation.

Sao Tome and Principe

The Committee notes that the efforts made last year have not been maintained this year and that the reports due on the application of ratified Conventions have not been received, including the first reports on Conventions Nos 135, 138, 151, 154, 155, 182 and 184, due since 2007. As a result, 13 reports are now due. In its letter of 17 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office took the initiative of offering its technical assistance to the Government. The Committee requests the Government to take the necessary measures without delay, including having recourse to the Office's technical assistance, so as to send all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Seychelles

The Committee notes that the majority of reports on the application of ratified Conventions have been received, including the first reports due on Conventions Nos 81 and 155, due since 2007. The Committee welcomes the efforts made by the Government. Nine reports are still due, including the first reports on Conventions Nos 73, 144, 147, 152, 161 and 180, all due since 2007. In its letter of 21 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office indicated its availability to provide technical assistance to the Government. According to the information received by the Committee, the Office intends to organize this technical assistance in the very near future. The Committee firmly hopes that the Government, with the Office's assistance, will provide all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Sierra Leone

The Committee notes that, for the third consecutive year, the reports due on the application of ratified Conventions have not been received and that 20 reports now remain due. In its letter of 21 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office took the initiative of offering its technical assistance to the Government to help it overcome its persistent difficulties in an appropriate manner. According to the information provided to the Committee, this assistance should be provided in 2009. The Committee firmly hopes that the Government, with the Office's assistance, will send in good time all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Somalia

The Committee notes that, for the third consecutive year, the reports due on the application of ratified Conventions have not been received and that eight reports are now due. It takes due note of the statement by the Government representative to the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), indicating that the situation of the country was still unstable and that the Government was not therefore in a position to send the reports. As soon as the national situation so permits, the Committee hopes that the Office will be in a position, as it indicated in its letter of 21 July 2008 following up the conclusions adopted by the Committee on the Application of Standards, to provide all the necessary assistance so that the Government can provide the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligation.

Tajikistan

The Committee notes that, following two years of interruption, the Government has once again started to send reports and has submitted 13 reports due on the application of ratified Conventions, thereby reducing the remaining number of reports due to 14, including the first report on Convention No. 182, which has been due since 2007. The Committee expresses appreciation of the efforts made by the Government, particularly as they have resulted in practical measures, and it notes that the Government benefited in this regard from the sustained support of the Office. As the Office recalled in its letter of 16 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Committee emphasizes that the Government may, if necessary, once again request the Office's technical assistance for the submission of the remaining reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

The former Yugoslav Republic of Macedonia

The Committee notes that nine reports on the application of ratified Conventions have been received this year. Fifty reports are still due, including first reports on Conventions Nos 182 (due since 2004) and 144 (since 2007). It takes due note of the statement by the Government representative to the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), affirming the Government's determination to overcome the accumulated backlog in the sending of reports and its commitment to pursue continued dialogue with the Office. The latter has provided it with substantial technical assistance in recent years, including recently in May 2008 in the context of a training programme on the sending of reports. The Committee notes the Government's determination to pursue the efforts initiated the previous year to make up the backlog in the sending of reports. Noting that the number of reports due remains high, the Committee will review the situation at its next session. The Committee firmly hopes that the efforts undertaken by the Government will rapidly result in lasting solutions, so that it can send all the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligation.

Togo

The Committee notes with regret that, for the fourth consecutive year, the reports due on the application of ratified Conventions have not been received and that 16 reports are now due. In its letter of 11 July 2008 following up the conclusions adopted by the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008), the Office took the initiative of offering its technical assistance to the Government in light of the persistence of difficulties related to the sending of reports. According to the information received by the Committee, by reason of the national situation technical assistance originally planned for 2008 has had to be postponed until 2009. As soon as the national situation so permits, the Committee hopes that the Office will provide all the necessary assistance to the Government so that it can provide the reports due on the application of ratified Conventions in good time, in accordance with its constitutional obligations.

Turkmenistan

The Committee notes with regret that, for the tenth consecutive year, the six reports due on the application of ratified Conventions have not been received. It is particularly concerned by this situation as, on the one hand, the reports in question are all first reports due since 1999 on the application of fundamental Conventions (Nos 29, 87, 98, 100, 105 and 111) and, on the other, as it has already indicated, since the country became a Member of the Organization it has not provided any information on the application of ratified Conventions. The Committee notes that, even though the training on international standards received by the Government at its request in 2007 constituted progress, no action has been taken on it. The Committee urges the Government to take all the necessary measures without delay, including requesting once again the Office's technical assistance, so as to provide the reports due on the application of ratified Conventions, in accordance with the constitutional obligation incumbent upon it as a Member of the ILO.

United Kingdom

Anguilla

The Committee notes that, for the third consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received and that 24 reports are now due. This non-metropolitan territory benefited from the Office's technical assistance in June–July 2008 and, according to the information provided to the Committee, should soon receive the assistance of a consultant to prepare the reports due.

British Virgin Islands

The Committee notes that, for the second consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received and that 11 reports are now due. This non-metropolitan territory benefited from the Office's technical assistance in October 2008 when, according to information provided to the Committee, it assured the Office that some of the reports will be sent. The Committee hopes that these reports will be received soon.

Falkland Islands (Malvinas)

The Committee notes that, for the second consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received and that nine reports are now due.

Isle of Man

The Committee notes that the majority of the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received and that four reports are now due.

St Helena

The Committee notes the efforts made this year, following an interruption of four years, to send once again the reports due on the application of the Conventions declared applicable to this non-metropolitan territory, although it notes that 16 reports are still due.

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The Committee notes the statement by the Government representative to the Committee on the Application of Standards at the 97th Session of the International Labour Conference (May–June 2008) relating to the sending of reports for certain of the non-metropolitan territories referred to above. As the difficulties are due to a lack of resources, the Government is continuing to collaborate closely with the local authorities to endeavour to resolve them. As emphasized by the Office in its letter of 21 July 2008 following up the conclusions adopted by the Committee on the Application of Standards, the two Committees are following with heightened attention the question of the sending of reports on the application of the Conventions declared applicable to non-metropolitan territories. The Office has provided technical assistance to certain of these non-metropolitan territories and is remaining in contact with them to continue providing the necessary support. Furthermore, according to the information provided to the Committee, the Government has sought information from the Office on the various options to assist the non-metropolitan territories in the preparation of reports. The Government has also provided financial support to some of these non-metropolitan territories so that they can benefit from the help of a consultant for the preparation of reports. The Committee takes due note of the efforts made this year to provide technical assistance to some non-metropolitan territories and the progress that has already been made in this respect. It hopes that these efforts will be pursued and will be extended to all the non-metropolitan territories that need such assistance so that the Government submits all reports due on the application of the Conventions declared applicable to these non-metropolitan territories, in accordance with its constitutional obligation.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Armenia, Bahrain, Barbados, Belize, Bolivia, Botswana, Burundi, Chile, Comoros, Côte d'Ivoire, Czech Republic, Eritrea, Ethiopia, France: French Southern and Antarctic Territories, Gambia, Guyana, Hungary, Islamic Republic of Iran, Ireland, Malta, Nicaragua, Nigeria, Norway, Panama, Rwanda, Solomon Islands, United Republic of Tanzania, United Republic of Tanzania: Tanganyika, United Republic of Tanzania: Zanzibar, Thailand, Uganda, Vanuatu.*

Freedom of association, collective bargaining, and industrial relations

General observation

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

In its recognition of the 60th anniversary of the freedom of association Convention, the Committee observes with concern that there are significant lacunae in the application of the Convention with respect to specific categories of workers. In light of the discussion in March 2008 in the Governing Body's Committee on Employment and Social Policy in relation to export processing zones (EPZs), the Committee would refer in particular to its past consideration of the application of Conventions in EPZs. In 1999, the Committee had taken note of the report of the Tripartite Meeting of Export Processing Zones–Operating Countries, which had highlighted the disparity between de jure and de facto application of labour standards in EPZs and between EPZ workers and those not working in EPZs, particularly as regards the right to organize and to bargain collectively. This information is all the more alarming in light of the estimates made in this year's report from the ILO InFocus Initiative on EPZs to the Governing Body (www.ilo.org/public/english/dialogue/sector/themes/epz.htm) that there are around 3,500 EPZs throughout the world, operating in 120 countries and territories and employing around 66 million people. The Committee further finds it of particular concern when considering the importance of fundamental human rights, in particular equality of treatment, that there is often an extremely high proportion of women among EPZ workers deprived of their rights. A perusal of the Committee's comments this year on the application of Convention No. 87 by ratifying countries lends weight to the importance of the obstacles faced by many EPZ workers and, in some cases, illustrates the dramatic impact this has had on society overall.

The Committee wishes also to raise the particular challenges faced by workers in the informal economy in relation to organizational rights. In many countries around the world, the informal economy represents between half and three-quarters of the overall workforce. The Committee, in reaffirming that Convention No. 87 is applicable to all workers and employers without distinction whatsoever, is heartened by innovative approaches taken by governments, workers' and employers' organizations over recent years to organize those in the informal economy, but observes that these are few and far between and that the full benefits of the Convention rarely reach the informal economy.

In follow up to discussions in the Governing Body in relation to EPZs and the conclusions of the 2002 Conference Committee concerning decent work and the informal economy, the Committee wishes to request governments to provide information with their next reports due on:

Export processing zones:

- the nature and extent of the workforce in any EPZs in the country (number of workers, percentage of women, percentage of migrants);
- the legislation applicable to EPZs and the manner in which the rights under the Convention are assured to EPZ workers;
- the number of trade unions in existing EPZs and the percentage of the workforce in the EPZs that is represented by unions;
- the bodies, institutions or other means available for trade unions to represent the interests of the EPZ workers they represent.

Informal economy:

- the nature and extent of the informal economy in the country, including percentage of women, percentage of migrants;
- any initiatives taken to ensure either in law or in practice the realization of the rights under the Convention to those in the informal economy.

Antigua and Barbuda

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

The Committee regrets that once again, the Government failed to reply to the specific comments and questions concerning the application of the Convention made by the Committee during several years. *The Committee trusts that the Government will endeavour to be more responsive to its specific questions in its next report.*

In its previous comments, the Committee had recalled the need to amend sections 19, 20, 21 and 22 of the Industrial Court Act, 1976, which permit the referral of a dispute to the court by the Minister or at the request of one party with the

consequent effect of prohibiting any strike action, under penalty of imprisonment, and which permit injunctions against a legal strike when the national interest is threatened or affected, as well as the overly broad list of essential services in the Labour Code.

On the matter of essential services, the Committee notes the inclusion of the Government printing office and the port authority in the schedule of essential services in the Labour Code and considers that such services cannot be considered essential in the strict sense of the term. In this respect, the Committee would draw the Government's attention to paragraph 160 of its General Survey of 1994 on freedom of association and collective bargaining wherein it states that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, the authorities could establish a system of minimum service in services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term. As concerns the Minister's power to refer disputes in cases of acute national crisis, the Committee notes that the power of the Minister to refer a dispute to the court under sections 19 and 21 of the Industrial Court Act would appear to apply to situations going beyond the notion of an acute national crisis. Under section 19(1), this authority of the Minister appears to be discretionary since, under section 21, this power may be used in the national interest which would appear to be broader than the strict notion of a specific situation of acute national crisis where the restrictions imposed must be for a limited period and only to the extent necessary to meet the requirements of the situation (see General Survey, op. cit., paragraph 152).

In light of the above, the Committee once again urges the Government to indicate in its next report the measures taken or envisaged to ensure that: (1) the power of the Minister to refer a dispute to binding arbitration resulting in a ban on strike action is restricted to strikes in essential services in the strict sense of the term, to public servants exercising authority in the name of the State or in case of an acute national crisis; (2) a binding referral of a collective dispute to the court can only be made at the request of both parties, and not any one of the parties as appears to be the case in section 19(2); and, (3) the schedule of essential services in the Labour Code is modified in order to eliminate all those services that are not essential in the strict sense of the term.

The Committee hopes that the Government will make every effort to take the necessary action in order to amend the abovementioned legislative provisions in the very near future and reminds it that it can avail itself of the technical assistance of the Office.

Australia

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

The Committee notes with interest the general statement made in the Government's report to the effect that the new Australian Government acknowledges that the aspects of federal workplace relations laws, previously commented on by the Committee, did not, in a number of important respects, meet the key requirements of ILO standards ratified by Australia relating to collective bargaining and freedom of association. These comments related primarily, but were not limited to, amendments made in 2005 to the Workplace Relations Act, 1996, (WR Act) by the Workplace Relations Amendment (Work Choices) Act, 2005 (Work Choices Act). The Committee also notes that: (i) a critical component of the new Government's legislative programme is to enact new laws governing workplace relations in Australia, having due regard to the issues canvassed in the report of the Committee of Experts; (ii) the first stage of the Government's legislative programme is now in place following the entry into force of the Workplace Relations Amendment (Transition to Forward with Fairness) Act, 2008 (Transition Act), on 28 March 2008; this Act amends the WR Act and provides for a measured transition to the Government's new workplace relations system which will be fully operational from 1 January 2010; (iii) the substantive workplace relations reforms under development have been the product of extensive consultation and review by employer and worker representatives and subject to extensive parliamentary scrutiny. ***The Committee requests the Government to communicate with its next report a copy of any draft legislation under consideration in the framework of the substantive labour law reform, so as to examine its conformity with the Convention.***

Article 3 of the Convention. Right to strike. The Committee's previous comments concerned the need to amend numerous provisions of the WR Act with a view to bringing them into conformity with the Convention. The Committee had referred in particular to provisions which lift the protection of industrial action in support of: multiple business agreements (section 423(1)(b)(i)); "pattern bargaining" (section 439); secondary boycotts and general sympathy strikes (section 438); negotiations over "prohibited content" (sections 356 and 436 of the WR Act, in connection with the Workplace Relations Regulations, 2006); strike pay (section 508 of the WR Act); and provisions which prohibit industrial action in case of danger to the economy (sections 430, 433 and 498 of the WR Act), through the introduction of compulsory arbitration at the initiative of the Minister (sections 500(a) and 504(3) of the WR Act). Finally, the Committee had raised the need to amend section 30J of the Crimes Act, 1914, which prohibits industrial action threatening trade or commerce with other countries or among States and section 30K of the Crimes Act, 1914, prohibiting boycotts, resulting in the obstruction or hindrance of the performance of services by the Australian Government or the transport of goods or persons in international trade.

The Committee notes from the Government's report that the substantive workplace relations reforms under development for consideration by Parliament later in 2008 will provide for protected industrial action authorized by a secret ballot during bargaining for a collective enterprise agreement; the ballot process will be fair and simple. The Committee also notes, however, that according to a communication by the Australian Congress of Trade Unions (ACTU) dated 1 September 2008, the Government has indicated its intention to retain the existing provisions which prohibit secondary boycotts and make industrial action in favour of "pattern bargaining" (i.e. negotiations seeking common wages or conditions of employment for two or more proposed collective agreements with different employers or even different subsidiaries of the same parent company) illegal. ***The Committee hopes that the substantive workplace relations reform will address the need to bring law and practice into conformity with the comments made by the Committee on the points raised above. It requests the Government to indicate in its next report the measures taken in this regard.***

Access to the workplace. In a previous direct request, the Committee had raised the need to lift the restrictive conditions set for granting a permit allowing trade union representatives to have entry to the workplace in order to meet with workers (sections 740, 742(1), (2)(b), (2)(d) and (2)(h)). The Committee notes the comments made by ACTU detailing the hurdles faced by unions in this regard and noting the intention of the new Government to retain the existing provisions.

The Committee recalls that the right of trade union officers to have access to places of work and to communicate with management is a basic activity of trade unions which should not be subject to interference by the authorities and should not be limited to communications with "eligible" employees, as trade unions should be able to apprise non-unionized workers of the potential advantages of unionization or of coverage by a collective agreement. ***The Committee therefore requests the Government to indicate any measures taken or contemplated to amend sections 742(1), (2)(b), (2)(d) and (2)(h) and 760 of the WR Act, so as to lift the restrictive conditions set for granting a permit giving right of entry to the workplace and ensure that the group of workers with whom a trade union representative may meet at the workplace is not artificially restricted.***

Building industry. In its previous comments, the Committee, taking note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2326 (338th Report, paragraphs 409–457), had raised the need to rectify numerous discrepancies between the Building and Construction Industry Improvement (BCII) Act, 2005, and the Convention. The Committee had regretted, in particular, the declining rate of trade unionism in the industry which, in the Committee's view, might not be unrelated to impediments placed over collective bargaining in the BCII Act.

The Committee recalls from previous comments that: (i) the BCII Act renders virtually all forms of industrial action in the building and industrial sector unlawful; (ii) introduces severe financial penalties, injunctions and actions for uncapped damages in case of "unlawful" industrial action; (iii) gives the enforcement agency known as the Australian Building and Construction Commission (ABCC) wide-ranging coercive powers akin to an agency charged with investigating criminal matters; (iv) grants the capacity to the Minister for Workplace Relations to regulate industrial affairs in the building and construction industry by Ministerial Decree through a device referred to as a building code which is inconsistent with the Convention on several points and is implicitly "enforced" through an "accreditation scheme" for contractors who wish to enter into contracts with the Commonwealth.

The Committee notes that according to the comments made by the ACTU in its communication dated 14 September 2007, the ABCC issued a fact sheet based on the building code which implicitly discourages trade union membership and encourages resignations from trade unions; moreover, the ABCC issued a "warning" against an employer that it might suffer a reduction in opportunities to tender for Government projects or be precluded from tendering for contracts for a period of time, if it continued to allow a union delegate, rather than site management, to conduct "staff inductions". The Committee also notes that, in its comments dated 1 September 2008, the ACTU regrets that the new Government has given no indication that it is considering amending the BCII Act and that it has retained the ABCC with its powers and resources undiminished and its policy orientation unaltered. With regard to the steps taken to replace the ABCC with a "specialist regulator" as of 1 February 2010, the ACTU notes that it opposes in principle the granting of additional powers to a "specialist regulator". It adds that it considers the existence of a separate set of industrial laws for a single industry to be contrary to the principle of treating all workers equally and fairly. The ACTU raises a number of serious concerns (inter alia, by citing statistical data) about the conduct of the ABCC, the activities of which appear to continue to be targeted against trade unions and workers. The ACTU also refers to heavy financial penalties imposed by the ABCC under the BCII Act (amounting to 1.2 million Australian dollars from October 2005 to May 2008). The ACTU finally refers to the prosecution by the ABCC of a trade union officer who risks up to six months imprisonment, without being the subject of any investigation, simply for having failed to appear before the ABCC to answer questions (s. 52(6), BCII Act). The Committee also notes the comments by the ITUC in a communication dated 29 August 2008 referring to additional restrictions on trade union activities and fines imposed by the ABCC in a "campaign against workers and unions in the construction industry".

The Committee notes that, according to the Government, the ABCC will be retained until 31 January 2010, after which time, it will be replaced with a specialist building and construction division of the inspectorate of a new workplace relations agency, Fair Work Australia. The Government has engaged a former judge of the Australian Federal Court to consult and report on matters related to the creation of the specialist division and to report to the Government in 2009. A

report will be provided to the Committee of Experts once the Government has had the opportunity to consider the recommendations of this inquiry.

The Committee requests the Government to provide a full reply to the information communicated by the ACTU and the ITUC in 2007 and 2008.

The Committee wishes to emphasize once again that all workers without distinction whatsoever, including workers in the building and construction industry, have the right to organise, and that the exercise of the right to organize presupposes that trade unions have the right to freely organize their activities and formulate their programmes for furthering and defending the interests of workers, without interference from the authorities. *The Committee, therefore, once again urges the Government to indicate in its next report any measures taken or contemplated with a view to: (i) amending sections 36, 37 and 38 of the BCII Act, 2005, which refer to “unlawful industrial action” (implying not simply liability in tort vis-à-vis the employer, but a wider responsibility towards third parties and an outright prohibition of industrial action); (ii) amending sections 39, 40 and 48–50 of the BCII Act so as to eliminate any excessive impediments, penalties and sanctions against industrial action in the building and construction industry; (iii) introducing sufficient safeguards into the BCII Act so as to ensure that the functioning of the Australian Building and Construction (ABC) Commissioner and inspectors does not lead to interference in the internal affairs of trade unions – especially provisions on the possibility of lodging an appeal before the courts against the ABC Commissioner’s notices prior to the handing over of documents (sections 52, 53, 55, 56 and 59 of the BCII Act); and (iv) amending section 52(6) of the BCII Act which enables the ABC Commissioner to impose a penalty of six months’ imprisonment for failure to comply with a notice to produce documents or give information so as to ensure that penalties are proportional to the gravity of any offence. The Committee also requests the Government to indicate any measures taken to instruct the ABCC to refrain from imposing penalties or commencing legal proceedings under the ABCC while the review is under way.*

The Committee addresses a request on certain other points directly to the Government.

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

The Committee notes with interest the general statement made in the Government’s report to the effect that the new Australian Government acknowledges that the aspects of federal workplace relations laws, previously commented on by the Committee, did not, in a number of important respects, meet the key requirements of ILO standards ratified by Australia relating to collective bargaining and freedom of association. These aspects related primarily, but were not limited to, amendments made in 2005 to the Workplace Relations Act 1996 (WR Act) by the Workplace Relations Amendment (Work Choices) Act 2005 (Work Choices Act). A critical component of the new Government’s legislative programme is to enact new laws governing workplace relations in Australia having due regard to the issues canvassed in the report of the Committee of Experts. The first stage of the Government’s legislative programme is now in place following the entry into force of the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 (Transition Act) on 28 March 2008. The Transition Act amends the WR Act and provides for a measured transition to the Government’s new workplace relations system which will be fully operational from 1 January 2010.

The Committee notes with interest that according to the Government, key changes introduced by the Transition Act include: (i) preventing the making of further Australian Workplace Agreements (AWAs – a form of statutory individual agreement putting emphasis on direct employee–employer negotiations over collective negotiations with trade unions aimed at concluding collective agreements); since the Transition Act took effect on 28 March 2008, no new AWAs can now be made; AWAs have been used to undermine the safety net set by awards and are the least used industrial instrument in Australian workplaces, estimated by the Government at fewer than 10 per cent of Australian employees; (ii) providing for Individual Transitional Employment Agreements (ITEAs) to be available in limited circumstances during the transition period, until 31 December 2009; the aim is to provide employers and employees with time to work through their transition to the new system without major disruption or confusion; (iii) enacting a new “no disadvantage” test for all workplace agreements which provides better protection to employers’ terms and conditions of employment in relation to the provisions of the applicable collective agreement, or in the absence of a collective agreement, the applicable award and the Australian Fair Pay and Conditions Standard; in other words, ITEAs must pass a no-disadvantage test which ensures that they cannot be used to reduce the wages and conditions of employees covered by them; (iv) enabling the Australian Industrial Relations Commission to create new, modern awards.

The Committee also notes with interest that, according to the Government, collective bargaining will be placed at the centre of the new workplace relations system, which is being developed through wide consultations with union and business representatives. The current complex agreement-making process will be replaced with a simple, flexible and fair system, and the current onerous, complex and legalistic restrictions on agreement content will be removed. In the new workplace relations system, Fair Work Australia will be responsible for a range of functions including the following: (i) assisting the parties to resolve grievances; (ii) resolving unfair and unlawful dismissal claims; (iii) facilitating collective bargaining and enforcing good faith bargaining; giving bargaining parties reliable advice in order to make collective agreements and assisting employees, particularly those who are not unionized, to understand how to collectively bargain; (iv) reviewing and approving collective agreements; (v) adjusting minimum wages and award conditions; (vi) monitoring

compliance with and ensuring the application of workplace laws, awards and agreements; and (vii) regulating registered industrial organizations.

The Committee also notes with interest from the Government's report that the new laws will recognise that freedom of association is vital for the proper functioning of a fair workplace relations system built on the concept of democracy in the workplace. It will be unlawful for anyone to try to stop a working person (whether by threat, pressure, discrimination, victimization or termination) from exercising their free choice to join and be represented by a union, or participate in collective activities. The Government will ensure that the new industrial arbiter, Fair Work Australia, has the power to make orders to ensure freedom of association is protected. ***The Committee requests the Government to communicate with its next report a copy of any draft legislation under consideration, so as to examine its conformity with the Convention.***

A. *Federal jurisdiction.* 1. In its previous comments, the Committee raised the need to amend sections 659 and 693 of the WR Act so as to ensure that there is no possibility of introducing exemptions from the right to be protected against anti-union dismissal for particular classes of employees (employees "in relation to whom the operation of the provisions causes or would cause substantial problems because of: (i) their particular conditions of employment; or (ii) the size or nature of the undertaking in which they are employed"). The Government indicates that, as no regulations have been made under section 693 of the WR Act to exclude certain classes of employees from protection, all Australian employees continue to be protected against anti-union dismissal. The Committee notes, however, that the issue raised in its previous comments relates to the *possibility* of introducing exemptions to protection against anti-union discrimination by regulation. ***The Committee hopes that the substantive workplace relations reform will address the need to amend sections 659 and 693 of the WR Act so as to ensure that there is no possibility of introducing exemptions from the right to be protected against anti-union dismissal for particular classes of employees. It requests the Government to indicate in its next report the measures taken in this regard.***

2. In its previous comments, the Committee raised the need to amend section 643 of the WR Act so as to ensure that establishments with less than 100 employees are not excluded from protection against harsh, unjust or unreasonable dismissals. The Government indicates that the exemption of workplaces with less than 100 employees from unfair dismissal laws will be removed; protection against harsh, unjust or unreasonable dismissals will be restored, subject to a 12-month qualifying period for employees who work in a small business with fewer than 15 employees and six months for employees who work in large businesses. The Committee notes that dismissals on anti-union grounds (which is a narrower category in relation to harsh, unjust or unreasonable dismissals) should be available to all workers at all times and should not be subject to a qualifying period. ***The Committee therefore hopes that the substantive workplace relations reform will address the need to ensure that protection against anti-union discrimination is available to all workers at all times and is not subject to a qualifying period. It requests the Government to indicate in its next report the measures taken in this regard.***

3. In its previous comments, the Committee raised the need to amend sections 400(6), 793 and 400(5) of the WR Act so as to ensure that workers are adequately protected against any discrimination at the time of recruitment related to their refusal to sign an AWA. The Committee notes that the Transition Act prevents new AWAs from being made and that, until the end of 2009, sections 400(6), 793 and 400(5) of the WR Act apply in relation to ITEAs instead of AWAs. The Committee also notes with interest that, according to the Government, there will be no place for any form of statutory individual employment agreement in the new workplace relations system and thus the question of discrimination will not arise. ***The Committee expresses the hope that the substantive workplace relations reform will address the need to ensure that workers are adequately protected against discrimination at the time of recruitment related to their refusal to sign any form of statutory individual employment agreement. It requests the Government to indicate in its next report the measures taken in this regard.***

4. In its previous comments, the Committee raised the need to amend sections 423 and 431 of the WR Act so as to ensure that workers are adequately protected against anti-union discrimination, especially dismissals for industrial action taken in the context of negotiations of multiple business agreements and "pattern bargaining" (i.e. negotiations seeking common wages or conditions of employment for two or more proposed collective agreements with different employers or even different subsidiaries of the same parent company). The Government indicates that it is committed to continuing provisions for protected industrial action authorized by a secret ballot during bargaining for a collective agreement; it will be unlawful for an employer to dismiss an employee wholly or partly because the employee is proposing to engage, is engaging, or has engaged, in protected industrial action.

In this regard, the Committee notes the comments made by the Australian Congress of Trade Unions (ACTU) in a communication dated 1 September 2008 to the effect that the Government has indicated its intention to retain the existing provisions rendering action in favour of "pattern bargaining" illegal. The Committee once again recalls that action related to the negotiation of multiple business agreements and "pattern bargaining" is legitimate trade union activity for which adequate protection should be afforded in the law and that the choice of the bargaining level should normally be made by the parties themselves. ***The Committee therefore once again requests the Government to indicate in its next report any measures taken or contemplated to amend sections 423 and 431 of the WR Act, so as to ensure that workers are adequately protected against acts of anti-union discrimination, in particular dismissal, for acts linked to negotiating collective agreements at whatever level deemed appropriate by the parties.***

5. In its previous comments, the Committee raised the need to establish a mechanism for the rapid and impartial examination of allegations of acts of interference in the context of the selection of a bargaining partner in the enterprise; this was considered necessary, given that under section 328(a) of the WR Act, an employer had the widest possible discretion to select a bargaining partner and to negotiate with organizations which had “at least one member” in the enterprise. Moreover, the Committee had taken note of comments made by the International Trade Union Confederation (ITUC) in 2007 on the possibility for employers to bypass unions in negotiations, even when the workers wished to be represented by their union, and had raised the need for measures to ensure that “employee collective agreements” did not undermine workers’ organizations and their ability to conclude collective agreements and that, therefore, negotiations with non-unionized workers took place only where there was no representative trade union in the enterprise. Finally, the Committee had raised the need to address various provisions of the WR Act which gave preference to individual agreement-making over collective bargaining and, in particular, to amend section 348(2) of the WR Act so as to ensure that statutory individual agreements (AWAs) might prevail over collective agreements only to the extent that they were more favourable to the workers.

The Committee notes with interest that, according to the Government, since the Transition Act took effect on 28 March 2008, no new AWAs can be made, while ITEAs may be concluded in limited circumstances until 31 December 2009; moreover, a new no-disadvantage test has been put in place for all new workplace agreements, which provides better protection to employees. In addition to this, the Committee notes the Government’s commitment that under the new system, at the commencement of bargaining, employers will be obliged to inform employees of their right to be represented. Employees will be free to choose who represents them in collective bargaining. Employees who are union members will be able to be represented by a union that is eligible to represent them. All bargaining participants must respect that choice and bargain in good faith with all other bargaining participants. An independent arbiter, called “Fair Work Australia”, will be able to determine the level of support for collective bargaining amongst employees in a workplace. Where a majority of employees at a workplace want to bargain collectively, their employer will be required to bargain collectively with them in good faith.

The Committee also notes, however, that in its latest comments the ACTU regrets the fact that the Transition Act did not immediately abolish statutory individual agreements. The ACTU also draws attention to recent cases in which employers have sought to take advantage of the transitional arrangements to impose non-union collective agreements containing AWA-like conditions on their workforce so as to prevent them from being covered by collective agreements negotiated with representative unions for years to come. This is significant in light of the fact that when AWAs expire, workers will potentially be covered by these non-union agreements. The ACTU urges the Government to ensure that enforceable “agreements” cannot be made applicable to existing employees without them having participated in the decision to endorse the agreements.

Finally, the Committee notes that the Government does not make any observation as to the incident communicated by the ITUC in its previous comments concerning a call centre which had allegedly forced workers out of a collective agreement and into AWAs, and the related investigation by the Workplace Rights Advocate of the State of Victoria.

The Committee requests the Government to provide additional information on the provisions which will govern the transition from the previous system, based on statutory individual agreements (AWAs), to the new system which will have collective bargaining at its centre and to specify, in particular, the conditions under which workers covered by AWAs will be free to be represented in collective bargaining, as well as the relationship between AWAs already concluded and new collective agreements. The Committee hopes that in the framework of the substantive labour reform, measures will be taken to ensure that: (i) there is no possibility of acts of interference by the employer in the context of the selection of a bargaining partner; and that (ii) “employee collective agreements” may not be used to undermine workers’ organizations and their ability to conclude collective agreements. The Committee requests the Government to indicate in its next report the measures taken in this regard.

6. In its previous comments, the Committee raised the need to repeal or amend sections 151(1)(h), 152, 331(1)(a)(ii) and 332(3) of the WR Act so as to ensure that *multiple business agreements* are not subject to a requirement of prior authorization at the discretion of the employment advocate and that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law or by decision of the administrative authority. The Committee notes that, according to the Government, under the new system Fair Work Australia will be able to facilitate multi-employer collective bargaining for low paid employees or employees who have not historically had access to the benefits of collective bargaining. Further, the Government’s policy is that where more than one employer and their employees or unions with coverage in the workplaces voluntarily agree to collectively bargain for a single agreement, they will be free to do so. Nevertheless, the Committee also notes that according to the ITUC, the Government has indicated its intention to retain the prohibition of “pattern bargaining” (i.e. negotiations seeking common wages or conditions of employment for two or more proposed collective agreements with different employers, which might therefore lead to a form of multi-employer business agreement).

The Committee once again recalls that the level of collective bargaining should be decided by the parties themselves and not be imposed by law and that legislative provisions which make the entry into force of a collective agreement subject to prior approval by the administrative authority at its discretion, is incompatible with the Convention. ***The Committee hopes that in the framework of the substantive labour reform under way, all types of multiple business***

agreements, including “pattern bargaining”, will be allowed so that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law or by decision of the administrative authority. The Committee requests the Government to indicate in its next report any measures taken in this regard.

7. In its previous comments, the Committee raised the need to amend section 330 of the WR Act so as to ensure that the choice of bargaining agent, even in new businesses, may be made by the workers themselves so that they will not be prohibited from negotiating their terms and conditions of employment in the first year of their service for the employer even if an “employer greenfields agreement” has been registered (enabling the employer to unilaterally determine the terms and conditions of employment in a new business including any new activity by a government authority, or a body in which a government has a controlling interest, or which has been established by law for a public purpose as well as a new project which is of the same nature as the employer’s existing business activities). The Committee notes that, according to the Government, under the new system where an employer commences a genuinely new business or undertaking and they have not yet engaged any employees, the employer and a relevant union may bargain for a collective greenfields agreement for the new business. *The Committee requests the Government to specify the modalities according to which an employer may negotiate with a union the terms and conditions of employment in a new business before engaging any employees and the safeguards which ensure protection against employer interference in this framework. The Committee also requests the Government to indicate whether it is still possible to conclude “employer greenfields agreements” which enable the employer to determine unilaterally the terms and conditions of employment in a new business; if that is the case, the Committee requests the Government to indicate the measures taken or contemplated in the framework of the substantive labour reform, to ensure that workers in new businesses are able to choose the bargaining agent themselves, and that they are not prohibited from negotiating their terms and conditions of employment even if an “employer greenfields agreement” has been registered.*

B. *Building industry.* In its previous comments, the Committee, taking note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2326 (338th Report, paragraphs 409–457), had raised the need to rectify several discrepancies between the Building and Construction Industry Improvement (BCII) Act and the Convention.

The Committee recalls that, according to the comments previously made by the ACTU, section 64 of the BCII Act prohibits project agreements, which have been a common feature of the building industry and are particularly suited to the industry’s nature as an efficient means of ensuring that all employees on a building site, who may be employed by a large number of small subcontractors, are covered by one agreement setting standard wages and conditions.

The Committee notes that the Government has commenced a process of extensive consultation in relation to the BCII Act and the regulatory arrangements that will apply after 31 January 2010. The Government’s policy is that collective bargaining will be based at the enterprise level using a well understood definition of “enterprise” which may include a single business or employer, a group of related businesses operating as a single business or a discrete undertaking, site or project. However, pattern bargaining and industry-wide bargaining will not be permitted. The new system contemplates multi-employer bargaining in the circumstances delineated above.

Taking note of the extensive comments made by the ACTU on this issue, under the Committee’s comments concerning Convention No. 87, and also noting that, according to the Government, under the new workplace relations system there will be no place for any form of statutory individual agreements, which means that certain provisions of the BCII operating in conjunction with the WR Act may be substantially modified in the future, the Committee regrets that the Government has not provided more detailed information on the specific steps contemplated to bring the BCII into full conformity with the Convention.

The Committee therefore once again urges the Government to indicate in its next report the measures taken or contemplated so as to bring the BCII Act into conformity with the Convention with regard to the following points: (i) the revision of section 64 of the Act so as to ensure that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law or by decision of the administrative authority; (ii) the promotion of collective bargaining, especially by ensuring that there are no financial penalties or incentives linked to undue restrictions on collective bargaining (sections 27 and 28 of the Act authorize the Minister to deny Commonwealth funding to contractors bound by a collective agreement that, although lawful, does not meet the requirements of the building code; the latter: (i) excludes a wide range of matters from the scope of collective bargaining; and (ii) contains financial incentives to ensure that statutory individual agreements may override collective agreements).

C. *Higher education sector.* In its previous comments the Committee raised the need to amend section 33-5 of the Higher Education Support Act 2003, as well as the Higher Education Workplace Relations Requirements (HEWRRs) which raised obstacles to collective bargaining similar to those raised by the WR Act and the BCII Act, by: (1) providing economic incentives to ensure that collective agreements contain exceptions in favour of AWAs; and (2) allowing for negotiations with non-unionized workers even where representative trade unions exist in the unit. The Committee notes with interest that the Government has introduced into the Australian Parliament draft legislation to abolish the HEWRRs. *The Committee requests the Government to indicate in its next report progress made in the adoption of legislation aimed at abolishing the HEWRRs.*

A request on another point is being addressed directly to the Government.

Bangladesh

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

The Committee notes with regret that the Government's report has not been received and takes note of the discussion that took place at the Conference Committee on the Application of Standards in June 2008.

The Committee recalls that in its previous comments it took note of an extensive list of serious violations of workers' basic civil liberties which, according to the International Trade Union Confederation (ITUC), had been committed in 2006 in the context of a strike and a riot in the garment sector and a reported harsh crackdown by the army's rapid action battalion; the ITUC had also referred to the death of a striking worker, numerous arrests of trade union leaders, the raiding of trade union offices and police harassment.

The Committee takes note of the comments made by the ITUC in a communication dated 29 August 2008, with regard to alleged violations committed in 2007 including the arrest and detention of the General Secretary of Dhaka University Teachers' Association (DUTA) and intimidation of unions by the military and security forces, the Government and employers. The Committee also notes that despite a tripartite agreement signed on 12 June 2006 to withdraw cases lodged against the workers in 2006 and release the arrested persons in Gazipur, Tongi, Savar and Ashulia Police Stations, Cases Nos 49/06, 50/06 and 51/06 against workers which are under the jurisdiction of the Joydevpur Police Station are yet to be withdrawn.

The Committee notes from the statement of the Government representative to the Conference Committee that all those arrested had been released on bail and the Government was not actively pursuing their cases. There were over 5,000 factories in the country with 2.5 million workers and it was not easy to maintain law and order in all of the factories. The Government was committed to ensuring law and order in factories with the utmost restraint.

The Committee regrets that the Government has not provided full particulars in respect of all the allegations of arrest, harassment and detention of trade unionists and trade union leaders as requested by the Conference Committee. ***Recalling that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of workers' organizations and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers, constitutes a serious interference with civil liberties in general and with trade union rights in particular, the Committee once again requests the Government to provide full particulars in respect of all the allegations of arrest, harassment and detention of trade unionists and trade union leaders.***

Furthermore, the Committee reiterates its previous requests for information on: (i) measures taken, including instructions given to the law enforcement authorities, so as to avoid the danger of excessive violence in trying to control demonstrations, and ensure that arrests are made only where criminal acts have been committed; (ii) the charges brought in 2004 against 350 women trade unionists, including the General Secretary of the JSL's Women's Committee, Shamsur Nahar Bhuiyan and all judicial decisions taken in this matter; and (iii) the measures taken to ensure the prompt registration of Immaculate (Pvt) Ltd Sramik Union.

The Committee notes that according to the latest communication by the ITUC, throughout 2007 the Joint Director for Labour (JDL) who is responsible for registering new trade unions refused to take any actions on pending union registration applications, particularly in the textiles sector, thereby effectively denying workers their right to association and bargain collectively; the ITUC also refers to processes initiated to deregister the Bangladesh Garments and Industrial Sramik Federation (BGIWF) and threats to deregister two other federations which cooperated with the petition of the AFL-CIO lodged before the Office of the US Trade Representative seeking the revocation of Generalized System of Preferences (GSP) privileges for Bangladesh. ***The Committee requests the Government to provide its observations in this regard and to indicate the number of trade unions registered in 2007, particularly in the textile sector, as well as the current status of the BGIWF.***

The Committee also recalls that its previous comments concerned the following issues.

Right to organize in export processing zones (EPZs). The Committee notes that according to the previous comments made by the ITUC, the Bangladesh Export Processing Zones Authority (BEPZA) continued to raise obstacles to the establishment of workers' associations in EPZs after the deadline of 31 October 2006 set in section 13(1) of the Industrial Relations Act 2004; although after this deadline, workers had the right to apply to form workers' associations the BEPZA allegedly failed to devise and provide the prescribed form needed by the workers to this effect, thus preventing in practice the establishment of such associations; the ITUC adds in its latest communication that following the filing of the AFL-CIO petition on the revocation of GSP privileges, delaying tactics at BEPZA relented and workers were provided the opportunity to register their intent to form workers' associations and participate in elections to formally establish them; in the final months of 2007, many workers' associations went through the election process, frequently with over 90 per cent of the workers in favour; nevertheless, employers continued to refuse to substantively accept their role or to enter into negotiations with them. ***The Committee requests the Government to communicate its observations in this regard and to provide statistical information on the number of workers' associations established in the EPZs after 1 November 2006.***

The Committee further recalls that the EPZ workers' associations and Industrial Relations Act 2004, contains numerous and significant restrictions and delays in relation to the right to organize in EPZs and, in particular:

- (i) provides that workers' associations will not be allowed in industrial units established after the commencement of the Act, until a period of three months has expired after the commencement of commercial production in the concerned unit (section 24);
- (ii) provides that there can be no more than one workers' association per industrial unit (section 25(1));
- (iii) establishes excessive and complicated minimum membership and referendum requirements for the establishment of workers' associations (a workers' association may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been verified by the Executive Chairperson of BEPZA, who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per cent of the eligible workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the workers' association (sections 14, 15, 17 and 20);
- (iv) confers excessive powers of approval of the constitution drafting committee to the Executive Chairperson of the BEPZA (section 17(2));
- (v) prevents steps for the establishment of a workers' association in the workplace for a period of one year after a first attempt failed to gather sufficient support in a referendum (section 16);
- (vi) permits the deregistration of a workers' association at the request of 30 per cent of the workers even if they are not members of the association and prevents the establishment of another trade union for one year after the previous trade union was deregistered (section 35);
- (vii) provides for the cancellation of the registration of a workers' association on grounds which do not appear to justify the severity of this sanction (such as contravention of any of the provisions of the association's constitution) (sections 36(1)(c), (e)–(h) and 42(1)(a));
- (viii) establishes a total prohibition of industrial action in EPZs until 31 October 2008 (section 88(1) and (2)); provides for severe restrictions of strike action, once recognized (possibility to prohibit a strike if it continues for more than 15 days or even before this deadline, if the strike is considered as causing serious harm to productivity in the EPZ (section 54(3) and (4));
- (ix) prevents workers' associations from obtaining or receiving any fund from any outside source without the prior approval of the Executive Chairperson of the BEPZA (section 18(2));
- (x) establishes an excessively high minimum number of trade unions to establish a higher level organization (more than 50 per cent of the workers' associations in an EPZ (section 32(1));
- (xi) prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs (section 32(3)); and
- (xii) does not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g. the procedure of election shall be determined by the BEPZA, etc. (sections 5(6) and (7), 28(1), 29 and 32(4)).

The Committee once again requests the Government to take the necessary measures to amend the EPZ workers' associations and Industrial Relations Act so as to bring it into conformity with the Convention and to provide detailed information in its next report in this respect.

Other discrepancies between national legislation and the Convention. The Committee recalls that for many years it had been referring to serious discrepancies between the national legislation and the Convention. It now notes the adoption of the Bangladesh Labour Act 2006 (the Labour Act) which replaced the Industrial Relations Ordinance 1969 (section 353(1)(x)).

The Committee notes with deep regret that the new Act does not contain any improvements in relation to the previous legislation and in certain regards contains even further restrictions which run against the provisions of the Convention. Thus, the Committee notes the following:

- the need to repeal provisions on the exclusion of managerial and administrative employees from the right to establish workers' organizations (section 2 XLIX and LXV of the Labour Act) as well as new restrictions of the right to organize of fire-fighting staff, telex operators, fax operators and cipher assistants (exclusion from the provisions of the Act based on section 175 of the Labour Act);
- the need to either amend section 1(4) of the Labour Act or adopt new legislation so as to ensure that the workers in the following sectors, which have been excluded from the scope of application of the Act including its provisions on freedom of association, have the right to organize: offices of or under the Government (except workers in the Railway Department, Posts, Telegraph and Telephone Departments, Roads and Highways Department, Public Works Department and Public Health Engineering Department and the Bangladesh Government Press); the security printing press; establishments for the treatment or care of the sick, infirm, aged, destitute, mentally disabled, orphans, abandoned children, widows or deserted women, which are not run for profit or gains; shops or stalls in public exhibitions which deal in retail trade; shops in any public fair for religious or charitable purposes;

educational, training and research institutions; agricultural farms with less than ten workers; domestic servants; and establishments run by the owner with the aid of members of the family. ***In case any of the above sectors are already covered by existing legislation, the Committee requests the Government to provide information in this respect,***

- the need to repeal provisions which restrict membership in trade unions and participation in trade union elections to those workers who are currently employed in an establishment or group of establishments, including seafarers currently engaged in merchant shipping (section 2 LXV and 175, 185(2) of the Labour Act);
- the need to repeal or amend new provisions which define as an unfair labour practice on the part of a worker or trade union, an act aimed at “intimidating” any person to become, continue to be or cease to be a trade union member or officer, or “inducing” any person to cease to be a member or officer of a trade union by conferring or offering to confer any advantage and the consequent penalty of imprisonment for such acts (sections 196(2)(a) and (b) and 291 of the Labour Act); the Committee considers that the terms “intimidating” or “inducing” are too general and do not sufficiently safeguard against interference in internal trade union affairs, since, for instance, a common activity of trade unions is to recruit members by offering advantages, including with regard to other trade unions;
- the need to repeal provisions which prevent workers from running for trade union office if they were previously convicted for compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand by using intimidation, pressure, threats, etc. (sections 196(2)(d) and 180(1)(a) of the Labour Act);
- the need to lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, as well as the possibility of deregistration if the membership falls below this number (sections 179(2) and 190(f) of the Labour Act); the need to repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5) of the Labour Act) and that only one trade union of seafarers shall be registered (section 185(3) of the Labour Act); finally, the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300 of the Labour Act);
- the need to repeal provisions denying the right of unregistered unions to collect funds (section 192 of the Labour Act) upon penalty of imprisonment (section 299 of the Labour Act);
- the need to lift several restrictions on the right to strike: requirement for three-quarters of the members of a workers’ organization to consent to a strike (sections 211(1) and 227(c) of the Labour Act); possibility of prohibiting strikes which last more than 30 days (sections 211(3) and 227(c) of the Labour Act); possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c) of the Labour Act) or involves a public utility service including the generation, production, manufacture, or supply of gas and oil to the public, as well as railways, airways, road and river transport, ports and banking (sections 211(4) and 227(c) of the Labour Act); prohibition of strikes for a period of three years from the date of commencement of production in a new establishment, or an establishment owned by foreigners or established in collaboration with foreigners (sections 211(8) and 227(c) of the Labour Act); penalties of imprisonment for participation in – or instigation to take part in unlawful industrial action or go-slow (sections 196(2)(e) and 291, 294–296 of the Labour Act);
- the need to repeal provisions which provide that no person refusing to take part in an illegal strike shall be subject to expulsion or any other disciplinary measure by the trade union, so as to leave this matter to be determined in accordance with trade union rules (section 229 of the Labour Act);
- the need to amend new provisions which define as an unfair labour practice on the part of workers, an act of compelling or attempting to compel the employer to sign a memorandum of settlement or to accept or agree to any demand by using “intimidation”, “pressure”, “threat” so as to ensure that there is no interference with the right of trade unions to engage in activities like collective bargaining or strikes, and to repeal the consequent penalty of imprisonment for such acts (sections 196(d) and 291(2) of the Labour Act);
- the need to amend provisions which impose a penalty of imprisonment for failure to appear before the conciliator in the framework of settlement of industrial disputes (section 301 of the Labour Act).

The Committee requests the Government to indicate in its next report the measures taken or contemplated so as to bring the Labour Act 2006 into full conformity with the provisions of the Convention.

The Committee also notes that it is not clear from the provisions of the Labour Act whether rule 10 of the Industrial Relations Rules 1977 (IRO) which previously granted the Registrar of Trade Unions overly broad authority to enter trade union offices, inspect documents, etc., without judicial review, has been repealed. It would appear from section 353(2)(a) that the rule remains in force, as the section in question provides that any rule under any provision of the repealed laws (including the IRO) shall have effect until altered, amended, rescinded or repealed, so far as it is not inconsistent with the provisions of the Labour Act 2006. ***The Committee requests the Government to indicate in its next report whether rule 10 of the IRO has been repealed by the entry into force of the Labour Act 2006 and, if not, to indicate the measures taken or contemplated with a view to its repeal or amendment.***

Barbados

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

The Committee takes note of the comments submitted by the International Trade Union Confederation (ITUC) on 29 August 2008 as well as the comments submitted by the Congress of Trade Union and Staff Associations of Barbados indicating that legislation commented upon by the Committee remains in place.

The Committee recalls that for numerous years it has advised the Government to amend section 4 of the Better Security Act 1920, according to which any person who wilfully breaks a contract of service or hiring, knowing that this could endanger real or personal property, is liable to a fine or up to three months' imprisonment, so as to eliminate the possibility of employers invoking it in a case of future strikes. The Committee notes the statement in the Government's report that section 4 of the Better Security Act 1920, has not been invoked in the case of a strike. The Committee recalls that if this provision is applicable in the case of a strike, it should be amended so that such penalties may only be imposed with respect to essential services in the strict sense of the term, namely those services the interruption of which would endanger the life, personal health or safety of the whole or part of the population, and that the sanctions should not be disproportionate to the seriousness of the violations. ***Once again, the Committee strongly urges the Government to take the necessary measures in order to amend the Act in the very near future to bring it into conformity with the Convention. The Committee requests the Government to indicate in its next report any measures taken in this regard.***

Furthermore, the Committee has been requesting the Government since 1998 to provide information on developments in the process of reviewing legislation regarding trade union recognition, to which the Government had referred. The Committee notes that the Government indicates that no further action has been taken. ***The Committee requests the Government to indicate in its next report if the drafting legislation process concerning trade union recognition could be considered as abandoned.***

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

The Committee notes with regret that the Government's report has not been received. The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) on 29 August 2008, concerning anti-union interference and strategies for avoiding collective bargaining in an enterprise of the telecommunication sector, as well as the comments submitted by the Congress of Trade Union and Staff Associations of Barbados concerning issues already raised by the Committee. ***It requests the Government to provide its observations concerning the ITUC's comments.***

Article 1 of the Convention. Lack of protection against anti-union discrimination. The Committee recalls that, in its previous observations, it had indicated that *Article 1* of the Convention guarantees workers adequate protection against acts of anti-union discrimination, in taking up employment and throughout the course of employment, including at the time of termination and covers all measures of anti-union discrimination (dismissals, demotions, transfers and other prejudicial acts) and that legislation prohibiting acts of discrimination is inadequate if not coupled with effective, expeditious procedures and sufficiently dissuasive sanctions to ensure their application (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 223 and 224). ***In this connection, the Committee once again requests the Government to take the necessary measures to ensure that its legislation provides adequate protection against all acts of anti-union discrimination, as well as adequate and dissuasive sanctions.***

Finally, the Committee points out to the Government that it may seek technical assistance from the Office in solving this serious problem.

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

Belarus

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

The Committee notes the information provided by the Government on the measures taken to implement the recommendations of the Commission of Inquiry, the conclusions of the Committee on Freedom of Association (352nd Report, approved by the Governing Body at its 303rd Session) and the discussion that took place in the Conference Committee on the Application of Standards in June 2008. The Committee also takes note of the seminar on anti-union discrimination which was held in Belarus in June 2008, with participation of ILO representatives and tripartite constituents. The Committee further notes the comments made by the International Trade Union Confederation (ITUC) on the application of the Convention in law and in practice in a communication dated 29 August 2008.

The Committee recalls that all of the issues raised in its outstanding comments are directly related to the recommendations of the Commission of Inquiry.

Article 2 of the Convention. The Committee recalls that it had previously noted with regret that no progress had been made in respect of the recommendations made by the Commission of Inquiry to register the primary-level organizations that were the subject of the complaint. It further noted with regret that two trade unions affiliated to the Radio and Electronic Workers' Union (REWU), which submitted applications for registration in 2006–07 were not registered (primary trade union of “Avtopark No. 1” and Mogilev city primary trade union). The Committee further noted that the non-registration of primary trade union organizations had led to the denial of registration of three regional organizations of the Belarusian Free Trade Union (BFTU) (organizations in Mogilev, Baranovichi and Novopolotsk-Polotsk). The Committee had therefore expressed the firm hope that the Government would take all necessary measures for the immediate re-registration of these organizations both at the primary and the regional level so that these workers may exercise their right to form and join organizations of their own choosing without previous authorization. It further requested the Government to keep it informed of the number of organizations registered and those denied registration. The Committee deeply regrets that no information was provided by the Government on steps taken to ensure the immediate registration of the primary-level organizations that were the subject of the complaint examined by the Commission of Inquiry. The Committee further regrets to note that, apart from the Novopolotsk-Polotsk organization, which according to the Government has been registered since 2000, no other trade union, the registration of which had been requested by the ILO supervisory bodies, has been registered. The Committee further notes from the 352nd Report of the Committee on Freedom of Association the new allegations of denial of registration of the REWU organizations in Gomel, Smolevichi and Rechitsa and of the Belarusian trade union of individual entrepreneurs “Razam”, a partner organization of the Congress of Democratic Trade Unions (CDTU). **Regretting the absence of action by the Government on these matters, the Committee urges the Government to take the necessary measures to ensure that all of the non-registered trade union organizations are registered without delay and requests the Government to keep it informed in this respect. It further once again requests the Government to indicate the number of organizations registered and those denied registration during the reporting year.**

The Committee notes that the main obstacle to registration of the BFTU and the REWU organizations mentioned above is the absence of legal address. The Committee had previously noted the Government's indication that with the adoption of the new Law on Trade Unions, the provisions of Presidential Decree No. 2 of 1999, which impose the legal address requirement for registration of trade union organizations, would cease to have effect. With regard to the process of drafting of the new Law on Trade Unions, the Committee notes the information provided by the Government that it was decided to hold back the draft Law and that new legislation would be developed in consultation with the social partners concerned. The Committee regrets to note that in the meantime, the legal address requirement continues to hinder the establishment and functioning of trade unions despite the recommendation of the Commission of Inquiry to amend the relevant provisions of the Decree, its rules and regulations so as to eliminate any obstacles that might be caused by this requirement. **In light of the fact that the requirement of legal address, as provided for in Decree No. 2, continues to raise difficulties with the registration of trade unions, the Committee once again requests the Government to take the necessary measures to immediately amend the Decree to eliminate this requirement so as to ensure that workers and employers may form organizations of their own choosing without previous authorization. The Committee further expects that any new legislation relating to trade union registration will be in full conformity with the provisions of the Convention. The Committee requests the Government to indicate any developments in this respect.**

Article 3. The Committee once again notes with regret that no information has been provided in respect of the steps taken to amend the Law on Mass Activities and sections 388, 390, 392 and 399 of the Labour Code, and to ensure that National Bank employees may have recourse to industrial action, without penalty. The Committee must therefore once again recall that it has been asking the Government to amend these provisions for several years now. **Recalling that the abovementioned legislative provisions are not in conformity with the right of workers to organize their activities and programmes free from interference by the public authorities, the Committee reiterates its previous requests and asks the Government to indicate the measures taken in this respect.** The Committee further expresses its concern at the allegations in the ITUC communication of repeated refusals to authorize the Belarusian Independent Trade Union (BITU) and the REWU to hold pickets and meetings. The Committee recalls that protests are protected by the principles of freedom of association and that permission to hold public meetings and demonstrations, which is an important trade union right, should not be arbitrarily refused. **The Committee requests the Government to conduct independent investigations into the alleged cases of refusals to hold pickets and meetings and to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests and to indicate any developments in this respect.**

Articles 3, 5 and 6. The Committee once again regrets that no information has been supplied by the Government in respect of the measures taken to amend section 388 of the Labour Code, which prohibits strikers from receiving financial assistance from foreign persons, and Decree No. 24 concerning the use of foreign gratuitous aid, so that workers' and employers' organizations may effectively organize their administration and activities and benefit from assistance from international organizations of workers and employers. The Committee must therefore reiterate that restrictions on the use of foreign aid for legitimate trade union activities is contrary to the right of national workers' and employers' organizations to receive financial assistance from international workers' and employers' organizations in pursuit of these aims. **Regretting the absence of measures by the Government on the matters above, the Committee once again requests the Government to take the necessary measures to amend both Decree No. 24 and section 388 of the Labour Code so**

that workers' organizations are not prohibited from using foreign aid to support industrial action or any other legitimate activity.

The Committee observes, just like the Conference Committee on the Application of Standards at its last discussion in June 2008, that while some positive steps have been taken by the Government, the current situation in Belarus still remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention. The Committee notes the Government's indication that it will continue its cooperation with the ILO and to that effect, a tripartite seminar (with the participation of representatives from the Government, trade unions – those affiliated and not affiliated to the Federation of Trade Unions of Belarus – employers' organizations, the ILO, the ITUC and the International Organisation of Employers) on the implementation of the recommendations of the Commission of Inquiry is under preparation. *The Committee welcomes this initiative and expresses the firm hope that concrete and tangible steps will be taken in the near future so as to ensure the full implementation of the recommendations of the Commission of Inquiry without delay.*

The Committee requests the Government to respond to the observations made by the ITUC.

[The Government is asked to supply full particulars to the Conference at its 98th Session and to reply in detail to the present comments in 2009.]

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

The Committee notes the information provided by the Government on the measures taken to implement the recommendations of the Commission of Inquiry, the conclusions of the Committee on Freedom of Association (352nd Report, approved by the Governing Body at its 303rd Session) and the discussion that took place in the Conference Committee on the Application of Standards in June 2008. The Committee also takes note of the seminar on anti-union discrimination which was held in Belarus in June 2008, with the participation of ILO representatives and tripartite constituents. The Committee further notes the comments made by the International Trade Union Confederation (ITUC) on the application of the Convention in law and in practice in a communication dated 29 August 2008.

The Committee recalls that all of its outstanding comments have raised issues directly relating to the recommendations of the Commission of Inquiry.

Articles 1, 2 and 3 of the Convention. In its previous comments, the Committee had requested the Government to indicate the measures taken to review and redress all complaints of anti-union discrimination that had been raised in the complaint filed under article 26 of the ILO Constitution or had come to light in the examination of the follow-up given by the Government to the recommendations of the Commission of Inquiry. The Committee had also requested the Government to ensure an independent investigation into the alleged instances of interference and anti-union discrimination at the "Mogilev ZIV" and "Avtopark No. 1" suffered by the primary trade union affiliated to the Radio and Electronic Workers' Union (REWU) and its members and to ensure that the rights of workers who had suffered anti-union discrimination in these enterprises were fully redressed. It had further asked the Government to indicate whether the officials of the Belarusian Free Trade Union (BFTU) were allowed access to the enterprise to meet their members and to provide information on the outcome of the discussion at the level of the Council for the Improvement of Legislation in Social and Labour Spheres of the case concerning the "Belshina" enterprise. Finally, it had urged the Government to rapidly adopt new, improved mechanisms and procedures to ensure effective protection against all types of anti-union discrimination and to indicate the progress made in this regard.

The Committee regrets that the information provided by the Government is once again limited to the indication that the current legal framework provides for adequate measures to protect citizens from acts of anti-union discrimination, that enterprise labour commissions can examine disputes involving allegations of anti-union discrimination and that aggrieved workers can have recourse to the courts according to the procedures provided for in the Code of Civil Procedure. According to the Government, in 2007, no cases involving allegations of anti-union discrimination were lodged with the courts. The Committee notes the Government's indication concerning the seminar on anti-union discrimination organized in June 2008 with the participation of representatives of employers' organizations, trade unions, including those not affiliated to the Federation of Trade Unions of Belarus, representatives of the Ministry of Justice and the Ministry of Labour and Social Protection, judges and prosecutors, representatives of the ILO, the ITUC and of the International Organisation of Employers. The Government further states that it will continue its cooperation with the ILO and to that effect, another tripartite seminar on the implementation of the recommendations of the Commission of Inquiry is under preparation.

The Committee notes with regret the new ITUC comments on of anti-union discrimination against members of the Belarusian Independent Trade Union (BITU) at "Polymir" company and the leaders of the BFTU at the Brest State Pedagogical University and the allegation of denial of access to workplace ("Belaruskaliy") to the leader of the BITU, as well as a number of comments of interference, anti-union pressure and anti-union dismissals submitted by the BITU and the REWU to the Committee on Freedom of Association.

The Committee recalls that it had previously noted the Government's statement that the Council for the Improvement of Legislation in the Social and Labour Spheres reviewed complaints concerning specific enterprises. The

Committee notes, however, from the recent report of the Committee on Freedom of Association, that the Congress of Democratic Trade Unions (CDTU) considers that this Council fails to play an effective role in eliminating violations of trade union rights.

In the light of the above, the Committee considers that the measures taken so far by the Government to ensure the full application of *Articles 1, 2 and 3* of the Convention are insufficient. ***In these circumstances, the Committee once again urges the Government to pursue vigorously, on the one hand, the instructions to be given to enterprises so as to ensure that enterprise managers do not interfere in the internal affairs of trade unions and, on the other, instructions to the Prosecutor-General, Minister of Justice and court administrators that all complaints of interference and anti-union discrimination are thoroughly investigated.***

The Committee further requests the Government to provide its observations on the comments submitted by the ITUC and to carry out independent investigations into all alleged instances of interference and anti-union discrimination and to keep it informed in this respect. It further reiterates its request to immediately redress the damages suffered from anti-union discrimination by those workers mentioned in the complaint filed under article 26 of the ILO Constitution, as well as those cases that had come to light in the examination of the follow-up given by the Government to the recommendations of the Commission of Inquiry. The Committee requests the Government to indicate the developments in this respect.

Belize

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

The Committee notes, with regret, that for the fourth consecutive year, the Government's report has not been received.

Articles 1 and 3 of the Convention. The Committee takes note of the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, to the effect that the procedures before the courts in cases of anti-union discrimination are too slow and cumbersome while the fines imposed are extremely low. According to the ITUC, cases of anti-union discrimination occur in practice in the banana plantation sector and in export processing zones, where employers do not recognize any unions. The ITUC also refers to instances of anti-union discrimination in specific companies. The Committee requests the Government to send its observations on this subject.

Articles 3 and 4. In its previous comments, the Committee recalled that, under the provisions of section 27(2) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act, Chapter 304, a trade union could be certified as a bargaining agent if it received 51 per cent of the votes and that problems might arise from such a requirement of an absolute majority since, where this percentage was not attained, the majority union would be denied the possibility of bargaining. ***The Committee therefore once again requests the Government to report on any measures taken or contemplated to amend the legislation so as to ensure that when no union covers more than 50 per cent of the workers, collective bargaining rights are not denied to the unions in this unit, at least on behalf of their own members.***

The Committee notes that according to the ITUC, collective bargaining rights are frequently violated by employers, despite the fact that they are guaranteed in law. ***The Committee requests the Government to reply to these comments and to provide statistical information in its next report on the number of collective agreements concluded during the last two years, as well as the sectors and number of workers covered by such agreements.***

Bolivia

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) on 29 August 2008, which refer to legislative matters already raised by the Committee as well as death threats against the Executive Secretary of the Bolivian Central of Workers (COB) and a dynamite attack against the COB headquarters in La Paz. In this regard, the Committee recalls that in such cases, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions. ***The Committee requests the Government to send its observations in this regard.***

The Committee observes with concern that for many years, its comments have referred to the following matters.

Article 2 of the Convention. ***Right of workers, without distinction whatsoever, to establish organizations of their own choosing. Exclusion of agricultural workers from the scope of the General Labour Act of 1942 and hence from the guarantees afforded by the Convention (section 1 of the General Labour Act of 1942 and Regulatory Decree No. 224 of 23 August 1943 issued under the Act).*** The Committee notes that in its report, the Government points out that legislative progress in favour of agricultural workers is gradual. Thus, the Act of 22 November 1945 recognizes some rights of rubber workers; several supreme resolutions of 1971 recognize rights of these workers and of chestnut workers; Supreme

Decrees Nos 19524 of 1983 and 20255 of 1984 recognize a special scheme in favour of sugar cane and cotton harvest workers, whose right to organize is expressly recognized; final provision No. 4 of Act No. 1715 of the National Agrarian Reform Service provides for wage-earning agricultural workers to be included in the scope of the General Labour Act, under a special seasonal scheme which reflects the seasonal nature of the work they perform. Section 3 of Act No. 3785 of 23 November 2007 also provides that seasonal workers are included in the scope of the General Labour Act. Thus, according to the Government, agricultural workers have gradually been included in the scope of this Act. ***In this regard, the Committee requests the Government to take the necessary measures so that all agricultural workers, whether they are wage earners or self-employed workers, enjoy the guarantees of the Convention.***

Denial of the right to organize of public servants (section 104 of the General Labour Act). The Committee notes that, according to the Government, the Civil Service Superintendence, which is an autonomous body under the Ministry of Labour, is examining the possibility of recognizing the right of association of the public sector. The Committee recalls that under *Article 2*, public servants, like all workers without distinction whatsoever, should enjoy the right to establish organizations of their own choosing and join those organizations without previous authorization for the promotion and defence of their interests. ***In this regard, the Committee once again requests the Government to take the necessary measures to ensure that public servants enjoy the guarantees envisaged in the Convention.***

Requirement that 50 per cent of the workers in an enterprise must give their agreement in order to establish a trade union if the latter is industrial (section 103 of the General Labour Act). The Committee notes that the Government points out that the percentage in question is not always restrictive because the political Constitution guarantees free unionization as a means of defence, representation, assistance, education and culture of workers. In this regard, the Committee reiterates once again that the percentage concerned is very high and could therefore hinder the establishment of trade unions at the industry level. ***The Committee therefore requests the Government once again to take the necessary measures to lower the percentage concerned to a reasonable level.***

Article 3. Right of workers' organizations to organize their administration and activities, elect their representatives in full freedom and formulate their programmes, without interference from the public authorities. Broad powers of supervision conferred on the labour inspectorate over trade union activities (section 101 of the General Labour Act provides that labour inspectors shall attend the debates of trade unions and monitor their activities). The Committee notes that according to the Government, labour inspectors check the activities of trade union organizations to ensure that they are acting in accordance with the legislation, ensuring observance of the principle of legality. The aim of such inspections is to prevent confrontations between groups of workers in the same organization. The inspections are carried out in moderation, in an impartial manner and with respect for the democratic decisions and the principle of legitimacy of the workers elected to a board. In this regard, the Committee recalls once again that *Article 3* provides that workers' organizations shall enjoy the right to organize their administration and the public authorities shall refrain from any interference which would restrict this right. ***The Committee requests the Government to take the necessary measures to amend section 101 of the General Labour Act so that any external interference is limited to exceptional cases where it is justified by serious circumstances.***

Requirement that trade union officers must be Bolivian (section 138 of the Regulatory Decree of the General Labour Act) and permanent employees in the enterprise (sections 6(c) and 7 of Legislative Decree No. 2565 of June 1951). The Committee notes that the Government refers to the right of foreigners to obtain Bolivian nationality when they have resided in the country for at least two years or for a shorter period in certain cases. It points out that the requirement that trade union leaders must be Bolivian is a way of protecting the rights of national workers given that there is a risk that a foreign worker with less than one year's residence might leave the country, abandoning the workers and the trade union. In this regard, the Committee recalls that provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors in which they account for a significant share of the workforce. The Committee considers that national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey on freedom of association and collective bargaining, 1994, paragraph 118), regardless of the acquisition of nationality.

The Committee also recalls that provisions which lay down the requirement to belong to an occupation or establishment in order to be a trade union officer are not consistent with the Convention. Provisions of this type infringe the organization's right to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks (see General Survey, op. cit., paragraph 117).

The Committee requests the Government to take the necessary measures to lift these restrictions in order to bring the legislation into conformity with the Convention.

Right to strike. Majority of three-quarters of the workers in order to call a strike (section 114 of the General Labour Act and section 159 of the Regulatory Decree). The Committee notes that according to the Government, the figure in question is a balanced one which encourages and allows consensus between workers, preventing minority decisions by a few to the detriment of the majority of workers who hold another view. In this regard, the Committee recalls that the requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises. The Committee considers, for

example, that it would be more appropriate to reduce the majority laid down to a simple majority of the votes cast. ***The Committee requests the Government to take the necessary measures to amend the legislation in order to lower the majorities required to call a strike.***

Illegality of general and sympathy strikes, subject to penal sanctions (sections 1 and 2 of Legislative Decree No. 2565 and 234 of the Penal Code). The Committee notes that the Government points out that, according to the National Directorate of Prisons, there is no record of persons having been detained as a preventive measure or convicted on these grounds during the period 2005–07, and that the Government, with the support of the ILO, intends to implement the tripartite agreement reached between the COB, the Bolivian Confederation of Private Entrepreneurs and the Ministry of Labour of Bolivia, designed to amend sections 2, 9 and 10 of Legislative Decree No. 2565 and section 234 of the Penal Code. The Committee recalls that the general prohibition of sympathy strikes could lead to abuse, especially when the initial strike is legal, and that these strikes, as well as general strikes, are means of action which should be available to workers. The Committee also recalls that no worker on strike who has acted peacefully should be subject to criminal sanctions. ***The Committee expresses the hope that in the near future the necessary amendments will be made to Legislative Decree No. 2565 and to the Penal Code in accordance with the above principles.***

Illegality of strikes in the banking sector (section 1(c) of Supreme Decree No. 1958 of 1950). The Committee notes that the Government points out that the Decree in question determines the public services, the activities of which shall not be interrupted so as not to harm society, including banking activities, the services of which may not be withdrawn given that these services involve the handling of the subsistence resources of many people. In this regard, the Committee recalls that banking services are not regarded as essential services in the strict sense of the term (services the interruption of which could endanger the life, personal safety or health of the whole or part of the population) in which strikes may be banned or restricted. However, the Committee recalls the possibility of a negotiated minimum service in cases where, although the total prohibition of strike action is not justified, and without calling into question the right to strike of the large majority of workers, it is considered necessary to ensure that users' basic needs are met. ***The Committee requests the Government to amend Supreme Decree No. 1958 of 1950 in order to ensure that the banking sector enjoys the right to strike in accordance with the above principles.***

Possibility of imposing compulsory arbitration by decision of the Executive in order to bring an end to a strike, including in services other than those that are essential in the strict sense of the term (section 113 of the General Labour Act). The Committee observes that the Government refers to the arbitration procedure and to the tripartite composition of the arbitration tribunals as a means of resolving disputes and conflicts, and points out that compulsory arbitration is not imposed by the Executive and that it is used to prevent strike action and not to bring a strike to an end. In this regard, the Committee recalls that a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers' organizations to organize their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association. The Committee recalls that compulsory arbitration to end a collective labour dispute and 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 requests the Government to take the necessary measures without delay to amend section 113 of the General Labour Act in accordance with the above principles.***

Article 4. Dissolution of trade unions. Possibility of dissolving trade union organizations by administrative authority (section 129 of the Regulatory Decree). The Committee notes that the Government points out that the Regulatory Decree issued under the General Labour Act refers to two grounds for the dissolution of trade union organizations: (1) the violation of the General Labour Act, and (2) in the event of a suspension of activities for one year. In the latter case, the aim is to encourage workers not to neglect to establish their board and obtain the appropriate recognition of the Ministry of Labour. The Government points out that the Ministry of Labour has not recorded many cases of dissolution of trade unions on the above grounds. It points out that dissolution takes place more frequently at the request of workers, with the agreement of the workers to determine the distribution of the trade union's assets. The Committee recalls that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association. The Committee considers that the dissolution of trade union organizations is a measure which should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defence are fully guaranteed. ***The Committee requests the Government to take the necessary measures without delay to amend the legislation in accordance with the above principle.***

The Committee requests the Government to indicate any legislative developments relating to all the questions raised.

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) of 29 August 2008, which refer to matters already raised by the Committee, as well as anti-union dismissals in a mining company in the

department of Oruro and in a telecommunications cooperative in Sucre. **The Committee requests the Government to provide its comments in this respect.**

Articles 1, 2, and 3 of the Convention. Adjustment of the amount of fines (from 1,000 to 5,000 bolivianos) envisaged in Act No. 38 of 7 February 1944 (former Legislative Decree No. 38) to make them sufficiently dissuasive against acts of anti-union discrimination or interference. The Committee notes that, according to the Government's report, the Ministry of Labour plans to modify these fines, taking into account the circumstances of each violation, and adapting the amounts of the fines to the Housing Development Unit (UFV), a reference index that is regularly updated on the basis of the consumer price index. **The Committee requests the Government to provide information on any developments in this respect and hopes that the legislation will be reformed in the near future.**

Articles 4 and 6. Denial of the right of public employees and other categories of workers to organize and therefore their right to collective bargaining. The Committee notes: (1) the Government's indication that the Office of the Superintendent of the Civil Service is conducting a study with a view to a possible amendment of the legislation so as to recognize the right to organize of public servants; and (2) that the draft Political Constitution of the State envisages the right to organize of all persons, and accordingly eliminates the current restriction. In this respect, the Committee recalls that, while *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages (see General Survey on freedom of association and collective bargaining, 1994, paragraph 262). **The Committee hopes that the new Constitution that is adopted will allow public officials covered by the Convention to benefit from the guarantees set out therein.**

The Committee notes that, according to the ITUC, rural and agricultural workers are also denied the right to organize and to collective bargaining, but that these rights will be recognized in the future Constitution. **The Committee expresses the firm hope that the legislation will recognize and implement union rights for these categories of worker.**

The Committee previously requested the Government to take measures, in accordance with *Article 4* of the Convention, to encourage and promote the full development and utilization of machinery for collective bargaining between employers and their organizations and workers' organizations (on various occasions, the Committee had noted that collective bargaining covered wage increases, but rarely other conditions of employment). The Committee notes the Government's indication that the Ministry of Labour has developed procedures at three levels: the first is based on the provisions of Presidential Decree No. 28699 of 1 May 2006, implemented by Ministerial Resolution No. 551/06 of December 2006, which provide for the participation of workers in the formulation of internal work rules. The second level lies with the General Directorate of Labour and Social Security, which is responsible for endorsing labour contracts, which have to be agreed between the parties, and the third level relates to departmental labour services, which are responsible for approving collective agreements. Collective bargaining is encouraged and promoted at the three levels. With regard to the third level, the Committee recalls that provisions of this kind are compatible with the Convention, provided that they merely stipulate that approval may be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. **The Committee requests the Government to indicate the criteria used by departmental labour services to approve collective agreements and to transmit a copy of the agreements that they have approved recently.**

The ITUC's 2007 comments. The Committee notes the Government's reply to the ITUC's comments, which referred to the slowness of legal proceedings in matters relating to the exercise of trade union rights. The Government indicates that the Ministry of Justice and Labour has prepared the draft text of the new Code of Labour Procedure, which has been submitted by the President to the Legislative Authority for approval. This will ensure greater rapidity and efficiency of judicial procedures through measures such as the imposition of penalties on administrative and judicial officials in the event of delays in the administration of justice and the reinstatement of workers in the event of unjustified dismissal. **The Committee requests the Government to provide information on the progress made in respect of this draft text and hopes that it will be adopted in the near future.**

Draft new Constitution. The Committee notes that, according to the Government, the provisions of the future Constitution will strengthen trade union rights. **The Committee reminds the Government that ILO technical assistance is at its disposal with a view to ensuring that full effect is given to the Convention in the future legislation adopted under the new Constitution.**

Botswana

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

The Committee notes that the Government's report has not been received. It further notes the comments submitted by the International Trade Union Confederation (ITUC) on 29 August 2008, which mainly refer to legislative issues raised in its previous observation. **The Committee asks the Government to provide full information on the progress made with respect to the legislative changes requested in its previous comment, which it repeats as follows:**

- the amendment of section 2 of the Trade Disputes Act, section 2 of the Trade Union and Employers' Organizations (Amendment) Act, and section 35 of the Prisons Act so as to ensure that prison staff are afforded all the guarantees provided under the Convention;
- the adoption of specific legislative provisions ensuring adequate protection against acts of interference by employers or employers' organizations in the establishment, functioning or administration of trade unions, coupled with effective and sufficiently dissuasive sanctions;
- the repeal of section 35(1)(b) of the Trade Disputes Act, which permits an employer or employers' organization to apply to the Commissioner to withdraw the recognition granted to a trade union on the grounds that the trade union refuses to negotiate in good faith with the employer;
- the amendment of section 20(3) of the Trade Disputes Act, so as to ensure that compulsory arbitration of disputes of interest is permissible only in the following instances: (1) where the party requesting arbitration is a trade union seeking a first collective agreement; (2) disputes concerning public servants directly engaged in the administration of the State; and (3) disputes arising in essential services.

Finally, the Committee requests the Government to provide its observations with respect to the ITUC's comments, according to which if a trade union is not registered, union committee members are not protected against anti-union discrimination.

Burkina Faso

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

The Committee notes the observations made by the International Trade Union Confederation (ITUC) concerning the transfer of over 100 officials by the General Directorate of the Treasury and the Ministry of Foreign Affairs against workers and militants who participated in protest actions. The Committee notes that according to the Government, the transfers were due to human resource imperatives, and not motivated by anti-union reasons.

Article 4 of the Convention. Promotion of collective bargaining. The Committee notes that the Government has provided examples of collective agreements in force, namely the Interoccupational Collective Agreement of 1974 and the collective agreements for transport auxiliaries of 1979, for oil companies of 1976, for private education of 1979 and for trade of 1982. The Committee notes that, according to the Government, it is not possible to determine the number of workers covered by each collective agreement. However, the professional elections due to be held soon should help to determine the number. ***The Committee emphasizes that these collective agreements, on which the Government has yet to provide information, have been in force for a long time and hopes that the Government will be able soon to indicate the approximate number of workers covered by these agreements, and requests it to give an account of all measures to promote collective bargaining (including in the bakery, road transport and media sectors, in relation to which the Committee has requested information in its previous comments), taken in particular by the Directorate of Labour Relations and the Promotion of Social Dialogue.***

Collective bargaining in the public sector. ***With regard to the public service advisory bodies, including the Tripartite Public Service Advisory Council, which is competent with regard to dialogue (section 51 of Act No. 013/98/AN of 13 April 1998 on the public service), the Committee notes the indication that the employees have not yet appointed their representatives and requests the Government to provide information on any developments in this regard.***

The Committee previously asked the Government to specify the categories of public servants not engaged in the administration of the State who enjoy the right to collective bargaining. It notes with regret that the Government's report does not contain information on this point. ***The Committee recalls that the Convention applies to all public servants not engaged in the administration of the State and requests the Government to take the necessary measures to guarantee the right to collective bargaining on conditions of employment between their trade union organizations and the employers.***

Cambodia

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) and the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), in communications of 29 August 2008. The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2318 (351st Report).

In its previous comment, the Committee had taken note of the discussion on Cambodia in the Conference Committee on the Application of Standards in 2007, and in particular that the Conference Committee had expressed its deep concern

at the statements made concerning the assassination of the trade unionists Chea Vichea, Ros Sovannareth, and Hy Vuthy; death threats; and the emerging climate of impunity in the country. The Conference Committee, recalling that the rights of workers' and employers' organizations could only be exercised in a climate free from violence, pressure or threats of any kind against the leaders and members of these organizations, had called upon the Government to take the necessary measures to ensure respect for this fundamental principle and bring an end to impunity; it further urged the Government to take steps immediately to ensure full and independent investigations into the murders of the abovementioned Cambodian trade union leaders so as to bring not only the perpetrators, but also the instigators of these heinous crimes to justice.

Having also noted the ITUC's comments on the irregularities that had attended the trials of Born Samnang and Sok Sam Oeun, the two men convicted of Chea Vichea's murder despite substantial evidence of their innocence, and numerous acts of harassment and violence against trade union leaders, the Committee had urged the Government to take the necessary measures, including the initiation of judicial inquiries, to bring an end to the acts of violence and intimidation against trade union officials and members. Finally, the Committee had noted the Government's acceptance of an ILO direct contacts mission, as requested by the Conference Committee, and had expressed the firm hope that the mission would achieve significant results in respect of all of the serious matters raised above.

Against this backdrop, the Committee notes with concern that according to the FTUWKC, a campaign of systematic violence and repression has been carried out against it in one factory, comprising vicious attacks on union leaders by gangs outside the factory; the violent dispersal of a FTUWKC rally, in which one worker was shot in the back by the police and 16 trade unionists were arrested and detained; the dismissal of 1,500 workers following the protest, virtually all of whom were FTUWKC leaders or members; and the subsequent blacklisting of the dismissed individuals by the management, which had distributed their names and photos to other factories. The FTUWKC also asserts that the authorities have done little to investigate the serious injuries inflicted on union leaders, and in fact have been regularly involved in the violent suppression of worker protests, strikes and marches at various factories.

The ITUC also indicates that in many factories trade unionists continue to face repression of all kinds, with virtually no intervention from the authorities. Anti-union acts include beatings from hired thugs, death threats, blacklisting, the bringing of trade unionists before the courts on false charges, wage deductions and exclusion from promotion. One FTUWKC leader was beaten by four or five masked individuals armed with iron rods on his way home from work. The ITUC also refers to the continued obstruction of the activities of the Cambodian Independent Teachers' Association (CITA), which the Government does not recognize as a trade union and whose demonstrations and protests have often been prohibited. Another organization, the Cambodian Independent Civil Service Association (CICSA), is also not recognized as a trade union.

Finally, the Committee takes note of the report of the direct contacts mission to Cambodia, held on 21 to 25 April 2008. The Committee notes with grave concern that the mission report contains, inter alia, the following conclusions: (1) that the Cambodian judiciary is plagued by serious problems of capacity and a lack of independence, (2) that the conviction of Born Samnang and Sok Sam Oeun for the murder of trade union leader Chea Vichea was upheld on 12 April 2007, in a trial marked by procedural irregularities, including the Court's refusal to entertain evidence of their innocence; (3) that Thach Saveth was sentenced to 15 years in prison for the murder of trade union leader Ros Sovannareth; and (4) that no concrete steps had been indicated by the Government to ensure a meaningful and independent review of the outstanding cases. The Committee notes with concern, moreover, that it has received no information on any progress made in the investigation respecting Hy Vuthy.

In these circumstances, the Committee can only deplore the absence of any further developments in this regard in the Government's report, six months after the direct contacts mission. ***It requests the Government to take the necessary measures to take concrete and tangible steps, as a matter of urgency: (1) to carry out independent inquiries, as a matter of urgency, into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy; (2) to facilitate an expedited review of the convictions of Born Samnang and Sok Sam Oeun for the murder of Chea Vichea, as well as the conviction of Thach Saveth for the murder of Ros Sovannareth, and to take steps for their release pending the outcome of the above independent inquiries; (3) to take the necessary steps to ensure the independence and effectiveness of the judicial system, including capacity-building measures and the institution of safeguards against corruption. In this regard, the Committee suggests that the Government have recourse to the technical cooperation facilities of the Office, notably in the area of reinforcing institutional capacity, as well as with respect to the establishment of labour courts and the revision of the Law on Trade Unions. Finally, it urges the Government, as also requested by the Committee on Freedom of Association, to take all necessary measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives.***

The Committee is addressing a request on other points directly to the Government.

Cape Verde

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

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

Very low number of collective agreements. The Committee had noted that the Government had sent copies of two collective agreements (telecommunications and private security) and indicated that collective bargaining must be voluntary and that the Government's role is to promote it without forcing it. The Government added that the Office's technical assistance to strengthen the capacities of the social partners in collective bargaining techniques would contribute to improving the situation. The Government indicates that the social partners are in agreement to request this technical assistance.

The Committee requests again the Government to continue its efforts to promote collective bargaining and hopes that the technical assistance requested by the Government with the agreement of the social partners will be provided in the near future.

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

Central African Republic

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

The Committee notes with regret that once again the Government's report does not contain any reply to its previous comments. The Committee notes the communication from the International Trade Union Confederation (ITUC), dated 29 August 2008, reiterating its previous observations on the application of the Convention. *The Committee urges the Government to provide comments in reply to the observations from the ITUC to the effect that wages in the public sector are determined by the Government after consultation with the unions but without any negotiation. In this regard, the Committee emphasizes that the Convention also applies to officials not engaged in the administration of the State and requests the Government to take the necessary steps to ensure that they enjoy the right to collective bargaining.*

Article 4 of the Convention. For many years the Committee has been asking the Government to take the necessary steps to amend the legislation so that the negotiation of collective agreements by "professional groupings" is only possible where no trade union exists. *The Committee reminds the Government that the Convention promotes collective bargaining between representative organizations of employers and workers and urges the Government once again to amend the legislation accordingly. Noting the indication that a draft new Labour Code is being drawn up to remedy the deficiencies vis-à-vis the Convention, the Committee trusts that the Government will take this point fully into consideration.*

Chad

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

The Committee notes the Government's report and its reply to the comments from the International Trade Union Confederation (ITUC) dated 27 August 2007. The Committee recalls that these comments were concerned with acts of anti-union violence, particularly a number of demonstrating workers who were reportedly injured and one detained by the police for having asked their employer to comply with an arbitration award which recognized the violation of their rights. The Committee regrets that the Government categorically denies these allegations without indicating whether an investigation had been undertaken. In this regard, the Committee recalls that it has previously emphasized that, when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions (see General Survey on freedom of association and collective bargaining, 1994, paragraph 29). The Committee also notes the recent comment from the ITUC, dated 29 August 2008, regarding legislative matters which are already under examination and containing allegations of acts of interference from the Government in trade union affairs and also acts of intimidation and violence against strikers on 5 June 2007. *The Committee requests the Government to send its observations concerning these new comments from the ITUC.* The Committee also notes Case No. 2581 examined by the Committee on Freedom of Association, in the context of which serious violations of trade union rights are alleged (see 351st Report). The Committee reiterates that it has been making comments on the following points for a number of years.

Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations without prior authorization. The Committee previously observed that, under section 294(3) of the Labour Code, fathers, mothers or guardians may oppose the right to organize of young persons under 16 years of age. The

Committee recalls that *Article 2* guarantees all workers, without distinction whatsoever, the right to establish and join organizations. ***The Committee expresses the firm hope that section 294(3) will soon be amended to guarantee the right to organize to minors who have reached the legal minimum age (14 years) for access to the labour market, either as workers or as apprentices, without parental or guardian authorization being necessary. The Committee requests the Government to provide information in its next report on all measures adopted in this regard.***

Article 3. Right of workers' and employers' organizations to organize their administration and activities in full freedom. The Committee previously noted that section 307 of the Labour Code provides that the accounts and supporting documents relating to the financial transactions of trade unions must be submitted without delay to the labour inspector, when so requested. The Committee notes that the Government indicates in this regard that the Labour Code indeed provides for inspecting the financial operations of trade unions but that in practice neither labour inspectors nor controllers perform this activity. The Committee reiterates once again that inspection by the public authorities of trade union finances should not go beyond the organizations' obligation to submit periodic reports. ***The Committee requests the Government to take the necessary steps to amend section 307 of the Labour Code taking account of the abovementioned principle. The Committee also requests the Government once again to send copies of the instructions issued by the Director of labour and social security with regard to the inspection of the financial transactions of trade unions.***

The Committee recalls that, in its previous comments, it requested the Government to take the appropriate measures to repeal or amend Decree No. 96/PR/MFPT/94 of 29 April 1994 in order to ensure full observance of the principles of freedom of association in the exercise of the right to strike in the public service. The Committee notes that the Government indicates that this Decree was repealed and replaced by Act No. 008/PR/07 of 9 May 2007 regulating the exercise of the right to strike in the public service. In this regard, the Committee raises the following points.

- Section 11(3) of the Act imposes the obligation to declare the “possible” duration of a strike. However, the Committee notes that, under section 13(1), non-compliance with this condition would result in an illegal strike. The Committee recalls that trade unions should be able to declare strikes of unlimited duration and considers that the legislation should be amended to this effect. ***The Committee requests the Government to indicate the measures taken to this end.***
- The Committee notes that strikes are permitted in “essential” public services, as listed in section 19 of the Act, on condition that a minimum service is provided (section 18). The Committee notes that, under sections 20 and 21, it is the public authorities (the Minister concerned) who have the discretion to determine the minimum services and the number of officials and employees who will ensure that they are maintained. In this regard, the Committee recalls that such a service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, i.e. one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey, op. cit., paragraphs 160 and 161). ***The Committee therefore requests the Government to amend the legislation to ensure that the minimum service is limited to the operations which are strictly necessary to avoid jeopardizing the life or normal living conditions of all or part of the population, that the workers' organizations concerned should be able to participate in defining such a service, along with the employers and the public authorities, and to indicate developments in this regard.***
- Section 22(1) provides that any refusal by officials or employees to comply with requisition orders (sections 20 and 21) makes them liable to the penalties provided for by sections 100 and 101 of Act No. 017/PR/2001 issuing the general public service regulations. In this regard, the Committee notes that these legislative provisions describe the degrees of disciplinary penalties imposed by order of gravity, but without indicating those which correspond to the different degrees of fault. ***The Committee requests the Government to clarify the scope of penalties for contraventions of legal provisions and also requests it to indicate any other penalties which can be imposed for violations of Act No. 008/PR/2007 regulating the exercise of the right to strike in the public service.***

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

The Committee notes the comments from the International Trade Union Confederation (ITUC), dated 29 August 2008, to the effect that: (1) the Government refuses, in the context of social dialogue, to recognize the Union of Trade Unions of Chad (UST) as the most representative organization; (2) some trade union leaders have been dismissed, transferred or prosecuted for anti-union reasons; and (3) the Government has refused to negotiate with the inter-trade union association which includes the UST.

The Committee notes that the Government declares these allegations to be unfounded and also refers to a number of agreements and examples of social dialogue.

Noting the ITUC's comments and the Government's report, the Committee requests the Government to ensure that neither the UST nor its leaders or members are discriminated against on account of their trade union activities and that, in the relations between the authorities and the UST, the status of the UST as the most representative trade union organization is given due consideration.

China

Hong Kong Special Administrative Region

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

Article 1 of the Convention. Protection against anti-union discrimination. In its previous comments, the Committee referred to the need to provide further protection against anti-union discrimination and took note of the Government's indication concerning the drafting of an amendment Bill that would empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent. The Committee notes the Government's indication that it has been working on the draft amendment Bill but that the Labour Advisory board, the high-level tripartite consultative committee on labour matters, has not reached an agreement on some technical details but will continue discussion of the matter. ***The Committee hopes that this Bill, which has been under examination since 1999, will soon be adopted so as to give legislative expression to the principle of adequate protection against acts of anti-union discrimination. It requests the Government to indicate any progress made in this respect in its next report.***

Article 4. Measures to promote collective bargaining. The Committee's previous comments concerned the need to strengthen the collective bargaining framework, in particular with respect to the low levels of coverage of collective agreements which were not binding on the employer (see Committee on Freedom of Association, Case No. 1942), and the absence of an institutional framework for trade union recognition and collective bargaining. The Committee noted the measures taken by the Government to promote collective bargaining, in particular the encouragement of voluntary negotiations, by promoting tripartite dialogue at the industry level through industry-level tripartite committees in the catering, construction, theatre, logistics, property management, printing, hotel and tourism, cement and concrete, as well as retail industries. In this respect, the Committee recalled that tripartite dialogue could not function as a substitute for bipartite negotiations referred to by the Convention, and requested the Government to continue to provide information on measures adopted or contemplated for the promotion of new bipartite collective agreements through the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations and to indicate any further sectors covered by collective agreements, as well as the level of coverage (number of collective agreements and workers covered). The Committee notes that, according to the Government's report, collective agreements were signed in two other sectors, namely the cleaning services and tourism sectors and that the Labour Department encourages employers to maintain effective dialogue with employees' or workers' unions and to consult them on employment matters. Furthermore, the Labour Department produces promotional material and organizes seminars to promote voluntary and direct negotiation in the workplace. The Government indicates that it encourages voluntary bipartite negotiations at the industry level through the setting up of industry-based tripartite committees that contribute to create a positive climate that enables negotiation between employers' and workers' organizations in industries and individual enterprises. The Government emphasizes that voluntary negotiation has contributed to harmonious industrial relations which has had a considerable impact on the reduction of the number of work stoppages. Moreover, in March 2006, the Government organized a workshop with the participation of ILO officers on labour management cooperation, which included shared experiences concerning collective bargaining. ***The Committee takes note of this information but considers that the extent of coverage of collective bargaining is very low. The Committee requests the Government to take all the necessary measures to continue to promote voluntary bipartite negotiations in the private sector and to provide additional information concerning new sectors in which collective agreements have been concluded.***

The Committee notes the comments submitted by the Hong Kong and Kowloon Trade Union Council with respect to the need for the Government to introduce legislation on collective bargaining rights. ***The Committee requests the Government to provide its comments thereon.***

Measures to promote collective bargaining for civil servants not engaged in the administration of the State. In its previous comments, the Committee had requested the Government: (1) to indicate any measures discussed or adopted as a result of the work of the consultative group, set up by the Government to work on an improved civil service pay adjustment mechanism; (2) to indicate any measure taken with a view to extending the right to collective bargaining to civil servants; and (3) to provide information on the activities covered by the civil service with a view to determining those categories of civil servants who are not engaged in the administration of the State.

With respect to the civil service pay adjustment mechanism, the Committee notes that according to the Government, after consultation with the employees, it has developed an improved civil service pay adjustment mechanism which

comprises an improved methodology for the conduct of the annual pay trend survey, a framework for the conduct of periodic pay level surveys and a framework for the application of pay level survey results for the civil service. The Committee further notes the Government's indication to the effect that taking into account that all civil servants are engaged in the administration of the State, since they are responsible for formulating policies and strategies and performing law enforcement as well as regulatory functions, all of them are excluded from the application of the Convention. However, the existing consultation mechanism encourages effective communication between staff and management on matters concerning the terms and conditions of employment. Moreover, the Government is endeavouring to put in place procedures that will further engage staff representatives in more intensive consultations on terms and conditions of employment.

The Committee takes note of this information and recalls that, according to *Article 4*, civil servants not engaged in the administration of the State should enjoy not only the right to be consulted about their conditions of employment but also the right to bargain collectively. ***The Committee requests the Government to indicate the different categories and functions of the civil servants so as to identify which of them are in the administration of the State and which are not.***

Colombia

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

The Committee notes the comments made on the application of the Convention by the Single Confederation of Workers of Colombia (CUT), the General Confederation of Workers (CGT) and the Confederation of Workers of Colombia (CTC), dated 13 June 2008; by the CGT in a communication of 19 August 2008; the CTC in a communication of 22 August 2008; the CUT in communications dated 28 January, 13 June and 27 August; and the CUT and the CTC jointly in a communication dated 31 August. These communications refer to matters that are under examination by the Committee, and particularly to acts of violence against trade union leaders and members, including murders, kidnappings, attempted murder and disappearances; the grave impunity surrounding such acts; the use of associated labour cooperatives and other forms of contracts which make it impossible for workers to establish or join unions; the arbitrary refusal by the authorities to register new trade unions, new statutes or the executive committees of unions; and the prohibition of the exercise of the right to strike in certain services which go beyond essential services. The Committee also notes the comments of the International Trade Union Confederation (ITUC) of 29 August 2008, which are being translated. The Committee notes the Government's reply to the communication by the CUT dated 28 January 2008. ***It requests the Government to provide its comments on all the observations made by trade unions.***

The Committee notes the discussions in the Conference Committee on the Application of Standards in 2008. It also notes the reports of the Committee on Freedom of Association on various cases that it is examining concerning Colombia, adopted at its sessions in March, June and November 2008.

Trade union rights and civil and political liberties

The Committee notes that the comments made by the CUT, CGT and CTC refer to the rise in the rate of murders of trade union leaders and members in 2008, amounting to ten trade union leaders and 30 trade union members. They also report an increase in the number of death threats. The trade union confederations recognize the efforts made by the Government to provide security to trade union leaders and members, but consider that they are not sufficient. They refer once again to the stigmatization of the trade union movement as sympathizing with the guerrillas and movements on the extreme left, which leaves them in a grave situation of vulnerability.

In this respect, the Committee notes the Government's indication that during the course of 2007 the Government programme of protection for persons under threat took measures to the value of \$13 million out of a total of \$40 million. These measures were intended to protect the members of the trade union movement, who account for 20 per cent of the beneficiaries. For 2008, the investment budget is estimated at \$45 million and up to June 2008 had benefitted 1,466 trade unionists, or 18 per cent of beneficiaries.

The Government adds that: (1) the trade union confederations were informed of the requirement for department police commanders to submit monthly reports to the Administrative Security Department, the Office of the Public Prosecutor General of the Nation and trade union leaders on the situation with regard to threats and the protection of trade unionists within their jurisdiction; and (2) a virtual network mechanism will be established to deal with risk alerts in real time in the same way as for mayors and councillors.

In this regard, while appreciating all the measures adopted by the Government, and particularly the increase in funding for the protection of trade union leaders and members, the Committee notes with deep concern the rise in the number of trade union leaders and members who have been murdered. The Committee emphasizes the need to eradicate violence so that workers' and employers' organizations can exercise their activities in full freedom. ***The Committee once again firmly urges the Government to continue taking all the necessary measures to guarantee the right to life and safety of trade union leaders and members so as to allow the due exercise of the rights guaranteed by the Convention.***

With reference to the measures to combat impunity, the CUT, CGT and CTC recognize the efforts made by the Office of the Prosecutor General of the Nation to proceed with investigations into cases of grave violations of the human

rights of trade unionists, but emphasize that only a very low percentage of investigations reach the courts and result in the conviction of those responsible. They also emphasize the lack of information on the situation of the proceedings in a large number of complaints of acts of violence against trade unions and that investigations are not systematic. The trade union organizations further regret that the decongestion courts are not of a permanent nature.

The Committee notes the Government's indication in this respect that the national general budget for 2008 authorized the Office of the Prosecutor General to increase its personnel by 2,166 officials, which will mean that the special subunit for cases of trade unionists could increase in size to 19 prosecutors (it previously had 13). The Government adds that it will continue offering rewards of up to US\$250,000 for information leading the capture of those responsible for crimes against trade unionists. It adds that Act No. 599 of 2000 deems the murder of trade unions leaders to be aggravated homicide, but not the murder of members of the trade union movement. For this reason, the Government submitted to the legislature Bill No. 308 in June 2008 seeking to increase sentences from 17 to 30 years for the murder of trade union members and to impose fines of up to 300 minimum wages on employers which restrict freedom of association. Moreover, at the request of the national Government, the Higher Judicial Council, through the decision of 25 June 2008, made the three decongestion courts established in July 2007 permanent. These courts have been devoted exclusively to ruling on cases of violations of the rights of trade unionists, issuing 44 sentences in 2007 and 24 up to July 2008.

The Committee also notes the Government's indication that the monthly report on the protection of trade union leaders and members and on impunity was presented to the Inter-Institutional Commission on the Human Rights of Workers, held on 29 July 2008, which included the participation of representatives of workers, employers, the Government and the ILO representative in Colombia. According to the Office of the Prosecutor General, of a total of 117 convictions, it was found in 21 cases that the reason for the acts of violence was the trade union activity of the victim. Under the terms of these 117 sentences, 192 persons were convicted and 128 imprisoned. Of the total of 117 convictions, 115 were handed down during the term of the present Government and 68 were issued over the past three months as a result of the establishment of decongestion courts. Of the 192 convictions, responsibility was found to lie with the public authorities in 15 cases, with the Self-Defence Units of Colombia in 93 cases, with the guerrillas in 24 cases, with a group outside the law in one case, with a trade unionist in one case, with common delinquents in 56 cases and with the *Aguilas Negras* (an emerging group) in two cases.

The Committee notes that in its conclusions in 2008 the Committee on the Application of Standards, while noting the efforts made by the Office of the Public Prosecutor of the Nation to secure progress in the investigation of serious human rights violations against trade unionists, as well as the appointment of three judges especially dedicated to hearing cases of violence against trade unionists (decongestion courts), expressed its concern at the increase in acts of violence against trade unionists in the first half of 2008 and urged the Government to take further steps to reinforce the available protection measures and to ensure that investigations of murders of trade unionists are more effective and expeditious.

The Committee notes all the measures adopted by the Government and the efforts made, which are recognized by trade union organizations, to carry out investigations of violations of the human rights of trade unionists. Nevertheless, it regrets that the number of convictions continues to fall and that a large number of investigations are only at the preliminary stages. ***Under these conditions, the Committee requests the Government to continue taking all the measures possible to carry forward and facilitate all investigations relating to acts of violence against the trade union movement and expresses the firm hope that the measures adopted recently concerning the appointment of new prosecutors and judges will reduce the situation of impunity and will clarify the acts of violence committed against trade union leaders and members, and result in the apprehension of those responsible. The Committee emphasizes the role played by the decongestion judges and hopes that they will continue discharging their duties.***

Furthermore, the Committee recalls that it requested the Government to keep it informed of the manner in which Act No. 975 on justice and peace is applied, particularly in cases involving trade union leaders and members. The Committee notes that, according to the trade union organizations, paramilitaries who have submitted to the rule of law have provided very little information on the murder of trade unionists and trade union leaders. ***The Committee once again requests the Government to provide the information requested.***

Pending legislative and practical matters

The Committee recalls that it has been making comments, in some instances for many years, on the following matters.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. The Committee referred previously to the use of various types of contractual arrangements, such as associated work cooperatives, service contracts and civil or commercial contracts which cover actual employment relationships and are used for the performance of functions and work that are within the normal activities of the establishment and under which workers may not establish or join trade unions. In this respect, the Committee requested the Government to take the necessary steps to ensure that full effect is given to *Article 2* of the Convention so that all workers, without distinction whatsoever, enjoy the right to establish and join unions. The Committee notes the Government's indication concerning the regulations applicable to temporary service enterprises and cooperatives. In particular, the Committee notes the Government's indication of the approval by the Congress of the Republic, on 22 July 2008, of Act No. 1233 respecting

associated work cooperatives, following lengthy consultations with the representative organizations of associated work cooperatives, workers' federations, branch organizations representing employers and academic circles. The Act regulates the activities of associated work cooperatives, third-party contractors and the competence of the Supervisory Authority for Economic Solidarity and the Ministry of Social Protection to impose penalties. According to the Government, the most important features of the Act include: (1) that it establishes the minimum wage as the basis for ordinary compensation and the requirement to pay contributions to the social security, employment injury and pension branches and compensation funds; (2) employment placement is prohibited and, where it occurs, employers' responsibilities apply to cooperatives and third-party contractors; and (3) it establishes a self-governing code for representative organizations of cooperatives and a commitment by representative organizations of cooperatives in relation to the principles of the ILO and those of the International Co-operative Alliance. The Committee observes that a reading of the Act shows that: (1) section 3 establishes ordinary monthly compensation in accordance with the work performed, productivity and the quantity of work undertaken by the "associated worker"; (2) section 9 refers to workers "who provide their services in associated work cooperatives or pre-cooperatives"; (3) under the terms of section 12, "the social object of cooperatives and pre-cooperatives consists of generating and maintaining work for associates in a self-managed manner, with autonomy, self-determination and self-direction"; (4) section 12, second paragraph, provides that "associated work cooperatives whose activity is the provision of services to the health, transport, vigilance, private security and education sectors shall be specialized in the respective branch of activity"; and (5) the organizations of cooperatives to which the Act refers are not trade union bodies. Observing that the Act itself refers to the "workers" of cooperatives, the Committee recalls that under the terms of *Article 2* of the Convention, all workers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing. The Committee also recalls that the criterion for determining the persons covered by this right is not based on the existence of a labour relationship with an employer and that the concept of worker includes not only dependent workers, but also workers who are self-employed or autonomous. In this respect, the Committee considers that associated workers in cooperatives should be able to establish and join the trade union organizations of their own choosing. ***The Committee requests the Government to take the necessary measures to guarantee explicitly that all workers, without distinction, including workers in cooperatives and those covered by other forms of contracts, irrespective of the existence of a labour relationship, enjoy the guarantees afforded by the Convention.***

Rights to establish organizations without previous authorization. In its previous comments, the Committee referred to the arbitrary refusal by the authorities to register new trade union organizations, new trade union rules or the executive committee of a trade union at the discretion of the authorities for reasons that go beyond the explicit provisions of the legislation. The Committee requested the Government to take steps to amend the provision of Decree No. 1651 of 2007 which established as one of the grounds for denying registration "that the trade union organization has been established, not to guarantee the fundamental right of association, but to secure labour stability" and to register new organizations or executive committees, as well as amendments to rules, without undue delay. The Committee notes the Government's indication that, by virtue of the Substantive Labour Code, the grounds for refusing to register a trade union are limited and that the decision by the Ministry of Social Protection not to register a trade union when it does not comply with the respective legal requirements is not a discretionary power. Furthermore, such a decision has to be based on a reasoned administrative decision that is subject to administrative and judicial appeal. The Committee nevertheless notes that Resolution No. 1651 has been repealed by Resolution No. 626 of February 2008, although the latter resolution includes in section 2 among the grounds upon which the competent official may refuse an entry in the trade union register, "that the trade union organization has been established for purposes that are different from those deriving from the fundamental right of association". In this respect, the Committee recalls once again that *Article 2* of the Convention guarantees the right of workers and employers to establish organizations without previous authorization from the public authorities and that national regulations governing the constitution of organizations are not in themselves incompatible with the provisions of the Convention, provided that they are not equivalent to a requirement for previous authorization and do not constitute such an obstacle that they amount in practice to a prohibition (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 68 and 69). The Committee further considers that the administrative authority should not be able to deny registration of an organization merely because it considers that it might devote itself to activities that although legal may go beyond normal trade union activities. ***In these circumstances, the Committee once again requests the Government to take the necessary measures to abrogate the provision of Resolution No. 626 of February 2008 which establishes as one of the grounds for refusing entry into the register for a trade union organization "that the trade union organization has been established for purposes other than those deriving from the fundamental right of association" and to register new organizations, executive committees and amendments to rules without undue delay.***

Article 3. Right of workers' organizations to organize their activities and to formulate their programmes. The Committee also referred previously to the prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very broad range of services that are not necessarily essential (section 430(b), (d), (f), (g) and (h); section 450(1)(a) of the Labour Code, Tax Act No. 633/00 and Decrees Nos 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963, 57 and 534 of 1967) and the possibility to dismiss workers who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), even when the unlawful nature of the strike is a result of requirements that are contrary to the principles of freedom of association. The Committee previously requested the Government, in the context of a Bill that was being examined by Congress and which envisaged certain amendments to the Labour Code, to amend the provisions referred to above and invited the Government to have recourse to the Office's

technical assistance. In this respect, the Committee notes the Government's indication that: (1) when assessing the divergent interests, for the purpose of defining essential public services, the legislator has to start from a serious objective and reasonable basis so that the respective regulation maintains proportionality between compliance with the fundamental rights of users and the right to strike of workers; (2) the Constitution recognizes the right to strike, although it is not absolute; and (3) under the terms of Act No. 1210 of 14 July 2008, the Standing Dialogue Commission on Wage and Labour Policies, which is tripartite, shall submit a report within six months on the draft texts that it has submitted in relation to articles 55 (collective bargaining) and 56 (strike action and essential services) of the Constitution. ***The Committee requests the Government to provide information on any progress made in amending the legislation with regard to the very broad range of services in which, as they are deemed essential, the right to strike is prohibited, and section 450, second paragraph, under which workers who have participated in a strike in such services can be dismissed.***

Declaring a strike illegal. The Committee previously noted the formulation of a Bill under which the competence to declare strikes illegal was transferred from the Ministry of Social Protection to the judicial authorities. The Committee notes ***with satisfaction*** that Act No. 1210 has amended section 451 of the Substantive Labour Code to read as follows: "the legality or illegality of a collective work suspension or stoppage shall be declared by the judicial authorities in a priority procedure".

Compulsory arbitration. The Committee referred previously to the authority of the Minister of Labour to refer a dispute to arbitration when a strike exceeds a certain period – 60 days – (section 448(4) of the Labour Code). The Committee noted a Bill to amend this section, providing that where it is not possible to achieve a definitive solution, the parties or one of them shall request the Ministry of Social Protection to convene an arbitration board. The Committee notes that Act No. 1210 amends section 448(4) of the Labour Code and provides that: (1) the employer and the workers may, within the following three days, convene any settlement, conciliation or arbitration machinery; (2) if they do not reach agreement, automatically or at the request of the parties, the Commission for Dialogue on Wage and Labour Policies shall intervene and use its good offices for a maximum of five days; (3) once this period has elapsed without it being possible to achieve a definitive solution, both parties shall request the Ministry of Social Protection to convene an Arbitration Board; and (4) the workers shall be under the obligation to return to work within three days. In this respect, the Committee considers that, except in essential services in the strict sense of the term or in the case of public servants exercising authority in the name of the State, the convening of the Arbitration Board should only be possible where both parties so decide voluntarily in common agreement. ***The Committee requests the Government to take the necessary measures to amend section 448(4) as indicated above.***

Article 6. Restrictions imposed on the actions of federations and confederations. The Committee referred previously to the prohibition on the calling of strikes by federations and confederations (section 417(i) of the Labour Code). The Committee recalled that higher level organizations should be able to resort to strikes in the event of disagreement with the Government's economic and social policy and requested the Government to amend the above provision. The Committee notes the Government's indication that federations and confederations cannot be assimilated to first-level organizations since those who hold a legal interest in collective bargaining are the workers who are members of enterprise, industry or branch trade unions and the employers to whom lists of claims have been submitted. The Government adds that if federations and confederations do not have a legal interest in collective bargaining, then they clearly have much less interest in strikes. In this regard, the Committee recalls that the guarantees provided to first-level organizations by *Article 6* of the Convention also apply to higher level organizations. Indeed, in order to defend the interests of their members more effectively, workers' and employers' organizations need to have the right to establish federations and confederations of their own choosing, which should themselves enjoy the various rights accorded to first-level organizations, in particular as regards their freedom of operation, activities and programmes (see General Survey, op. cit., paragraphs 195 and 198). ***The Committee requests the Government to take the necessary measures to amend section 417(i) so as not to prohibit the right to strike of federations and confederations.***

Observing that it has been making comments for many years, the Committee expresses the firm hope that the Government will take the necessary measures without delay to amend the legislative provisions commented upon and bring them into conformity with the Convention. The Committee requests the Government to provide information on any measures adopted in this respect.

The Committee is addressing a request directly to the Government on another point.

Congo

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

The Committee notes the Government's report and the comments from the International Trade Union Confederation (ITUC) dated 29 August 2008 on the application of the Convention. The Committee notes with regret that the Government has still not provided its observations on the ITUC comments, dated 10 August 2006, concerning the arrest for 24 hours of eight trade union representatives on 27 October 2005. In this regard, the Committee would like to remind the Government that the arrest and detention, even for short periods, of trade union leaders and members engaged in their legitimate trade

union activities, without any charges being brought and without a warrant, constitute a grave violation of the principle of freedom of association (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 31).

The Committee notes with regret that the Government's report does not contain any information on the issues it has been raising for a number of years. The Committee recalls that in its previous comments it requested the Government to amend the legislation on the minimum service organized by the employer to be maintained in the public service that is indispensable for safeguarding the general interest (section 248-15 of the Labour Code), in order to limit the minimum service to operations which are strictly necessary to meet the basic needs of the population, within the framework of a negotiated minimum service. In this regard, the Committee noted that the Government had indicated that section 248-15 had indeed been amended but that it was not in a position to produce the copy of the text amending the provisions of the said section. The Committee recalls that, since the definition of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey, op. cit., paragraph 161). *The Committee again expresses the hope that the text amending section 248-15 of the Labour Code takes account of these principles and requests the Government to send it a copy of the text as soon as possible.*

The Committee had also requested the Government to indicate any developments in the revision of the Labour Code in its next report and to send it a copy of any draft amendment to that Code in order to ensure its conformity with the provisions of the Convention. The Committee had noted the Government's indication that the revision work had been completed and that the draft had been submitted for opinion to the National Labour Advisory Commission. *The Committee requests the Government to send it a copy of the draft revised Labour Code.*

Costa Rica

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1960)

The Committee notes the comments on the application of the Convention made by the International Trade Union Confederation (ITUC), the Confederation of Workers Rerum Novarum (CTRN), the Petroleum, Chemical and Similar Workers' Union (SITRAPEQUIA) and the Costa Rica Union of Chambers and Associations of Private Enterprises (UCCAEP), which relate mainly to issues that are already under examination. The Committee noted in its previous observations the report of the high-level mission which visited the country from 2 to 6 October 2006. The Committee notes Cases Nos 2490 and 2518 examined by the Committee on Freedom of Association at its November 2007 meeting, which confirm the dismissals of a large number of trade unionists, as well as a number of rulings of the Supreme Court which had found that certain clauses of collective agreements in public sector institutions or enterprises were unconstitutional.

The Committee recalls that the problems relating to the application of the Convention which it raised in its previous observation were as follows:

- the slowness and ineffectiveness of recourse procedures and compensation in the event of anti-union acts (according to the high-level mission, the slowness of procedures in cases of anti-union discrimination results in a period of not less than four years to obtain a final ruling);
- the subjection of collective bargaining in the public sector to criteria of proportionality and rationality in accordance with the case law of the Constitutional Chamber of the Supreme Court of Justice which has declared unconstitutional a considerable number of clauses of collective agreements in the public sector at the instigation of the public authorities (the Ombudsperson, the Office of the Public Prosecutor) or of a political party; and
- the enormous disproportion in the private sector between the number of collective agreements concluded with trade unions (much lower) and the number of direct agreements concluded with non-unionized workers (the Committee previously called for an independent investigation into this matter, which took place and the relevant report has been prepared).

The Committee notes the comments made by the UCCAEP on the application of the Convention in which it refers to the comprehensive standards applicable with regard to protection against anti-union discrimination and points out that the judicial authority may even order the reinstatement of a worker dismissed as a result of anti-union unfair practice. The UCCAEP indicates that the current legal framework allows non-member workers to appoint, by means of a majority election, a Permanent Workers' Committee to represent their interests against the employer (a committee which may, where appropriate, coexist with a trade union in the same enterprise), and that no form of association of workers other than the trade union may interfere in matters relating to collective bargaining, trade union functions or aims.

The ITUC comments that the administrative procedures against anti-union dismissals (which are subsequently referred to the judicial authority) are complex and ineffective and may take several years (in fact, the *amparo* appeal for enforcement of constitutional rights is abused in anti-union discrimination procedures); furthermore, employers are not

obliged under any legal mechanism to comply with a reinstatement order. The ITUC confirms the Government's indication that the draft Act to reform labour procedures is being examined by a tripartite committee. The ITUC indicates that in the private sector trade unions are practically non-existent and that those which do exist are permanently submitting complaints to the Labour Inspectorate of trade union persecution. According to the ITUC, the Ministry of Labour and Social Security promotes direct agreements with non-unionized workers through publications. There are special problems with regard to the application of the Convention and anti-union discrimination in export processing zones, pineapple enterprises and banana enterprises. The Committee points out that the recent comments of the ITUC concerning the very low number of trade unions in the private sector will be examined in 2009 in the framework of the examination of the application of Convention No. 87.

The SITRAPEQUIA and the CTRN emphasize the gravity of the problem of collective bargaining in the public sector and the constraints placed on public employers by the Committee on Negotiation Policy.

The CTRN and the country's other confederations hold the view that the long delay in the adoption of draft legislative reforms and the ratification of Conventions Nos 151 and 154 demonstrate the lack of interest in moving forward.

The Committee observes that the Government refers to the statements made in its previous reports to the effect that: (1) the Government possesses the will and commitment to resolve the problems raised by the Committee of Experts; (2) it has requested the ILO's technical assistance and trusts that this will enable it to overcome the problems raised; (3) the Government's efforts (many of them supported by tripartite agreement) relating to these problems have included the submission of several legislative proposals to the Legislative Assembly and their reconsideration: a draft constitutional amendment to article 192, a Bill on collective bargaining in the public sector, and the addition of subsection 5 to section 112 of the General Act on Public Administration (the three initiatives are intended to strengthen collective bargaining in the public sector); a draft amendment to the chapter of the Labour Code on freedom of association; approval of ILO Conventions Nos 151 and 154; draft texts to revise various sections of the Labour Code, Act No. 2 of 26 August 1943, and sections 10, 15, 16, 17 and 18 of Legislative Decree No. 832 of 4 November 1949 and its amendments; a draft Act to reform labour procedures (aimed at the elimination of delays and introducing the principle of hearings, and the establishment of summary procedures for cases of anti-union discrimination); (4) the Government's efforts have also included other types of initiatives in legal actions of unconstitutionality brought in order to annul specific clauses in the agreements; and the reinforcement of alternative dispute settlement procedures through the Centre for Alternative Settlement of the Ministry of Labour and Social Security, which increased the number of persons dealt with in 2005 to 3,329. The Government indicated that in 2005 complaints of anti-union discrimination related to 38 cases; (5) the current Government has the will to push forward draft legislation to resolve pending problems and has maintained contact with the Executive, including the Ministry of the Presidency, and the Legislative, (including deputies from various parties, as well as the leaders of the principal opposition party which also supports the reforms sought by the ILO), for the re-examination of the draft texts in question. The Government states that it has sent reports to the judiciary forwarding the observations and positions of the Committee of Experts. The Government lays emphasis on the follow-up meetings held by the Minister of Labour and Social Security, on occasions with the technical assistance of the ILO subregional office, with this assistance including the gathering of information on matters relating to Conventions Nos 151 and 154 on collective bargaining. The Government adds that it held a meeting with numerous representatives of all the sectors involved (the authorities, civil society, etc.) to analyse and seek consensus for the draft legislation to reform labour procedures which is awaiting the opinion of the Legal Affairs Commission of the Legislative Assembly.

Additionally, the Committee notes the statements made by the Government to the effect that:

- there has been a substantial change in the case law given that, the Second Chamber of the Supreme Court of Justice recently declared in a ruling (by a vote of six judges to one) that: (1) the conclusion cannot be drawn that the Constitutional Chamber has prohibited collective agreements in the public sector and it found that collective agreements concerning public employees – whose relations are governed by the labour laws, even though they belong to the public sector – and servants were not unconstitutional (in particular, the collective agreement relating to the case concerned, which does not constitute excessive privileges for workers despite having been presented by the Ombudsperson for alleged unconstitutionality); (2) Convention No. 98 supersedes domestic law; (3) the regulations in force on collective bargaining in the public sector are an important legal matter. According to the Government, in view of the above, this ruling of the Supreme Court could prevent new contestations of clauses of collective agreements in the public sector;
- the Government has carried out a series of actions (mentioned above) in relation to all the problems raised by the Committee of Experts, which shows the political commitment to resolving those problems; training and information activities aimed at the leaders of the three authorities of the State (legislative, executive and judicial) have been carried out, such as the forum on the dissemination of the right to collective bargaining in the public sector (March 2008) which benefited from technical assistance from the ILO and the participation of representatives at the highest level of the three authorities of the State, as well as the social partners; training programmes for judges and the social dialogue forum (organized by the Second Chamber of the Supreme Court of Justice);
- the Higher Labour Council (a tripartite body) has revived a special committee for the examination and analysis of the draft text reforming labour procedures which is intended to overcome the problem of the slowness of procedures

in the event of anti-union acts and strengthen the right to collective bargaining in the public sector; during this financial year, the technical assistance of the ILO has been sought to ensure conformity with the provisions of Conventions Nos 87 and 98 and the special committee has been provided with the report of the ILO technical assistance on the draft;

- the slowness of justice is being tackled by the judicial authority and consequently, greater human resources have been allocated and the processes have been sped up in several ways (introduction of hearings, etc.), new courts of minor jurisdiction have been created in various areas of the country; in 2007, the judicial authority concluded 24,501 cases (despite having received 21,897 cases during that year); furthermore, on 12 March 2008, the Conciliation Centre under the judiciary, which works preventatively, was created; the Government is continuing in turn to develop alternative means for the settlement of disputes and the judiciary is continuing its programme to tackle judicial delays aimed at clearing the backlog of the judicial bodies by calling on supernumerary judges;
- there is a plan for the implementation of the recommendations made in the report of the high-level mission which visited the country in 2006.

The Committee requests the Government to indicate any developments relating to the draft texts which have been before the Legislative Assembly for a number of years and the aim of achieving greater efficiency and speed in the procedures for protection against anti-union discrimination and collective bargaining in the public sector, as well as on any developments relating to the case law of the Supreme Court of Justice on this matter.

The Committee continues to consider that the situation of trade union rights is precarious. The Committee welcomes the desire shown by the current Government to push forward draft legislation, in many cases with tripartite support for a number of years, with a view to complying with the Convention and giving effect to the Committee's comments. ***The Committee expresses its very firm hope that the various draft texts that are currently under examination will be adopted in the very near future and that they will be in full conformity with the Convention. The Committee requests the Government to indicate the progress made in this respect and hopes that an improvement in the application of the rights and guarantees set forth in the Convention will be the outcome of this political will.***

With regard to the matter of the negotiation of direct agreements with non-unionized workers, the Committee recalls that, according to the study carried out by the independent expert "according to the statistics provided by the Ministry of Labour and Social Security, there are now in force 74 direct agreements, while only 13 collective agreements remain in force"; "it is also an established fact, as well as being clear and evident, that it is the latter (employers) who propose, defend and claim them and who, in particular, take the initiative for their conclusion". The study also refers to the phenomenon of intervention by employers in the election of standing committees, including the imposition of candidates, public disqualification or vetoes, etc.; ballots are not secret and electors can be intimidated. According to the mission report "although it is not correct to say that in all cases the election of the members of standing committees is a result of processes that are fixed and not authentic, it can be said that the very conception of standing committees and the long-standing practices for their establishment clearly lack the elementary guarantees of democratic authenticity ..., and the indispensable conditions of independence and representativeness are not present". The expert's report indicates that standing committees lack the resources and the capacity to engage in a dialogue with employers that ensures a certain balance in negotiations. In general, the expert's study shows that standing committees have been used to prevent the establishment of trade union organizations or to impede their activities.

In its previous observation, the Committee noted these conclusions with concern and drew the Government's attention to the importance of these matters being submitted for tripartite examination so as to remedy the existing disproportion between the number of collective agreements and of direct agreements with non-unionized workers and so as to facilitate the formulation of the legal and other means necessary to prevent standing committees and direct agreements from having an anti-union impact in practice, and also from being established where there is already a trade union organization. The Committee recalls once again that, under the terms of *Article 2 of the Convention*, the State is under the obligation to guarantee adequate protection against any acts of interference by employers in workers' organizations, and that *Article 4* of the Convention enshrines the principle of the promotion of collective bargaining between workers' organizations and employers or employers' organizations.

The Committee notes that the Government indicates that: (1) collective bargaining is recognized by the Constitution and is therefore granted privileged protection under the national legal system; in fact, in accordance with an administrative instruction of 4 May 1991, if it is found that a company has a union that is recognized for bargaining purposes, the General Labour Inspectorate shall reject any direct agreements immediately so as not to hinder the negotiation of a collective agreement; (2) the independent expert refers to facts which suggest a contradiction with the commitment provided for in *Article 4* of the Convention referring to promoting the full development and utilization of machinery for voluntary negotiation between employers and workers; for this reason, given that the report in question was received recently and taking into account the Committee of Experts' recommendation to the Government concerning the importance of this document together with its conclusions being submitted for tripartite examination so as to remedy the existing imbalance between the number of collective agreements and direct agreements, the Ministry of Labour and Social Security has sent a complete copy of the study in question to each of the members of the Higher Labour Council; (3) in this regard, the Government undertakes to keep the Committee informed of any progress made by the Council in the analysis of the expert's report, which includes finding a satisfactory solution to the situation by means of genuine social

dialogue and calling upon any technical assistance which the ILO may be able to offer on this matter, to prevent standing committees and direct agreements from having the anti-union impact in practice referred to by the independent expert in his report; (4) the matter is complex and the Government hopes to be able to provide, in the near future, a balanced proposal which offers a satisfactory solution to the situation referred to by the independent expert.

The Committee requests the Government to provide information on the tripartite evaluation of the problem of direct agreements with non-unionized workers, undertaken in the light of the expert's report, as well as any satisfactory solution proposed.

The Committee also requests the Government to provide its comments on the recent communication of the CTRN dated 12 September 2008.

Democratic Republic of the Congo

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

The Committee had noted in its previous observation the comments from the International Trade Union Confederation (ITUC) on the serious obstruction of trade union activities in certain administrations and enterprises, and the comments from the Confederation of Trade Unions of Congo (CSC) relating to the arrest of trade unionists and threats towards trade union delegates, particularly in public enterprises. In its report, received in June 2008, the Government states that the cases denounced by the CSC took place during a period in which lawlessness and impunity reigned. The Government gives its assurance that such occurrences would not happen again. The Committee takes note of this statement, but recalls that a Government cannot turn away from the responsibility that events under a previous Government might have incurred. The new Government is responsible for any repercussions these events might have and it should take all the necessary measures to counter the consequences of the actions committed under the previous Government or system. To the extent in which it is incumbent upon the public authorities to maintain a social climate in which law prevails, it is important that investigations should be carried out on the anti-trade union actions to ensure that those responsible for such actions should be brought before the courts and punished in accordance with the law. *The Committee hopes that the Government will spare no efforts to launch the necessary investigations on the alleged cases of anti-trade union actions against workers' organizations and their representatives.*

The Committee notes the observations from the ITUC dated 29 August 2008 concerning cases of violation of the Convention in 2007, in particular arrests and acts of violence against strikers. *The Government is requested to send comments in reply to the observations made by the ITUC.*

Articles 2 and 5 of the Convention. In its previous comments, the Committee had noted that section 1 of the Labour Code excluded from its scope of application magistrates, career officials in the state public services governed by the general conditions of service, and career employees and officials of the state public services governed by specific conditions of service. The Committee had requested the Government to provide information on the trade union rights of these categories of state employees. The Committee had also noted that, by virtue of section 56 of Act No. 81-003 of 17 July 1981 issuing the conditions of service of career members of the state public services, public officials and employees were affiliated automatically to the then Union of Workers of Zaire (UNTZA). However, pending the amendment of these conditions of service, the Minister for the Public Service had issued Order No. CAB.MIN/F.P./105/94 of 13 January 1994 establishing provisional regulations respecting trade union activities within the public administration, amended by Order No. CAB.MIN/F.P./0174/96 of 13 September 1996. The Committee notes that, according to the Government's report, the reform of the public administration is under way and that it will bring about a revision of the conditions of service of career members of the state public services. *The Committee trusts that the reform of the public administration will allow, as soon as possible, all state employees to benefit from the guarantees provided under the Convention. It requests the Government to indicate any new developments in this respect, in particular the repeal of section 56 of Act No. 81-003.*

Article 3. The Committee had requested the Government to take the necessary measures to ensure that trade union elections were organized in various branches of activity and to provide specific information on the results of these elections. In its report, the Government undertakes to do the necessary in this respect and to communicate information on the organization of trade union elections and the election results in the commerce sector. *The Committee notes this information and trusts that the Government's next report will indicate progress in the organization of trade union elections in other branches of activity and contain the results of these elections.*

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

The Committee notes the Government's report in reply to the questions raised in 2007 by the Trade Union Confederation of the Congo (CSC) and the International Trade Union Confederation (ITUC) on the application of the Convention. According to the recent comments made by the ITUC, dated 29 August 2008, the Committee notes that most of the 400 trade unions in the private sector, mainly in the natural resources sector, do not have active members and were in fact created by employers to mislead workers and discourage initiatives to create genuine trade unions.

The Committee notes with interest that the Government states in its report that it intends to give effect to the Committee's recommendation to conduct an independent investigation in order to clarify the questions raised by the ITUC and by the CSC concerning: (1) acts of discrimination and anti-union interference in private enterprises (including threats of dismissal against union members despite the fact that section 234 of the Labour Code prohibits acts of anti-union discrimination); (2) the existence of many unions established and financed by employers; and (3) the failure to comply with collective agreements. ***The Committee therefore requests the Government to indicate the developments and conclusions of the independent investigation.***

Article 2 of the Convention. Protection against acts of interference. The Committee noted previously that, according to the Government, the National Labour Council has not yet adopted the draft Order prohibiting acts of interference. The Committee recalled that, although section 235 of the new Labour Code prohibits all acts of interference by organizations of employers and workers in each others' affairs, section 236 provides that acts of interference must be defined more precisely. The Committee notes the Government's reply to the effect that the National Labour Council has not yet taken a decision on the draft Order prohibiting acts of interference. To that end, the Committee notes that the Government undertakes to provide a copy of the Order once it has been adopted. ***The Committee hopes that the Order concerned will be adopted as soon as possible and requests the Government to provide information on developments in this regard.***

Article 6. Collective bargaining in the public sector. The Committee noted previously that section 1 of the Labour Code explicitly excludes from the Code career members of the state public services who are governed by the general conditions of service (Act No. 81-003 of 17 July 1981 issuing the conditions of service of career members of state public services and explicitly providing for the establishment of institutions ensuring the representation of the personnel) and career employees and officials of state public services who are governed by specific conditions of service. The CSC had indicated in its comments of 31 May 2004, the existence of measures allowing the establishment of mechanisms for the promotion of collective bargaining in the public sector. The Committee had noted the information provided by the Government concerning the right of public employees not engaged in the administration of the state to engage in collective bargaining, and particularly: (1) the agreement of 11 September 1999 on basic wages concluded by the Government and the unions of the public administration at a meeting of the joint committee; (2) the "social contract for innovation" of 12 February 2004 concluded by the Government and the unions of the public administration; and (3) the agreement concluded by the Government and the unions of the public administration following a strike by unions in the education sector in 2005. The Committee had concluded that, in practice, there were wage negotiations and agreements in the public sector.

The Committee observes that the Government has sent the text of Ministerial Order No. 12/CAB.MIN/TPS/ar/NK/054 of 12 October 2004, establishing the procedures for the representation and recourse to elections of workers in enterprises or establishments of all types. The Committee also notes the Government's indication that it intends to regulate the salaries of public servants set by negotiated agreements in the context of the imminent reform of the public administration. In this regard, the Committee also notes the comment by the ITUC that the staff of decentralized entities (towns, territories and sectors), who comprise a subcategory of public servant, do not enjoy the right to bargain. ***The Committee reiterates its previous request to the Government to take steps to ensure that the legislation guarantees the right of collective bargaining for public servants not engaged in the administration of the State, as established under Articles 4 and 6 of the Convention, and requests the Government to indicate the developments concerning the reform of the public administration.***

Djibouti

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

The Committee takes note of the direct contacts mission undertaken in January 2008 following the discussion that had taken place in the Committee on the Application of Standards of the 96th Session of the International Labour Conference (June 2007).

The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 29 August 2008 reiterating its previous observations of 2007 concerning violations of the Convention in law and in practice. The ITUC denounces the brutal repression of strikes, the designation by the authorities of persons who do not represent the most representative organizations for participating in international meetings, and the harassment and arrest of trade unionists. ***The Committee urges the Government to send its replies to the observations by the ITUC.***

The Committee recalls that in its previous comments it already noted the observations from the ITUC on the arrest and assault of trade unionists and acts of anti-union harassment, and requested the Government to conduct investigations into the allegations. The Committee notes with regret that the Government's report received in May 2008 merely rejects the ITUC's observations and makes some general remarks on freedom of association in Djibouti. The Committee also notes that, according to information gathered by the direct contacts mission which took place in January 2008, a dominant feature of the situation of trade unions in Djibouti is a widening gap between some workers' organizations and the Government, and allegations persist regarding Government interference in union activities and discrimination and

harassment suffered by union leaders. Moreover, the Committee notes the recommendations of the Committee on Freedom of Association in Case No. 2450 (351st Report, paragraphs 775 to 798). The Committee firmly reminds the Government that civil freedoms and trade union rights are interdependent and that a truly free and independent trade union movement can only develop in a climate of respect for fundamental human rights. ***The Committee expresses the firm hope that the Government will give priority to resolving all pending issues so that all trade union organizations and their representatives can fully enjoy the guarantees afforded by the Convention. The Committee once again requests the Government to take measures without delay so that the necessary investigations are conducted into the serious allegations referred to above in order to identify the persons responsible for anti-union acts, and to prosecute and penalize them, in accordance with the law.***

Legislative problems. The Committee recalls that its previous comments concerned the provisions of Act No. 133/AN/05/5° L of 28 January 2006 issuing the Labour Code. The Act was denounced by the ITUC and also by the Labour Union of Djibouti (UDT) and the General Union of Djibouti Workers (UGTD) as challenging fundamental rights relating to freedom of association. The Committee notes that, according to the report of the direct contacts mission, the Government reaffirms that all the social partners were consulted in the process of preparation of the Labour Code. However, the Committee notes that the Government held working meetings with the mission to consider the points of divergence between the national legislation and the Conventions in order to rectify them and that it undertook to bring the recommended solutions to the attention of a tripartite National Council for Labour, Employment and Vocational Training (CNTEFP), which was due to be constituted. The Committee notes that, in its report of May 2008, the Government reiterates its commitment to reviewing certain provisions of the legislation in order to bring them into conformity with the Convention and bring them to the attention of the CNTEFP. In this respect, the Committee notes the warning contained in the report of the direct contacts mission regarding any excessive delay in constituting the CNTEFP and the impact thereof on the adoption of the necessary legislative amendments. It also notes the mission's recommendation that, in a context where the representativeness of workers' organizations has not yet been established in a clear and objective manner, no representation from the trade unions in Djibouti should be discarded from the work of the CNTEFP. ***The Committee endorses the recommendations of the direct contacts mission on this point and requests the Government to indicate whether the CNTEFP has been constituted and state the composition thereof.***

The Committee wishes to remind the Government of its comments concerning the following points of divergence between the Labour Code and the Convention:

- ***Sections 41 and 42 of the Labour Code.*** These provisions concern the suspension of employment contracts. Section 41 provides that the employment contract shall be suspended, among other cases, for the duration of any regular, political or trade union office held by the worker which is not compatible with paid employment (paragraph 8). Section 42 provides in addition that the period during which the employment is suspended shall not be counted for the purpose of determining the worker's seniority within the undertaking. The Committee considers that the holding of trade union office is not incompatible with professional life and, consequently, any worker holding trade union office should be able to remain employed. The Committee therefore considers that sections 41 and 42 of the Labour Code, in providing for a more or less automatic suspension of the employment contract when a worker holds trade union office, are likely to be detrimental to the rights of all workers to establish and join the organization of their own choosing or to hold trade union office (*Articles 2 and 3 of the Convention*). ***The Committee therefore requests the Government to amend sections 41 and 42 of the Labour Code by providing that the possibility of suspending the employment contract during a period in which a worker holds a trade union office that is incompatible with a professional activity is a matter for negotiation between the employer and the trade union, who must establish the relevant arrangements, and that in any case such suspension cannot be automatic.***
- ***Section 214 of the Labour Code.*** This section provides that any person convicted "by any court" may not hold office as a trade union leader. The Committee recalls that a law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of freedom of association (*Article 3 of the Convention*), when the activity condemned is not prejudicial to the attitude and integrity required to exercise trade union office. In this case, the Committee considers that section 214 of the Code, in deeming any person who has been convicted to be unsuitable for trade union office, is formulated too broadly and would cover situations in which the nature of the conviction is not inherently such as to rule out the holding of trade union office. ***The Committee therefore requests the Government to amend section 214 of the Labour Code so as to ensure that only court convictions for offences which by their nature call into question the integrity of the individual are deemed to be incompatible with the holding of trade union office.***
- ***Section 215 of the Labour Code.*** This section concerns the formalities for registration and verification of the legality of a trade union. Under the terms of this section, the founders of any occupational trade union are required to deposit their regulations and the list of persons responsible for their administration and management; within a period of 30 days following their deposit, copies of the regulations and the list of persons responsible for the administration and management of the union are transmitted by the labour inspector to the Minister of Labour and the Chief Public Prosecutor; the documents are accompanied by a report prepared by the Labour Inspectorate; the Minister of Labour then has 15 days to issue a receipt granting legal recognition to the union; the Chief Public Prosecutor then has 30

days to verify the regulations and review the situation of each of the officials responsible for the administration and management of the union and to notify the Minister of the Interior, the Minister of Labour and the union leaders concerned of his/her conclusions; any modification to the regulations and any changes to the composition of the officials responsible for the management or administration of the trade union have to be brought to the knowledge of the same authorities and are subject to verification under the same conditions. The Committee firstly wishes to remind the Government that *Article 2* of the Convention guarantees the right of workers and employers to establish organizations without previous authorization by the public authorities. It therefore considers that national legislation which requires the deposit of the regulations of organizations is compatible with this provision if it is a mere formality intended to ensure that the regulations are available to the public. Nevertheless, problems of compatibility with the Convention may arise if the registration procedure is lengthy or complicated, or if the rules concerning registration are applied in such a way as to defeat its purpose and the registration authorities make excessive use of their discretionary power. The Committee notes that section 215 of the Labour Code, under which the decision of the Minister of Labour requires not only the deposit by the founders of the trade union of the relevant documents but also a detailed report by the labour inspector, would appear to grant the administration more or less discretionary power in deciding whether or not an organization meets the registration criteria. This situation could amount in practice to denying the right of workers and employers to establish organizations without previous authorization, in contravention of *Article 2* of the Convention. ***The Committee therefore requests the Government to amend, in consultation with the social partners, section 215 of the Labour Code so as to guarantee the right to establish workers' and employers' organizations without previous authorization, remove the provisions which give de facto discriminatory powers to the administration and ensure that the registration procedure is merely a formality.***

Finally, the Committee recalls that its previous comments were also concerned with the need for the Government to repeal or amend the following provisions of the legislation:

- *Section 5 of the Act on associations.* This provision, which requires organizations to obtain authorization prior to their establishment as trade unions, is contrary to *Article 2* of the Convention.
- *Section 23 of Decree No. 83-099/PR/FP of 10 September 1983.* This provision, which confers upon the President of the Republic broad powers to requisition public servants who are indispensable to the life of the nation and the proper operation of essential public services, should be amended in order to restrict the power of requisition to public servants who exercise authority in the name of the State or in essential services in the strict sense of the term.

Noting that the Government displayed a degree of openness during the direct contacts mission by indicating that it was planning a number of amendments and declaring its willingness to receive technical assistance and advice from the Office, the Committee trusts that the Government will take the necessary steps as soon as possible to revise and amend the legislative provisions, taking into account the comments reiterated above. It expresses the firm hope that the Government's next report will contain information on the progress made in this respect.

A request on a number of other points is being addressed directly to the Government.

Equatorial Guinea

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. The Committee also notes that the Conference Committee on the Application of Standards regretted that it was unable to examine the case of the application of the Convention by Equatorial Guinea owing to the fact that the Government was not represented at the Conference.

The Committee also notes the comments from the International Trade Union Confederation (ITUC) dated 29 August 2008, which refer once again to the legislative issues which are under examination and the administrative authority's refusal to register a number of trade unions, including 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 once again urges the Government to register without delay the trade union organizations, whose registration was refused and inform it of the measures taken or envisaged to ensure that workers are able to establish organizations of their choosing.***

The Committee recalls that for a number of years it has been requesting the Government to:

- 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;
- 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 in order to reduce the number of workers required to a reasonable level;

- 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;
- 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
- 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 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. The Committee expresses the hope that the Government will send a detailed report next year for examination by the Committee in the context of the regular reporting cycle and that it will contain full information on the issues raised.

The Committee expresses the firm hope that the Government will take all possible steps without delay to renew the constructive dialogue with the ILO. Furthermore, taking into account the gravity of the situation, it urges the Government to seek technical assistance from the Office to ensure the full application of the Convention.

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

The Committee notes with regret that it has not received the Government's report. The Committee also notes that the Conference Committee on the Application of Standards regretted not being able to examine the case of the application of the Convention by Equatorial Guinea due to the fact that the Government was not represented at the Conference.

Article 2 of the Convention. The Committee notes the comments made by the International Trade Union Confederation (ITUC), dated 29 August 2008, to the effect that there is no provision protecting workers against acts of anti-union discrimination. The Committee observes nevertheless that Act No. 12/1992 establishes protection against such acts.

Article 4. Collective bargaining. The Committee notes that the comments made by the ITUC refer once again to the impossibility of establishing any trade union organization which the authority considers to be "too independent". In 2004, the Government pointed out in its report that there were no trade unions in the country due to a lack of trade union tradition. The Committee emphasizes once again that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention and for exercising the right to collective bargaining. *The Committee urges the Government to adopt without delay the necessary measures to create appropriate conditions for the establishment of trade unions which can engage in collective bargaining with a view to regulating conditions of employment.*

The Committee also recalls that in its previous observation it noted that section 6 of Act No. 12/1992 on trade unions and collective labour relations provides that the organization of officials of the public administration shall be regulated by a special Act and that the Act had not yet been adopted. *The Committee requests the Government once again to indicate whether the special Act has been adopted and ensures public officials' right to organize, and to provide detailed information on the application of the Convention with regard to public officials who are not engaged in the administration of the State.*

The Committee hopes that the Government will send a detailed report for examination next year in the context of the regular reporting cycle, and that this report will contain full information on the matters raised.

Finally, the Committee expresses the firm hope that the Government will take all the measures within its power, without delay, to renew constructive dialogue with the ILO. Furthermore, it urges the Government to seek technical assistance from the Office to ensure full application of the Convention.

Estonia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1994)

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, which refers to the matters already raised by the Committee. *The Committee requests the Government to provide its observations thereon.*

The Committee recalls that for a number of years it had been raising the issue of the prohibition of the right to strike in the public service (section 21(1) of the Collective Labour Dispute Resolution Act). In this respect, the Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2543 concerning the same issue.

The Committee notes the Government's indication that while there have been no amendments to the current legislation, the Ministry of Justice has prepared a *concept* of modernization of public service, which provides a new and narrower definition of the term "public servant" to include only those employees who exercise authority on behalf of the State. *The Committee notes this information and requests the Government to inform it of the progress achieved in*

respect of the adoption of legislative provisions ensuring that public servants, who do not exercise authority in the name of the State, enjoy the right to strike.

The Committee, once again, requests the Government to provide the list of services where the right to strike will be restricted, as referred to in section 21(3) and (4) of the Collective Labour Dispute Resolution Act.

Ethiopia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1963)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, which are being translated and will be examined in the framework of the next reporting cycle.

The Committee regrets that the Government's report contains no observations on the comments previously submitted by the International Confederation of Free Trade Unions (ICFTU, now ITUC), the Education International (EI) and the ITUC alleging serious violations of teachers' trade union rights and, in particular, of the Ethiopian Teachers' Association (ETA). The Committee expresses deep concern over the failure of the Government to conduct a full and independent inquiry into the allegations made relating to arrests of trade unionists, their torture and mistreatment when in detention, and continuing intimidation and interference. The Committee recalls that when disorders have occurred involving loss of human life or serious injuries, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions. Judicial inquiries of this kind should be conducted as promptly and speedily as possible, since otherwise there is a risk of de facto impunity which reinforces the climate of violence and insecurity and which is therefore highly detrimental to the exercise of trade union activities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 29). ***The Committee urges the Government to conduct a full and independent inquiry without delay into all of the comments made by the ITUC and earlier by the ICFTU and EI and to provide information on the outcome.***

The Committee notes that a direct contact mission visited the country in October 2008 and notes the information contained in the mission report. In particular, the Committee notes that the Supreme Court has rendered its final decision concerning the ETA executive body and that following this decision, a group of teachers have made a request to the Ministry of Justice to be registered under the name of the National Association of Ethiopian Teachers. The Committee observes from the mission report that despite the fact that this request was made in August 2008, no answer concerning registration has been received from the Ministry so far. The Committee further notes that the Ministry of Justice requested the Ministry of Education to provide its opinion as to whether the new teachers' association should be registered. In this respect, the Committee considers that a request to the Ministry of Education, which is the employer in this case, concerning the appropriateness of registering an association of teachers is contrary to the right of workers to form and join the organization of their own choosing without previous authorization. The Committee further expresses its concern that four months have elapsed since the teachers' request without registration being granted by the Ministry of Justice. The Committee expresses particular concern and regret over the fact that the delay in registration occurs within the context of the long-standing allegations of serious violations of teachers' trade union rights including the continuous interference by way of threats, dismissals, arrest, detention and maltreatment of ETA members, which are pending before the Committee on Freedom of Association (Case No. 2516). ***The Committee urges the Government to take all necessary measures to ensure the rapid resolution of this request for registration so that teachers may fully exercise their right to form organizations for the furthering and defending teachers' occupational interests without further delay.***

The Committee recalls that it had previously noted the Government's indication that it was in the process of revision of the Civil Servant Proclamation, which would protect and guarantee the right of civil servants, including teachers in public schools, to form and join trade unions. The Committee regrets that no information was provided by the Government on the progress made in this respect. ***In the light of the above, the Committee urges the Government to amend the Civil Servant Proclamation without further delay so as to ensure that the rights of civil servants (including teachers) afforded by the Convention are fully guaranteed. It requests the Government to provide information on the measures taken in this respect.***

The Committee recalls that for several years it had been expressing its concern over the Labour Proclamation (2003), which falls short of ensuring full application of Convention No. 87. In particular, the Committee recalls that it had previously requested the Government:

- to ensure the right to organize of the following categories of workers excluded, by section 3, from the scope of application of the Labour Proclamation: workers whose employment relations arise out of a contract concluded for the purpose of upbringing, treatment, care, rehabilitation, education, training (other than apprenticeship); contract of personal service for non-profit-making purposes; managerial employees, as well as employees of state administration; judges and prosecutors, who were governed by special laws;

- to delete air transport and urban bus services from the list of essential services in which strike action is prohibited (section 136(2)). In this respect, considering that these services did not constitute essential services in the strict sense of the term, the Committee had suggested that the Government gave consideration to the establishment of a negotiated system of minimum service in these services of public utility, rather than imposing an outright ban on strikes, which should be limited to essential services in the strict sense of the term;
- to amend its legislation so as to ensure that, except in situations concerning essential services in the strict sense of the term, acute national crisis and public servants exercising authority in the name of the State, recourse to arbitration is allowed only upon the request of both parties. In this respect, the Committee had noted that section 143(2) of the Labour Proclamation allowed the aggrieved party to the labour dispute to take the case to the Labour Relations Board for arbitration or to the appropriate court. In this case, the strike was considered unlawful (section 160(1)). In the case of essential services, as listed in section 136(2), the dispute was referred to an ad hoc board for arbitration (section 144(2));
- to amend section 158(3), according to which the strike vote should be taken by the majority of the workers concerned in a meeting in which at least two-thirds of the members of the trade union were present, so as to lower the quorum required for a strike ballot; and
- to ensure that the provisions of the Labour Proclamation, which, as noted above, contrary to the Convention, restrict the right of workers to organize their activities, are not invoked to cancel an organization's registration pursuant to section 120(c) until they have been brought into conformity with the provisions of the Convention.

The Committee notes the Government's indication that the Labour Proclamation is being examined with a view to amendment. In this regard, the Government indicates that employment relations arising out of a contract concluded for the purpose of upbringing, treatment, care, rehabilitation, education, training (other than apprenticeship), contract of personal service for non-profit-making purposes, as well as of managerial employees are the issues to be discussed by the labour proclamation drafting committee. The Government further indicates that the Committee's observations on essential services, compulsory arbitration, the need to lower the strike quorum required for a strike ballot, as well as the matter of dissolution of trade unions are also to be discussed by the drafting committee. ***The Committee expects that the Labour Proclamation will be soon amended so as to ensure its full conformity with the Convention. It requests the Government to indicate any progress made in this respect.***

The Committee further requests, once again, the Government to indicate how the right to organize of employees of state administration, judges and prosecutors is ensured in law and in practice and to transmit with its next report any specific legislation in this respect.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, which are being translated and will be examined in the framework of the next reporting cycle.

The Committee regrets that no observation was provided by the Government on the previous comments submitted by the ITUC and Education International (EI) concerning specific violations of the Convention regarding teachers' trade union rights in the public sector, including interference in trade union activities of the Ethiopian Teachers' Association (ETA) by way of creation and control by the Government of a teachers' trade union, and the harassment of teachers (dismissals, transfers, etc.) in connection with their union affiliation. The Committee recalls that governments should refrain from interference in the establishment and functioning of trade unions. ***The Committee urges the Government to conduct a full and independent inquiry without delay into all of the allegations made by the ITUC and EI and to indicate its outcome.***

The Committee had previously noted that the national legislation, in particular the Labour Proclamation (2003), provided inadequate protection of the rights afforded by the Convention and expressed the following concerns.

- *Scope of application of the Convention.* According to its section 3, the Labour Proclamation was not applicable to the employment relations arising out of a contract concluded for the purpose of upbringing, treatment, care of rehabilitation, education, training (other than apprenticeship), contract of personal service for non-profit-making purposes and managerial employees. The Committee had requested the Government to take the necessary measures to ensure that the categories of worker excluded from the scope of the Labour Proclamation enjoy the rights under the Convention, either by amending the Labour Proclamation or by adopting specific legislative provisions.
- *Absence of adequate protection against acts of interference.* The Committee had requested the Government to amend its legislation by adopting specific provisions coupled with effective and sufficiently dissuasive sanctions, providing for protection of organizations of employers and workers against acts of interference by each other's agents or members in their establishment, functioning or administration so as to give full effect to *Articles 2 and 3 of the Convention.*
- *Article 4. Collective bargaining.* The Committee had requested the Government to amend section 130(6) of the Labour Proclamation, as amended by Proclamation No. 494/2006, providing that, if the negotiation to modify or

replace a collective agreement is not finalized within three months from the expiry date of the collective agreement, the provisions of the collective agreement relating to wages and other benefits shall cease to be effective. The Committee considered that this provision did not take into account the reasons behind a failure to finalize a new agreement nor the eventual responsibility of one or the other party for this failure and was not conducive to promoting collective bargaining. The Committee also considered that it was up to the parties to decide on the moment when the collective agreement becomes inapplicable after the date of its expiration.

The Committee notes the Government's indication that the above comments with regard to the application of the Convention to the employment relations arising out of a contract concluded for the purpose of upbringing, treatment, care, rehabilitation, education, training (other than apprenticeship), contract of personal service for non-profit-making purposes were on the agenda to be discussed by the Ethiopian labour law reform committee. The Committee further notes the Government's indication that the discussion will be extended to the Committee's observation on protection to be granted to workers' and employers' organizations against acts of interference committed by each other's agents, as well as on *Article 4* of the Convention. ***The Committee expects that the Labour Proclamation will be amended without delay so as to ensure its full conformity with the Convention. It requests the Government to indicate progress made in this respect. The Committee further requests the Government to indicate the measures taken or envisaged to ensure the rights under the Convention of managerial employees.***

The Committee recalls that it had previously taken note of article 4 of the draft regulation concerning employment relations established by religious or charity organizations, which provided that "religious or charity organizations employing persons for administrative or charity work shall not be obliged to enter into collective bargaining concerning salary increment, fringe benefits, bonus and similar other benefits which may incur financial expense upon the organization". Recalling that collective bargaining should be promoted also in respect of these categories of worker and that no restrictions on the scope of bargaining should be imposed on workers by religious or charity institutions, the Committee had requested the Government to bring this draft into conformity with the Convention. The Committee notes the Government's indication that the draft regulation has already been presented at the consultative meeting with the persons concerned and it was decided that the draft regulation should be replaced with a new draft regulation. ***The Committee requests the Government to indicate any developments in this regard. It further requests the Government to transmit a copy of the bill once it has been drafted.***

Articles 4 and 6. The Committee once again urges the Government to amend the Civil Servant Proclamation so as to ensure the right of civil servants, including public teachers, to defend their occupational interests through collective bargaining. It requests the Government to indicate the measures taken or envisaged in this respect.

France

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

The Committee notes the Government's report and the detailed information supplied in response to the observations made by the General Confederation of Labour-Force ouvrière (CGT-FO) concerning the Act on social dialogue and continuity of the public service in scheduled land passenger transport of 21 August 2007 (Act No. 2007-1224).

In its previous comments, the Committee noted that, under the terms of section 5 of this Act, transport enterprises, the employer and the representative trade unions had to engage in bargaining with a view to the conclusion, before 1 January 2008, of a collective agreement on the service to be provided in the event of disruption of traffic or a strike. This provision also established that, in the absence of an applicable agreement as of 1 January 2008, a plan of the services to be provided had to be determined by the employer. The Committee recalled the principle according to which the determination of a negotiated minimum service should be limited to the operations that are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, as it restricts one of the essential means of pressure available to workers to defend their economic and social interests. The Committee also emphasized that workers' organizations should be able, if they so wish, to participate in defining the minimum service, along with the employers and the public authorities. Finally, the Committee recalled that, in the event of disagreement, the parties might also envisage the establishment of a joint or independent body (or recourse to a judicial body by mutual consent) responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161).

The Committee notes that the Government recalls in its reply dated 28 August 2008 that the purpose of the adopted Act is to reconcile the exercise of the right to strike with other fundamental freedoms, and that it places the social partners at the focus of the measures to be adopted in order to ensure the best coordination possible. The Government points out that the Act does not intend to establish a minimum service which would lead to the requisitioning of staff but aims to set up a system for predicting the services to be provided which makes no difference to the capacity of the strike to have an impact and apply pressure. With regard to the participation of the social partners in the mechanisms for dispute prevention and organization in the event of a strike, the Government indicates that agreements have been signed with trade unions in both the enterprises and the occupational sector concerned (for example, the agreement signed on 21 January 2008 in

urban passenger transport, the extension of which making it applicable to 170 enterprises belonging to the Public Transport Union was published in the *Official Journal* of 15 June 2008). As regards the procedures for resolving disputes, the Government adds that national law offers a wide range of possibilities but in the transport sector there is also room for cooperation and regulation, as show by the branch negotiations which are already placed under the authority of the chairman of a joint committee, which is independent of the parties, and the task of which is to facilitate dialogue. Furthermore, within the passenger transport enterprises (RATP and SNCF), additional “social alert” clauses were signed before the 1 January 2008 deadline with five trade unions in order to ensure conformity with the provisions of the Act of 21 August 2007. According to the Government, which bases its statements on the annual statistics of the SNCF, the use of “social alert” mechanisms has more than doubled without any increase in the number of strike notices deposited; on the contrary, the number of notices leading to strikes has increased over the same period. This suggests that the periods of prior negotiation provided for by the Act do not restrict the possibility of going on strike. Finally, with regard to the possible use of a joint or independent body, the Government indicates that the setting up of such a body has not been considered necessary by the Government, Parliament or the social partners, in view of existing mechanisms. The Government also recalls that the possibility of intervention by a neutral third party to promote an amicable resolution of disputes is possible under the terms of section 6 of the Act, which provides for the appointment of a mediator by the parties. The Committee notes the information supplied by the Government.

The Committee trusts that the Government will ensure, in any dispute in the land passenger transport sector and in the absence of an agreement on the determination of the minimum service to be maintained in the event of a strike, that the principle is observed whereby the workers’ organizations concerned shall be able to participate, alongside the employers and the public authorities, in the definition of this minimum service and, in the event of disagreement, the possibility is guaranteed for the parties to have recourse to a joint or independent body, according to existing or specially established mechanisms.

The Committee is also addressing a request on a number of other points directly to the Government.

Gambia

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

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

Scope of the Convention. The Committee notes that Labour Act No. 12 of 1990 (the Act) does not apply to workers engaged in civil service, prison service and domestic service. The Committee notes that according to the Government the new labour bill empowers the Secretary of State to extend the scope of the bill to cover any category of worker excluded. ***While recalling 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 requests the Government to guarantee that the rights afforded by the Convention are ensured for the abovementioned categories of worker.***

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee had noted that section 75 of the Act provides that any term or condition in a contract of employment, whether express or implied, prohibiting an employee from becoming or remaining a member of any trade union, or purporting to subject the employee to any penalty, loss of benefit or detriment by reason of such membership, shall be null and void. However, according to section 73(1), not all workers are entitled to a written contract of employment, this type of contract being reserved to specific cases of employment, in particular, fixed-term employment of six months or more. ***The Committee requests the Government to indicate the way in which workers are guaranteed protection against acts of anti-union discrimination in cases where the employment relationship is not based on a written contract of employment.***

The Committee had noted that Part IX, sections 109–125 of the Bill by which the Act was introduced to Parliament contained provisions on protection against dismissal by reason of union membership or because of participation in trade union activities, including strikes, and provided for compensation and reinstatement as remedies for such acts. However, the corresponding provisions are missing from the copy of the Labour Act adopted by Parliament, which the Committee has at its disposal. ***The Committee therefore requests the Government to transmit a complete copy of the Act.***

Article 2. Protection against acts of interference. The Committee had noted that there is no provision in the Act concerning protection against acts of interference by workers’ and employers’ organizations (or their agents) in each other’s affairs. The Committee notes that according to the Government the new labour bill provides protection against acts of interference. ***The Committee requests the Government to communicate the text of any provisions of the new labour bill that prohibit acts of interference (such as the establishment or financial support of workers’ organizations with the object of placing them under the control of employers or employers’ organizations) and guarantee sufficiently rapid appeal procedures and dissuasive sanctions against such acts.***

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. The Committee had observed that section 161 of the Act provides that voluntary agreements may be registered by the Commissioner upon the application of both parties to the agreement. Noting that the wording of this section seems to allow discretionary power to deny registration, the Committee recalls that the registration of the collective agreement can be refused only if it has a procedural flaw or does not conform to the minimum standards laid down by general labour law. The Committee notes that according to the Government the new labour bill does not give discretionary power to the Commissioner. ***It requests the Government to transmit a copy of the relevant provisions.***

The Committee had noted that, according to section 168, in order to be recognized as a sole bargaining agent, a trade union must be registered as “efficient”, within the meaning of sections 128(5) and 142 of the Act (i.e. the Registrar should be satisfied

that the trade union is and is likely to remain independent and is capable of efficiently representing its members and conducting the trade union affairs). *Considering that provisions which allow such great discretionary power to the Registrar are contrary to the principle of the autonomy of the parties in collective bargaining and therefore are not in conformity with the Convention, the Committee requests the Government to repeal or amend sections 128(5), 142 and 168, accordingly.*

The Committee also noted that, according to section 168, 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 recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should not be denied to other unions in the unit, at least on behalf of their own members and requests the Government to take the necessary measures in order to bring the legislation into conformity with the Convention.*

The Committee further noted that section 168(6) provides that an employer may, if he or she wishes, organize a secret ballot upon receiving an application to establish a sole bargaining agent. The Committee considers 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. *While taking note of the Government's statement according to which the appropriate authorities will be informed of the Committee's comments in order to make the necessary changes, the Committee requests the Government to amend section 168(6) in accordance with the above.*

The Committee had noted that, under section 167, a work committee could be set up at an establishment where at least 100 employees are employed. The Committee notes that the Government has communicated the text of the relevant provisions of the new labour bill. *The Committee requests the Government to clarify the role of such committees and more specifically to indicate: (1) whether trade union representatives can be elected to such committees; and (2) whether these committees can negotiate and conclude collective agreements even when a union exists in the undertaking.*

Article 6. The Committee had requested the Government to indicate whether public servants not engaged in the administration of the State are granted collective bargaining rights and to specify the relevant legislative provisions. The Committee notes that these categories of worker do not have the right to form unions and therefore do not have the right to collective bargaining. The Committee notes that according to the Government the relevant authorities will be advised to grant the right to collective bargaining to civil servants in the new labour bill.

The Committee trusts that the Government will take all necessary steps to bring its national law into conformity with the Convention and requests the Government to provide information on any measures taken or envisaged in this respect, in particular those concerning the adoption of the new labour bill.

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

Ghana

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

The Committee notes the Government's report. It further notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 29 August 2008; the ITUC's comments primarily refer to legislative matters previously raised by the Committee.

Prison staff. Previously, the Committee had requested the Government to take the necessary legislative measures to ensure that prison service staff enjoy the right to organize and bargain collectively. The Committee notes the Government's statement that this request has been communicated to the Sector Minister for due consideration. *Recalling that the Convention's guarantees apply to prison service staff, the Committee once again requests the Government to take the necessary measures to amend the Labour Act, so as to ensure that prison service staff expressly enjoy the right to organize and to collective bargaining, and to provide information on developments in this regard.*

Collective bargaining certification. The Committee had previously noted that sections 99–100 of the Labour Act, 2003, regulate the issue of trade union recognition for collective bargaining purposes by providing that the Chief Labour Officer shall issue, upon request by a trade union, a certificate appointing that trade union as the appropriate representative to conduct negotiations on behalf of the class of workers specified in the collective bargaining certificate (section 99). Further noting that under section 99(4), the Chief Labour Officer appeared to have full discretion to decide which trade union to grant recognition to, in situations where more than one trade union existed at the work place, and that the criteria upon which this decision should be based were not specified, the Committee requested the Government to provide information on any regulations adopted or envisaged under section 99 of the Labour Act with a view to setting up procedures and criteria relevant to the Chief Labour Officer's competence to determine which union shall hold a collective bargaining certificate.

The Committee notes with regret that the Government provides no indications in respect of the abovementioned relevant criteria, but rather limits itself to repeating the provisions of section 99 of the Labour Act, 2003. In these circumstances, the Committee once again recalls that in cases in which a system of "compulsory" recognition has been established, where the employer must recognize the existing trade union(s) under certain conditions, it is important for the determination of the trade union in question to be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse. Furthermore, when national legislation provides for a compulsory procedure for recognizing unions as exclusive bargaining agents, certain safeguards should be attached, such as: (a) the certification to be made by an independent body; (b) the representative organization to be chosen by a majority vote of the employees in

the unit concerned; (c) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; and (d) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed (see the General Survey of 1994 on freedom of association and collective bargaining, paragraph 240). *The Committee requests the Government to take measures to adopt the appropriate regulations establishing procedures and objective criteria concerning the Chief Labour Officer's competence to determine which union shall hold a collective bargaining certificate, in keeping with the abovementioned principle, and to provide information on developments in this regard.*

Guatemala

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

The Committee notes the Government's report, the discussion which took place in the Conference Committee on the Application of Standards in 2008 and the various cases currently before the Committee on Freedom of Association (some of which relate to serious allegations of violence against trade union leaders and trade unionists). The Committee also notes the report of the high-level mission which visited the country in April 2008 and the tripartite agreement signed during the mission designed to improve the application of the Convention.

The Committee also notes the detailed comments on the application of the Convention made by the Union Movement, Guatemalan Indigenous and Agricultural Workers for the Defence of Workers' Rights in a communication dated 31 August 2008, as well as the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, which refer to matters already raised by the Committee, as well as to serious acts of violence against trade union leaders and trade unionists, impediments to the registration of trade union organizations, difficulties in exercising the right of assembly of trade union organizations and other violations of the Convention. *In this regard, the Committee hopes that, in the context of the tripartite agreement concluded during the high-level mission, all the questions raised, as well as the comments made by the ITUC in 2005 and by the Trade Union Confederation of Guatemala (UNSITRAGUA) in 2006, will be examined and tackled in a tripartite manner by the Government and the social partners in the context of the work of the Tripartite Committee on International Affairs, the Legal Reform Subcommittee and the mechanism for rapid intervention in cases.*

Acts of violence against trade unionists

The Committee recalls that for several years, it has noted in its observations acts of violence against trade unionists and has previously requested the Government to provide information on developments in this regard. The Committee notes that the Government indicates in its report that: (1) it shares the Committee's concern with regard to the acts of violence which, in its view, affect not only people involved in trade union activities, but also society in general; (2) it hopes that, in the medium term, it will be possible to reduce the crime rate through the development of strategies to strengthen civil intelligence systems, so that the perpetrators of crimes can be identified, tried and convicted; (3) a new Attorney-General and Head of the Office of the Public Prosecutor has recently taken up office and the Tripartite Committee on International Affairs has called on him to deal with the issue of acts of violence against trade unionists and the need to track down, prosecute and convict the perpetrators of these acts; and (4) the intention of the members of the Tripartite Committee is to achieve closely coordinated links with the Office of the Public Prosecutor in order to facilitate the provision of effective security measures for those members of the trade union movement who are the victims of intimidation or threats.

The Committee notes the conclusions of the high-level mission, in particular, with reference to the issue of human rights in trade union circles, that: "the mission noted greater attention to this problem, which is reflected in the decision of the Office of the Public Prosecutor under the instruction of the Attorney-General to allocate greater budgetary resources to the Special Office for Offences against Journalists and Trade Unionists and to assign four new investigators to that area. Moreover, the progress that had been made in the investigation into the assassination of the Secretary-General of the Trade Union of Workers of Puerto Quetzal, Mr Pedro Zamora, in January 2007, which prompted a special ILO mission and action taken by the mission in March–April 2007. The investigations carried out have established that two individuals have been accused of the crime and a warrant for their arrest has been issued. It is also worth pointing out that, following an investigation, it was confirmed that the trade unionist Mr López Estrada, thought to have disappeared, was found safe and sound at his mother's house in Puerto Barrios".

Furthermore, the Committee notes that, at the proposal of the mission, the Tripartite Committee approved an agreement to eradicate violence, which provides for the carrying out of: "(1) an evaluation of institutional action, including the most recent, and particularly the special protection measures to prevent acts of violence against trade unionists under threat; and (2) an evaluation of the measures that are being taken (increases in budget allocations and in the number of investigators) to guarantee effective investigation with sufficient resources to permit the elucidation of the crimes against trade unionists and the identification of those responsible".

In this respect, the Committee once again expresses deep concern at the acts of violence against trade union leaders and members and recalls that trade union rights can only be exercised in a climate that is free of violence. *The Committee*

expresses the firm hope that the Government will continue to take measures to guarantee full respect for the human rights of trade unionists and will continue providing protection measures to all trade unionists who so request. The Committee also requests the Government to take the necessary measures without delay to conduct the investigations with a view to identifying those responsible for acts of violence against trade union leaders and members, so that they are prosecuted and penalized in accordance with the law. The Committee requests the Government to keep it informed of any development in this respect.

Legislative problems

The Committee recalls that for many years it has been commenting on the following provisions which raise problems of conformity with the Convention:

- restrictions on the establishment of organizations in full freedom (the need to have half plus one of those working in the occupation to establish industry trade unions, under section 215(c) of the Labour Code); delays in the registration of trade unions or refusal to register them. In this regard, the Committee notes that the Government indicates that: (1) the new Ministry of Labour authorities have initiated a process to significantly reduce the time required for the administrative processing of trade union authorizations; (2) the Directorate General of Labour had authorized 40 new trade unions as at August 2008; and (3) the speed with which pending applications for registration will be processed is dependent on how quickly the comments made by the technical bodies of the Ministry of Labour and Social Insurance to the representatives of the trade unions in the process of being established are taken into account;
- restrictions on the right to elect trade union leaders in full freedom (the need to be of Guatemalan origin and to be a worker in the enterprise or economic activity in order to be elected as trade union leader, under sections 220 and 223 of the Labour Code);
- restrictions on the right of workers' organizations to organize their activities freely (under section 241 of the Labour Code, strikes are declared not by a majority of those casting votes, but by a majority of the workers); the possibility of imposing compulsory arbitration in the event of a dispute in the public transport sector and in services related to fuel, and the need to determine whether strikes for the purpose of inter-union solidarity are still prohibited (section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996); labour, civil and penal sanctions applicable to strikes involving public servants or workers in specified enterprises (sections 390(2) and 430 of the Penal Code and Decree No. 71-86);
- Civil Service Bill. In its previous observation, the Committee noted a Civil Service Bill which, according to the UNSITRAGUA and the National Federation of State Workers' Unions (FENASTEG), requires a percentage that is too high to establish unions and restricts the right to strike. The Committee notes that the Government reports that the Bill has been withdrawn from discussion, since an inter-sectoral consultation committee was set up in July 2008 to come up with a Bill that is consistent with the needs of the sectors involved;
- Situation of many workers in the public sector who do not benefit from trade union rights. These workers (who are under contracts under item 029 and others of the budget), who should have been recruited for specific or temporary tasks, are engaged in ordinary and permanent functions and often do not benefit from trade union rights and other employment benefits apart from wages, and are not covered by the social security nor by collective bargaining where it exists. The Committee notes that the members of the Supreme Court of Justice stated to the high-level mission that, in accordance with case law, these workers enjoy the right to organize.

With regard to the matters above, the Committee notes that, at the proposal of the high-level mission, the Tripartite Committee approved an agreement to modernize the legislation and give better effect to Conventions Nos 87 and 98, and that this agreement provides for "an examination of the dysfunctions of the current system of labour relations (excessive delays and procedural abuses, lack of effective enforcement of the law and of sentences, etc.) and particularly of the machinery for the protection of the right to collective bargaining and the rights of workers' and employers' organizations and their members as laid down in Conventions Nos 87 and 98 in the light of technical considerations and the comments of a substantive and procedural nature of the ILO Committee of Experts on the Application of Conventions and Recommendations". The Committee observes that the high-level mission undertook to provide appropriate technical assistance in relation to these matters and notes with interest that this assistance has already started.

The Committee takes note of the report of the first mission of the technical assistance (November 2008), which was a follow-up to the high-level mission (April 2008).

The Committee firmly hopes that with the technical assistance the Government is receiving, the Government will be able to provide information in its next report on a positive assessment with regard to the various points mentioned.

Other matters

Export processing sector. In its previous observation, the Committee noted the comments made by trade union organizations referring to significant problems relating to trade union rights in export processing zones and requested the Government to take the necessary measures to give full effect to the Convention in export processing zones. The Committee notes that the Government reports that: (1) through its general labour inspectorate, the Ministry of Labour and Social Insurance has been addressing complaints made in connection with the export processing sector, as well as developing routine inspections through the Inspectorate's Export Processing Inspection Unit; (2) in 2007, 19 enterprises in

the sector closed and in 2008, ten closed; (3) in 2008, a procedure of administrative conciliation allowed the payment of benefits to workers affected by the closures in the case of ten export processing enterprises, and the workers who decided not to make use of the conciliation procedure and opted instead to take legal action received assistance free of charge from the Office of the Labour Ombudsperson; (4) there are ten trade unions in the sector with a total membership of 258 workers; (5) in 2007, ten complaints were dealt with relating to violations of freedom of association rights and in six cases a settlement was reached through conciliation, and in 2008, 17 complaints were dealt with relating to violations of Convention No. 87, and 16 are being processed; and (6) the training activities will continue on the rights established in Conventions Nos 87 and 98 for the export processing sector, for which the Government is counting on technical support from the ILO.

In this regard, the Committee notes that, in its conclusions, the high-level mission points out the following on this matter: "... it is in this area, as well as in the area described in the previous paragraph, that we see the extent to which the problems identified during the 2007 mission persist. According to the Ministry of Labour and Social Insurance, there are seven collective agreements for the export processing sector, but only two of those are from 2007. The others date back to 2003 or earlier. With regard to trade union membership, according to the administrative authority, there are six trade unions with a total membership of 562 workers in the export processing sector, among almost 200,000 workers, but according to the executive board of the trade union movement, there are only two trade unions in this sector. Regardless of whichever information is accurate, what is certain is that there continues to be minimal trade union activity and collective bargaining in the export processing sector and problems in applying Conventions Nos 87 and 98".

Under these circumstances, the Committee hopes that the Government will continue benefiting from technical assistance from the Office so that the Convention is given full effect in the export processing sector, and will continue providing information on this matter.

Tripartite national committee. In its previous observation, the Committee asked the Government to continue keeping it informed of the work of the Tripartite Committee on International Affairs, as well as the work of the Legal Reform Subcommittee and the mechanism for rapid intervention in cases. The Committee notes that the Government reports that: (1) it is satisfied with the development of the meetings of the Tripartite Committee, particularly with the effectiveness of the dialogue and the openness to analysis, discussion and recommendations arising from the meetings; (2) by August 2008, ten meetings had been held, in which subjects of relevance to employer-worker relations were discussed; (3) the impetus of the Tripartite Committee's activities has absorbed functions covered by the Legal Reform Subcommittee and an analysis is currently being carried out in order to filter and prioritize the cases to be dealt with; (4) in the context of the mechanism for rapid intervention in cases, both the worker and the employer sectors of the Tripartite Committee have reported cases and, given the constant participation of the general labour inspector, those cases have been dealt with and results achieved, both in the agricultural sector and in the garment or export processing sector; and (5) in addition, the Deputy Minister of Labour has intervened directly in the cases brought to the attention of the Tripartite Committee, appearing in person in the places in which a dispute has arisen and mediating in order to find an appropriate solution to those cases. ***The Committee requests the Government to continue keeping it informed of the work of the Tripartite Committee on International Affairs, as well as that of the Legal Reform Subcommittee and the mechanism for rapid intervention in cases.***

Finally, the Committee observes that, in the context of the session of the International Labour Conference held in 2008, during the analysis of the application of the Convention by Guatemala, the Committee on the Application of Standards invited the Government to accept a mission made up of the Employer and Worker spokespersons to assist the Government in finding durable solutions to all of the above matters. The Committee notes with interest that the Government indicates in its report that it welcomes the invitation along with each and every mission which wishes, in good faith, to assist in overcoming the complex situations relating to freedom of association.

The Committee hopes that it will be able to note in the near future that significant progress has been made in the application of the Convention.

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

The Committee notes the report of the high-level mission which visited the country in April 2008 and the tripartite agreement signed during the mission with a view to improving the application of the Convention.

The Committee also notes the detailed comments on the application of the Convention made by the Indigenous and Rural Workers Trade Union Movement of Guatemala in a communication dated 31 August 2008, and by the International Trade Union Confederation (ITUC) referring to matters already raised by the Committee, as well as to acts of anti-union discrimination and interference by employers, obstacles to collective bargaining processes and the violation of collective agreements. ***In this respect, the Committee hopes that, in the context of the tripartite agreement concluded during the high-level mission, all of the issues raised will be examined and addressed in a tripartite manner by the Government and the social partners with the technical assistance of the ILO in the context of the work of the Tripartite Commission on International Labour Affairs, and the Subcommittee for Legal Reform and Rapid Intervention Machinery.***

The Committee recalls that for various years it has been referring to the following problems relating to restrictions on the exercise of trade union rights in practice;

- failure to comply with orders for the reinstatement of dismissed trade unionists;
- slowness and ineffectiveness of procedures to impose penalties for breaches of labour legislation;
- need to promote collective bargaining, especially in export processing zones;
- need for the Code of Labour Procedures to be subject to in-depth consultation with the most representative organizations of workers and employers; and
- the Bill on civil service reform. The Committee notes the Government's indication in its report under Convention No. 87 that the Bill has been delayed, but that in July 2008 an intersectoral dialogue forum was established with a view to obtaining a bill that is adapted to the specific needs of the sectors concerned.

The Committee notes the Government's indication that the matters raised by the Committee have been discussed for several years by the National Tripartite Commission and that tripartite consensus has been achieved on certain issues.

Furthermore, in relation to these matters, the Committee notes that, under the auspices of the high-level mission, the Tripartite Commission concluded an agreement to modernize the legislation and give better effect to Conventions Nos 87 and 98, with the agreement calling for an examination to be carried out of the dysfunctions of the current labour relations system (excessive delays and procedural abuses, lack of effective application of the law and of penalties, etc.), and in particular of the machinery for the protection of the right to collective bargaining and the rights of workers' and employers' organizations and their members set forth in Conventions Nos 87 and 98 in the light of the technical considerations and substantive and procedural comments of the Committee of Experts. The Committee observes that the high-level mission undertook to organize appropriate technical assistance on these matters and notes with interest that this assistance is being provided.

The Committee has received the report of the first technical assistance mission (November 2008) following the high-level mission (April 2008). *The Committee firmly hopes that the Government, with the technical assistance it is receiving, will be in a position to provide information in its next report on the progress made in relation to the various issues raised above.*

Finally, the Committee observes that, at the session of the International Labour Conference in 2008, when examining the application of Convention No. 87 by Guatemala, the Committee on the Application of Standards invited the Government to accept a mission made up of the Employer and Worker spokespersons to assist the Government in finding durable solutions to all of the above matters. The Committee of Experts appreciates the Government's acceptance of the above invitation and its indication that each and every good faith mission that wished to help in overcoming the complex situations relating to freedom of association was welcome.

The Committee will examine these matters in its next examination of the application of the Convention in the light of the report of the above mission.

Guinea

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

The Committee notes with regret that it has not received the Government's report. It also notes the comments made by the International Trade Union Confederation (ITUC), dated 29 August 2008, which relate to matters already raised by the Committee. Furthermore, the ITUC reports assaults, by the security forces, on demonstrators and strikers, as a result of which around 40 people died and nearly 300 others were injured, arrests of trade unionists and the destruction of the headquarters of the National Confederation of Workers of Guinea (CNTG). The Committee recalls that a climate of violence in which murders and disappearances of trade union leaders go unpunished, constitutes a serious obstacle to the exercise of trade union rights and that such acts require severe measures to be taken by the authorities. When disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such acts (see 1994 General Survey on freedom of association and collective bargaining, paragraph 29). *The Committee requests the Government to provide its observations in this regard, as well as on the comments made by the ITUC in 2007.*

The Committee recalls that in its previous comments the Committee raised a number of points about the national legislation as follows:

- the need for measures to set up an independent body that has the trust of the parties and is able to rule promptly on difficulties encountered in defining the minimum service where the parties are unable to agree as to the minimum service in transport and communications (which are not deemed essential in the strict sense of the term); and
- the need for measures to ensure that compulsory arbitration (established in sections 342, 350 and 351 of the Labour Code) is restricted to cases where the two parties agree to request it, in essential services in the strict sense of the term, or in the event of acute national crisis.

The Committee trusts that the Government will take the measures requested very shortly, in consultation with the representative organizations of employers and workers concerned, and asks it inform it of any developments in the situation.

The Committee reminds the Government that it may seek technical assistance from the Office.

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

The Committee notes with regret that the Government's report has not been received. It takes note of the observations of 29 August 2008 by the International Trade Union Confederation (ITUC) on legislative issues that the Committee has already raised.

In its previous comments, the Committee raised the following matters.

Article 1 of the Convention. Need to include in the national legislation specific provisions: (a) to protect all workers, and not only trade union delegates as provided in the Labour Code, against acts of anti-union discrimination at the time of recruitment and during employment; (b) to provide expressly for appeal procedures and sufficiently dissuasive sanctions against acts of anti-union discrimination and interference; (c) to provide for rapid appeal procedures and sufficiently dissuasive sanctions for violations of section 3 of the draft new Labour Code, which provides that no employer may take into consideration membership of a trade union and trade union activities of workers in making decisions about recruitment, performance and distribution of work, termination of the employment contract, etc.

Article 2. Need to include in the draft Labour Code specific provisions on protection against acts of interference in the internal affairs of workers' and employers' organizations, accompanied by efficient and expeditious procedures and sufficiently dissuasive sanctions.

The Committee trusts that the Government will take the necessary steps to ensure that the provisions of the new Labour Code, which have been under preparation for many years, are fully consistent with Articles 1 and 2 of the Convention. The Committee requests the Government to indicate all progress towards this end in its next report.

Guinea-Bissau

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

The Committee notes that the report has not been received. The Committee notes the comments made by the International Trade Union Confederation (ITUC), dated 29 August 2008, referring to the issues examined by the Committee.

The Committee recalls that for several years it has been referring to the following matters:

Articles 4 and 6 of the Convention. The Committee previously noted the Government's indication that it intended to pursue the process of revision of the General Labour Act, Title XI of which contains provisions on collective bargaining, and to take steps so that this text would guarantee agricultural workers and dockworkers the rights envisaged in the Convention. The Committee notes that it previously noted the Government's indication that the draft Labour Code provided for the 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 indicate any developments relating to this draft legislation and hopes that this draft will guarantee agricultural workers and dockworkers the rights provided for by the Convention.*

The Committee previously asked the Government to send information on the measures taken to adopt the special legislation which, under section 2(2) of Act No. 08/41 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 keep it informed of any developments in this regard.*

Finally, the Committee previously asked the Government to keep it informed of any developments with regard to the promotion of collective bargaining in the public and private sectors (training and information activities, seminars with the social partners, etc.), and to send statistics on the collective agreements concluded (by sector) and the number of workers they cover. The Committee notes that the comments made by the ITUC show that the situation with regard to collective bargaining is unsatisfactory. It reminds the Government once again 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 utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements". *The Committee requests the Government to take concrete measures to promote greater use in practice of collective bargaining in the private and public sectors, and to indicate any developments concerning this situation, including the number of new agreements signed and the number of workers covered by such agreements.*

The Committee hopes that a detailed report will be provided for examination next year in the context of the regular report examination cycle and that it will contain full information on the points raised as well as on the comments made by the ITUC.

Haiti

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

The Committee recalls that in its previous comments it requested the Government to reply to the observations of the ITUC relating to a raid by armed police at the premises of a trade union centre, the Trade Union Coordination of Haiti, and the murder of a delegate of the Union of Federated Cooperative Drivers. In this respect, the Committee notes the Government's rebuttal in its report of the ITUC's allegations and its indication that various investigations have been conducted by the police authorities and that no reference has ever been made to the death of a member of this union. The Government adds that there have been no further violations of freedom of association since the establishment of the rule of law following the June 2006 elections. The Committee notes these indications. It recalls that a free and independent trade union movement can only develop in conditions in which fundamental human rights are respected and that all States have an undeniable duty to defend a social climate where respect for the law reigns as the only way of guaranteeing respect for and protection of individuals. The Committee notes the latest communication from the ITUC dated 29 August 2008, which is currently being translated. The matters raised therein will be taken into consideration during the next examination of the application of the Convention.

Amendment of the legislation. The Committee recalls once again that its comments have for many years referred to the need to take measures in relation to the national legislation to bring it into conformity with the requirements of the Convention through:

- the amendment of section 34 of the Decree of 4 November 1983 which gives the Government broad powers of supervision over trade unions, and sections 185, 190, 199, 200 and 206 of the Labour Code, which allow for compulsory arbitration at the request of only one party to a labour dispute;
- the amendment of sections 233 and 239 of the Labour Code so as to remove the impediments to the right of association of minors and to allow foreign workers to have access to trade union office, at least after a reasonable period of residence in the country; and
- the repeal or amendment of section 236 of the Penal Code, under which government consent is required for the establishment of an association of over 20 members. In this respect, the Committee notes the Government's indication that the formality of the legal registration of associations by the Directorate of Labour offers them an opportunity to carry out administrative procedures and does not constitute interference in their affairs. The Committee wishes to recall that, under the terms of *Article 2 of the Convention*, workers and employers, without distinction whatsoever, shall have the right to establish organizations of their own choosing without previous authorization. Accordingly, any legislation which requires prior approval at the discretion of the authorities of the statutes and by-laws of representative organizations of workers or employers is incompatible with the provisions of the Convention.

In general terms, the Committee notes the Government's indication that a Secretariat of State responsible for judicial reform was appointed in June 2006, but that the political troubles prevented it from reporting on the progress of its work. The Government adds that it is engaged in the modernization of legal texts and is pursuing the work that has been commenced. ***The Committee trusts that the Government's next report will indicate tangible progress in the revision of the national legislation to bring it fully into conformity with the Convention. It requests the Government to take into account in this respect all the points raised and hopes that it will be possible to continue the technical assistance provided to the Government by the Office on these issues.***

Finally, the Committee previously requested the Government to specify the texts ensuring and governing the trade union rights of workers in the rural sector and of domestic workers and noted that they were excluded from the scope of the provisions on freedom of association in the Labour Code. Furthermore, with a view to assessing more fully the recognition of the right to organize of public officials, the Committee also requested the Government to provide a copy of the Decree of 17 July 2005 amending the Act of 1982 issuing the conditions of service of the public service. The Committee notes that the Government confines itself to indicating that workers in the rural sector and domestic workers are protected by the Labour Code. However, the Committee recalls that it noted previously that, under the terms of sections 257 (domestic workers) and 381 (workers in the rural sector) of the Labour Code, the provisions of the Labour Code respecting the exercise of the right to organize were not applicable to them. ***The Committee therefore requests the Government to take all the necessary measures (through an amendment to the Labour Code or the adoption of a specific text) to ensure that domestic workers and workers in the rural sector explicitly benefit from the right to organize. The Committee urges the Government to indicate any progress achieved in this respect and to provide a copy of the Decree of 17 July 2005 amending the 1982 Act issuing the conditions of service in the public service.***

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

Comments by the ITUC. The Committee notes the Government's reply to the comments made in 2007 by the International Trade Union Confederation (ITUC) on the application of the Convention. These comments related to legislative issues concerning the dispute settlement machinery and acts of discrimination and interference in certain enterprises which have not been penalized. Furthermore, according to the ITUC, the labour inspectorate is unable to operate and the judicial system is dysfunctional. The Government indicates in its reply that the labour inspectorate is not incapable of operating, even though it is not functioning at full efficiency, and that the judicial system has been under reform since 2006 and is now in operation as a result of the restoration of courts throughout the country. **The Committee requests the Government to provide additional information in this regard, including the number of complaints of violations of trade union rights to the labour inspectorate and the courts, the average duration of the investigation of cases and the outcomes of legal proceedings.**

With regard to the ITUC's comments that workers in rural areas and the informal economy, self-employed workers and domestic workers are not covered by the Labour Code and have no trade union rights, the Government indicates in its report that all workers in the sectors referred to benefit in practice from trade union rights and provides certain examples of representative organizations in these sectors which have sought the registration of their by-laws with the authorities. **The Committee requests the Government to provide information in future reports on the number of collective agreements in the sectors referred to and their coverage.**

The Committee also notes the ITUC's communication dated 29 August 2008. The issues raised therein will be considered during its next examination of the application of the Convention.

Articles 1, 2 and 4 of the Convention. In its previous comments, the Committee requested the Government to indicate any developments concerning: (i) the adoption of a specific provision establishing protection against anti-union discrimination in hiring practices; (ii) the adoption of provisions affording in general adequate protection for workers against acts of anti-union discrimination, accompanied by effective and expeditious procedures and sufficiently dissuasive sanctions; and (iii) the revision of section 34 of the Decree of 4 November 1983 empowering the Social Organizations Branch of the Department of Labour and Social Welfare to intervene in the drafting of collective agreements. In its report, the Government indicates that the requested amendments to the legislation have not yet been adopted, but specifies that the Ministry of Social Affairs and Labour intervenes to settle any dispute when so requested by trade union organizations. The Government adds that the intervention of the authorities in the formulation of collective agreements is confined to verifying their conformity with legal provisions and does not therefore constitute interference. **While noting the persistence of the difficulties confronting the country, the Committee trusts that the Government will soon report progress in the adoption of legislative measures to bring the national legislation into full conformity with the Convention.**

Iraq

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

In its previous observation, the Committee took note of comments sent in 2006 and 2007 by the International Trade Union Confederation (ITUC) reporting serious instances of violence and breach of freedom of association and the right to collective bargaining, including instances of anti-union violence and a directive prohibiting companies in the oil sector from cooperating with members of trade unions. In its reply, the Government reiterates that acts of terrorism are indiscriminate in terms of the population they affect, which includes trade union officers. It nonetheless adds that security in the country has improved, that criminal activities are on the decline and that the Government's plan to establish the rule of law will help to create a more favourable climate for the trade union movement. As for the dispute in the oil sector, the Government states that an amicable settlement was reached following the signing of an agreement by the Ministry of Petroleum and the petroleum unions in Basra. **The Committee takes notes of this information and expresses the hope that it will be possible in the near future for trade union rights and the right to collective bargaining to be exercised normally and in observance of fundamental rights, and in a climate free from violence, duress, fear and any kind of threat.**

The Committee notes the communication of 29 August 2008 from the ITUC raising a number of legislative issues on which the Committee has already commented and drawing attention to the persistence of the serious violations of freedom of association. **The Committee notes the Government's reply of 18 November 2008 and asks it to comment on the ITUC's comments concerning arrests, detentions and acts of violence against trade unionists.**

The Committee also takes note of the discussions that took place in the Committee on the Application of Standards at the 97th Session of the International Labour Conference (June 2008), on Iraq's application of the Convention. It notes that the matters discussed included the need to amend certain provisions of the draft Labour Code of 2007 in order to align them more closely with the requirements of the Convention. The Committee notes that in its conclusions, the Conference Committee expressed the firm hope that the draft Code would be amended along the lines requested by the Committee, in

full consultation with the social partners, and that it would be adopted without delay. The Conference Committee also called upon the Government to ensure that the laws and practice of the previous regime were no longer applied and expressed the hope that all workers, including public servants not engaged in the administration of the State, would be able fully to enjoy effective protection in accordance with the provisions of the Convention.

The Committee notes that in its report the Government states that the draft Labour Code has been referred to the Consultative Council (*Majlis Al-Shura*) so that Parliament can examine and adopt it. It also notes the information that the Tripartite Consultation Committee has recommended that a Ministry of Labour representative who took part in that Committee's discussion should relay its observations to the Consultative Council with a view to determining how they should be implemented to take account of the demands of the national interest. ***The Committee trusts that the Government will take the necessary steps to ensure that the draft Labour Code is fully in keeping with the requirements of the Convention and that it will take due account to that end of all the following points, which the Committee raised in its previous observation.***

Articles 1 and 3 of the Convention. In its previous comments, the Committee noted that the guarantees laid down in the draft Labour Code for protection against acts of anti-union discrimination apply to trade union founders and chairpersons and to trade union officers but not to trade union members. Furthermore, the draft does not establish adequate guarantees against discrimination at the time of recruitment. The Committee also noted that although it covers anti-union dismissals, the draft does not address other adverse measures affecting trade union membership or activities. It pointed out that protection against acts of anti-union discrimination must apply to trade union members as well as union officers, and must cover not only dismissal but any other measure amounting to anti-union discrimination (transfer, demotion and other measures that have adverse effects). Furthermore, the protection provided for by the Convention applies upon recruitment, in the course of employment and at the time of separation. Lastly, the general provisions of the law prohibiting acts of anti-union discrimination are not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. Protection against acts of anti-union discrimination should therefore be ensured by various means adapted to national law and practice that prevent or effectively redress such acts. ***The Committee requests the Government to take due account of the principles recalled above and to take the necessary steps to amend the draft Labour Code so as to ensure adequate protection for members of trade unions and trade union officers against acts of anti-union discrimination.***

Article 4. In its previous comments the Committee noted that section 142 of the draft Labour Code establishes a duty to bargain in good faith when a request to open collective negotiations has been submitted by a registered union representing no less than 50 per cent of the workers employed at the establishment or enterprise, or where such a request has been submitted jointly by several registered unions representing no less than 50 per cent of the workers to whom the collective agreement is to apply. The Committee pointed out that problems may arise where it is established by law that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a union that fails to secure this absolute majority is thus denied the possibility of bargaining. It noted that if no union – or group of unions, as provided for in section 142 – covers more than 50 per cent of the workers, collective bargaining rights should not be denied to the unions in the unit concerned, at least on behalf of their own members. ***The Committee requests the Government to take the necessary steps to amend section 142 of the draft Labour Code accordingly.***

The Committee trusts that in its next report, the Government will indicate the progress made in revising the draft Labour Code to bring it fully in to line with the Convention. It hopes that the technical assistance provided by the Office in preparing the draft will be pursued in respect of these matters.

Articles 1, 4 and 6. The Committee has been noting for many years that Act No. 150 of 1987 on public servants which the Government is planning to repeal contains no provisions affording the guarantees established in the Convention (protection against acts of anti-union discrimination and interference and the right to collective bargaining of employment conditions) to public servants and public sector employees who are not engaged in the administration of the State. The Committee notes that in its report, the Government merely states that public sector employees are not subject to the provisions of Act No. 52 of 1987 on trade unions. The Committee observes that the draft Labour Code excludes employees of the public service from its scope. The Government indicated previously – although it provided no legal text – that public servants do have such protection pursuant to the laws and regulations applying to the enterprises and institutions that employ them.

The Committee recalls that *Article 6* of the Convention provides that only public servants engaged in the administration of the State may be excluded from the Convention's scope; all other persons employed by the Government, public enterprises or autonomous public institutions should benefit from the guarantees afforded by the Convention. The Committee notes the information in the Government's report that, in consultation with the social partners and experts from the Office, a recommendation was drawn up with a view to including in the new Labour Code provisions on the trade union rights of public sector workers, which will give them the rights provided for in *Articles 1, 3 and 6* of the Convention. ***The Committee notes this information and asks the Government to provide information in its next report on all progress made in this respect.***

Article 4. Promotion of collective bargaining. The Committee has been commenting for many years on the fact that Act No. 52 of 1987 on trade union organizations contains no provisions to give effect to *Article 4* of the Convention. **The Committee expresses the firm hope that the draft Labour Code will contain provisions to promote collective bargaining.**

Trade union monopoly and interference in trade union activities. The Committee notes that according to a statement made by the Government representative to the Conference Committee on the Application of Standards, Act No. 52 of 1987 established a de facto monopoly of the Confederation of Iraqi Workers' Unions by forbidding the establishment of other unions or federations. However, according to the Government representative, the Act was in force only on paper, in that since April 2003 other unions have been set up in several sectors notwithstanding the lack of a proper legal framework. The Committee notes that the Conference Committee's discussions also addressed the need to repeal Decision No. 8750 of 8 August 2005, the provisions of which have been used by the Government to freeze the trade unions' bank assets.

In the Committee's view, texts such as these which have not yet been formally repealed can generate uncertainty in law and hinder the development of collective bargaining within the meaning of the Convention and of other trade union activities. **The Committee trusts that the Government will shortly indicate that Act No. 52 of 1987 and Decision No. 8750 of 2005 have been formally repealed.**

Jamaica

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

The Committee notes the comments of 29 August 2008 by the International Trade Union Confederation (ITUC), which are being translated and will be considered at the next examination of Jamaica's application of the Convention. The Committee takes note of the Government's reply to the ITUC's comments of 2006 and 2007, and notes in particular that: (1) with regard to the non-deduction of the trade union dues of members of the National Workers' Union (NWU) in the oil sector, the parties have resolved the matter by agreement; and (2) regarding the obstacles faced by trade unions in the export processing zones, these zones have been virtually depleted; and the trade unions of Jamaica support the Labour Relations and Industrial Disputes Act, including the provisions on representation.

Article 3 of the Convention. The Committee recalls that in its previous observation it referred to the extensive power of the Minister to refer an industrial dispute to arbitration (sections 9, 10, and 11(A) of the Labour Relations and Industrial Disputes Act). The Committee notes that according to the Government: (1) the Committee's observations have been noted; (2) the Minister exercises the power in question only where the public interest is being jeopardized or where the dispute requires urgent or expeditious settlement; and (3) the Labour Relations and Industrial Disputes Act is under constant review. The Committee recalls that compulsory arbitration to end a collective labour dispute is acceptable only at the request of both parties or in instances where a strike may be restricted or even banned, i.e. in the event of a dispute in the public service involving public servants exercising authority in the name of the State, or in essential services in the strict sense of the term, namely services the interruption of which could endanger the life or personal safety of the whole or part of the population. **The Committee again asks the Government to provide information in its next report on all progress made in amending the abovementioned Act.**

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

The Committee notes with regret that no report has been received from the Government. The Committee also notes the comments from the International Trade Union Confederation (ITUC) dated 29 August 2008, which are being translated and will be taken up by the Committee in its next examination of the application of the Convention by Jamaica. **The Committee also requests the Government to send its observations in relation to the ITUC's comments of 2007 on acts of anti-union discrimination and the refusal to recognize a trade union, and also on the fact that there are no trade unions in the export processing zones.**

Article 4 of the Convention. The Committee recalls that its previous comments referred to the following matters:

- the denial of the right to negotiate collectively in the case of workers in a bargaining unit when these workers do not amount to more than 40 per cent of the workers in the unit or when, if the former condition is satisfied, a single union that is engaged in the procedure of obtaining recognition does not obtain 50 per cent of the votes of the workers in a ballot that the minister has caused to be taken (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its regulations); and
- the need to take measures to amend the legislation so that a ballot is made possible when one or more trade unions are already established as bargaining agents and another trade union claims that it has more affiliated members in the bargaining unit than the other trade unions, and therefore invokes its most representative status in the unit in order to be considered as a bargaining agent.

The Committee recalls once again that, by ratifying the Convention, the State undertook to promote collective bargaining and that this implied granting collective bargaining rights to the most representative trade union or (jointly)

trade unions. *The Committee therefore hopes that the Government will take the necessary measures in the very near future to amend its legislation, lowering the percentage mentioned and allowing a ballot in cases of disputes concerning representativeness, so as to bring it into full conformity with the Convention as soon as possible. The Committee requests the Government to provide information in this respect.*

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

Kazakhstan

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

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee had previously requested the Government to amend its legislation so as to ensure the right to organize of judges (article 23(2) of the Constitution and section 11(4) of the Law on Social Associations). The Committee notes the Government's explanation that judges have a special legal status within the State system and the particular nature of their function justifies the constitutional limitation of their rights. *The Committee recalls that the only exceptions authorized by Convention No. 87 are members of the police and the armed forces and therefore once again requests the Government to take the necessary measures to ensure that judges can establish organization for defence and furtherance of their interests. It requests the Government to indicate the measures taken or envisaged in this respect.*

The Committee recalls that it had previously requested the Government to specify the categories of workers covered by the term "law enforcement bodies" whose right to organize is restricted under the same provisions. The Committee notes from the Government's report, as well as from the definition provided for in section 256(2) of the Labour Code (2007), that firefighting and prison services are included in the definition of the "law enforcement bodies" and therefore, its personnel is excluded from the right to organize. The Committee considers that while exclusion from the right to organize of the armed forces and the police, as stated above, is not contrary to the provisions of Convention No. 87, the same cannot be said for fire service personnel and prison staff. The Committee is of the opinion that the functions exercised by these two categories of public servants should not justify their exclusion from the right to organize on the basis of *Article 9* of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 56). *The Committee therefore requests the Government to ensure that fire service personnel and prison staff enjoy the right to organize. It requests the Government to indicate the measures taken or envisaged in this respect.*

Right to establish organizations without previous authorization. The Committee notes that in its report, the Government makes reference to section 10(1) of the Law on Social Associations, applicable to employers' organizations and providing for a minimum requirement of ten people to form an association. The Committee recalls that a requirement of a membership of at least ten employers to create an employers' organization is too high and likely to be an obstacle to the free creation of employers' organizations. *It therefore requests the Government to take the necessary measures in order to amend its legislation so as to lower this requirement. It requests the Government to indicate the measures taken or envisaged in this respect.*

The Committee recalls that it had previously requested the Government to provide its observations on the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC), dated 10 August 2006, referring to violations of *Article 2* of the Convention in practice, in particular high registration cost, which makes registration of trade unions almost impossible. *In view that no information has been provided by the Government in this respect, the Committee once again requests the Government to provide its observations on the comments of the ICFTU.*

Article 3. Right of organizations to organize their activities and to formulate their programmes. The Committee notes Chapter 32 of the Labour Code (2007) regulating collective labour disputes. The Committee understands that the process of settlement of collective labour disputes begins with the procedure provided for by section 289, which requires that claims of workers should be formulated at the meeting (conference) of employees gathering not less than half of the total workforce and adopted by the majority of those present. The Committee considers that trade unions should be free to regulate the procedure of submitting claims to the employer and that the legislation should not impede the functioning of a trade union by obliging a trade union to call a general meeting every time there is a claim to be made to an employer. *The Committee therefore requests the Government to take the necessary measures in order to amend section 289 of the Labour Code so as to ensure the right of trade unions to submit claims to the employers without their prior approval by a general meeting of workers. It requests the Government to indicate the measures taken or envisaged in this respect.*

The Committee notes that the right to strike is prohibited in the civil service (section 10(6) of the Law on Civil Service). Furthermore, according to section 231(2) of the Labour Code, public service employees cannot participate in any action impeding normal functioning of the service and their official duties. The Committee therefore understands that the right to strike of public servants is restricted or even prohibited. The Committee considers that the prohibition of the right to strike should be limited to public (or civil, as the case may be) servants exercising authority in the name of the State. The Committee notes that pursuant to section 230 of the Code, the list of services considered public was adopted by the

Government on 27 September 2007 and concerns categories of workers who cannot be considered as exercising authority in the name of the State. *With regard to the “civil service”, while noting from the Government’s report that teachers, doctors and bank employees are not civil servants, the Committee requests the Government to provide a full list of the services falling into this category. In the light of the above, the Committee requests the Government to take the necessary measures, including through amendment of the relevant legislative provisions, in order to ensure that the prohibition of the right to strike is limited only to public (or civil, as the case may be) servants exercising authority in the name of the State. It requests the Government to indicate the measures taken or envisaged in this respect.*

The Committee notes that pursuant to section 303(1) of the Labour Code, strikes are illegal in organizations carrying out dangerous industrial activities (subsection (1)) and in other cases provided for by the national legislation (subsection (5)). *The Committee requests the Government to clarify which organizations fall into the category of organizations carrying out dangerous industrial activities and the categories of workers whose right to strike is so restricted. The Committee further requests the Government to indicate all other categories of workers whose right to strike is restricted by other legislative texts and to provide copies thereof.*

The Committee further notes that according to section 303(2), in the rail and public transports, civil aviation and communications, a strike may be held if the necessary range of services, as determined on the basis of a prior agreement with the local executive authorities, is maintained. The Committee recalls that in situations in which a total prohibition of strikes would not appear to be justified (as in services mentioned above) and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users’ basic needs are met or that facilities operate safely or without interruption, the minimum service as a possible alternative to a total prohibition would be appropriate. However, in the view of the Committee, such a service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey, op. cit., paragraphs 161 and 162). *The Committee therefore requests the Government to amend section 303(2) of the Labour Code so as to ensure the application of these principles. It requests the Government to indicate the measures taken or envisaged in this respect.*

The Committee notes that according to section 298(2) of the Labour Code, the decision to call a strike is taken by a meeting (conference) of workers (their representatives) gathering not less than half the total workforce and the decision is adopted if not less than two-thirds of those present at the meeting (conference) have voted for it. The Committee considers that while a requirement of a strike ballot does not, in principle, raise problems of compatibility with the Convention, the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice; if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at reasonable level (see General Survey, op. cit., paragraph 170). In these circumstances, the Committee considers that while the quorum provided for by section 298(2) seems to be compatible with the freedom of association principles, the requirement that a decision to strike should be taken by two-thirds of those present at the meeting is excessive and limits the right to strike. *The Committee therefore requests the Government to amend section 298(2) of the Labour Code so as to lower this requirement and so as to ensure that account is taken only of the votes cast in determining the outcome of a strike ballot. The Committee requests the Government to indicate the measures taken or envisaged in this respect.*

The Committee notes that section 299(2)(2) of the Labour Code imposes the obligation to indicate, in the strike notice, its possible duration. *The Committee requests the Government to indicate whether workers or their organizations can declare a strike for an indefinite period of time.*

Article 5. Right of organizations to establish federations and confederations and to affiliate with international organizations. For several years, the Committee had been requesting the Government to amend section 106 of the Civil Code and article 5(4) of the Constitution so as to lift the ban on financial assistance to national trade unions by an international organization. The Committee notes that the Government reiterates that other than monetary, the financial assistance also includes such forms of support as property, equipment, motorized transport, communications and printing equipment. The Committee considers that legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers and that all national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers respectively, whether they are affiliated or not to the latter. *The Committee therefore once again requests the*

Government to take steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift this prohibition and to indicate the measures taken or envisaged in this respect.

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

The Committee recalls that in its previous comments it had requested the Government to institute an independent investigation into the comments concerning interference by the employer in trade unions' internal affairs and activities and refusals to bargain collectively submitted by the International Confederation of Free Trade Unions (ICFTU). The Committee regrets that no information has been provided by the Government in this respect. ***The Committee reiterates its request and trusts that the Government will be more cooperative in the future.***

Articles 1, 2 and 4 of the Convention. The Committee had previously requested the Government to specify the categories of worker covered by the term "law enforcement bodies" whose right to organize is restricted under article 23(2) of the Constitution and section 11(4) of the Law on Social Associations. The Committee notes from the Government's report, as well as from the definition provided for in section 256(2) of the Labour Code (2007), that fire-fighting and prison services are included in the definition of the "law enforcement bodies" and therefore excluded from the right to organize and to bargain collectively. The Committee considers that while the armed forces and the police can be excluded from the application of the Convention, the same cannot be said for fire service personnel and prison staff. ***The Committee therefore requests the Government to take the necessary measures to ensure that these categories of worker enjoy the rights afforded by the Convention.***

Article 1. The Committee notes sections 14, 170 and 177 of the Labour Code, as well as section 141 of the Criminal Code (1997) which provide for an adequate protection against anti-union discrimination.

Article 2. The Committee had previously noted that sections 4(4) and 18(2) of the Law on Trade Unions prohibited acts of interference in the affairs of workers' organizations and requested the Government to provide details on the procedures available to trade unions in cases of infringement, as well as the specific sanctions provided by the legislation. The Committee notes sections 150 and 150-1 of the Criminal Code concerning interference in the activities of social organizations and interference in the legitimate activities of workers' representatives, respectively, and providing for a penalty equivalent to up to five times the monthly wage or imprisonment to be imposed on an "official" found guilty of committing the offence using his or her position. ***The Committee requests the Government to clarify whether this provision applies in both the public and the private sectors.***

Article 4. The Committee notes that according to section 282(2) of the Labour Code, workers who are not members of any trade union may either authorize an existing trade union or choose another representative for the purposes of collective bargaining. If several workers' representatives exist at the enterprise, they can establish a joint representative body to negotiate a collective agreement. The Committee considers that when a representative trade union exists and functions at the enterprise, allowing other workers' representatives to bargain collectively could not only undermine the position of the trade union concerned, but also infringe upon the rights guaranteed under *Article 4* of the Convention. ***The Committee therefore requests the Government to amend its legislation so as to ensure that where there exist in the same undertaking both a trade union representative and an elected representative, the existence of the latter is not used to undermine the position of the union in the collective bargaining process. It requests the Government to indicate the measures taken or envisaged in this respect.***

The Committee notes that the obligation imposed on the employer to conclude a collective agreement was repealed (once the Law on Collective Agreements was repealed) and that section 281 of the Labour Code enshrines the principle of free and voluntary negotiations. The Committee notes, however, that under section 91 of the Code on Administrative Breaches (2001), an unfounded refusal to conclude a collective agreement is punished by a fine. The Committee recalls that the 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 negotiations. ***The Committee therefore requests the Government to provide information on the application of section 91 of the Code in practice.***

Article 6. The Committee notes that civil and public servants enjoy collective bargaining rights under section 8 of the Law on Civil Service and section 236 of the Labour Code, respectively. It notes, in this respect, the list of collective agreements concluded in the civil service between various trade unions and the relevant ministries.

Kenya

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

The Committee notes the Government's report and the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008.

Articles 1, 2 and 3 of the Convention. Protection against acts of anti-union discrimination. The Committee takes note of the adoption of the Labour Relations Act (LRA) 2007. The Committee notes with interest that section 5 of the

LRA prohibits acts of anti-union discrimination on the basis of trade union membership or activities, both during the recruitment period and the entire course of employment.

The Committee further notes that under section 10 claims of infringement of employees' rights, including claims of anti-union discrimination, must first be referred in writing to the minister to appoint a conciliator and, should conciliation fail to resolve the claim within 30 days (or a longer period, should both parties agree) from the appointment of the conciliator, section 73(1) provides that the claim may then be referred to the Industrial Court. ***The Committee requests the Government to indicate the average time period for the adjudication of anti-union discrimination cases by the Industrial Court.***

Protection against acts of interference. The Committee observes that the LRA makes no provision for protection against acts of interference, either directly or indirectly. ***Recalling that Governments which have ratified the Convention are under the obligation to take specific action, in particular through legislative means, to ensure respect for the guarantees laid down in Article 2 concerning acts of interference, the Committee requests the Government to take legislative measures so as to make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to ensure the application in practice of Article 2 of the Convention.***

Article 4. Trade union recognition for purposes of collective bargaining. The Committee notes that section 54(1) of the LRA requires an employer to recognize a trade union if the said trade union represents "a simple majority of unionizable employees". Similarly, section 54(2) provides that employers' federations shall recognize a trade union for the purposes of collective bargaining "if the trade union represents a simple majority of unionizable employees employed by the group of employers or the employers who are members of the employers' organization within a sector". The Committee recalls, in this respect, that problems may arise when the law stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a representative union which fails to secure this absolute majority is thus denied the possibility of bargaining (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). ***The Committee therefore requests the Government to ensure that section 54(1) and (2) of the LRA are applied in such a manner that, where no union covers more than 50 per cent of the workers, collective bargaining may still be possible for the unions failing to acquire this percentage.***

Collective bargaining in the public sector. The Committee had previously noted that the 14 May 2004 Memorandum of Understanding between the Government and the Union of Civil Servants concerning recognition, negotiating and grievance procedures for civil servants did not apply to employees of the Prison Department, the National Youth Service and teachers under the Teachers' Service Commission, and had requested the Government to indicate whether those categories of employee enjoyed the right of collective bargaining under any legislative provisions. In this respect, the Committee notes that, according to the ITUC, those categories of employee were still denied the right of collective bargaining, although civil servants not involved in State administration are allowed to bargain collectively. The Committee also notes, however, the Government's statement that it had signed a collective agreement with the Union of Civil Servants that entered into force in June 2008, and that negotiations with teachers were ongoing.

As concerns the LRA, the Committee observes that section 61(1) provides that the minister may, after consultations with the National Labour Board, make regulations establishing machinery for determining terms and conditions of employment for any category of employee in the public sector. The Committee also notes that under section 61(3) the minister may determine different terms and conditions for different categories of public employee. ***Recalling that all public servants, with the sole possible exception of those directly engaged in the administration of the State, should enjoy the right of collective bargaining, the Committee requests the Government to: (1) take legislative measures to ensure that employees of the Prison Department and the National Youth Service enjoy the right of collective bargaining; (2) indicate the categories of public employee, if any, for whom the minister has determined terms and conditions of employment under section 61(3) of the LRA; and (3) to provide full information on the practical application of section 61(1), which provides for the establishment of collective bargaining machinery in the public sector.***

Kiribati

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

The Committee notes with interest that the Kiribati Tripartite Committee drafted, with the assistance of the ILO, several amendments to national labour laws in order to give effect to the Committee's previous comments. The Committee notes, in particular, that, upon adoption of the Trade Unions and Employers' Organizations Amendment Bill, section 21 of the Trade Union and Employers' Organizations Act, will be amended by introducing a comprehensive guarantee of the right to organize for all workers and employers. Moreover, upon adoption of the Industrial Relations Code Amendment Bill, section 39 of the Industrial Relations Code will be amended so that a strike decision can be adopted upon approval by a majority of employees who voted in the ballot. These amendments have been recently approved in the first reading by Parliament. ***The Committee requests the Government to keep it informed of progress made in the adoption of these amendments to section 21 of the Trade Union and Employers' Organizations Act and section 39 of the Industrial Relations Code.***

The Committee also notes, however, that certain issues have not been addressed yet or are still under consideration.

Article 2 of the Convention. Minimum membership requirement. The Committee had previously requested the Government to amend section 7 of the Trade Unions and Employers' Organizations Act so as to lower the minimum membership requirement for the registration of an employers' organization which is set at seven members. The Committee notes, from the Government's report, that due note has been taken of this comment, which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress; the Government will inform the Committee on the outcome and measures taken as a result of these discussions. ***The Committee requests the Government to keep it informed of the outcome of consultations and to indicate in its next report any measures taken or contemplated with a view to amending section 7 of the Trade Unions and Employers' Organizations Act so as to lower the minimum membership requirement for the registration of an employers' organization.***

Right of public employees to establish and join organizations of their own choosing. The Committee had previously noted that section L.1 of the National Conditions of Service provides that all employees are free to join a "recognized" staff association or union and had requested the Government to amend this section, given that there is no provision in the law relating to the recognition of trade unions. The Committee notes the Government's indication that due note has been taken of this comment which is currently under review with the social partners and the Committee will be kept informed of the outcome and measures taken as a result of these discussions. ***The Committee requests the Government to keep it informed of the outcome of consultations and to indicate in its next report any measures taken or contemplated with a view to amending section L.1 of the National Conditions of Service so as to remove the reference to "recognized" staff associations or unions.***

Article 3. Right of employers' and workers' organizations to draw up their constitutions and rules, elect their representatives in full freedom, organize their administration and activities and formulate their programmes. Right to elect representatives freely. In its previous comments, the Committee had noted that there is no provision in the law regarding the right of workers and employers to elect their representatives. The Committee notes the Government's indication that the current practice in which workers and employers elect their representatives, on the basis of their freely drawn constitution, is in line with the Convention. The Government adds that it has taken due note of the Committee's comment which is currently under review by the social partners and the Committee will be kept informed of the outcome and measures taken as a result of these discussions. The Committee takes due note of this information.

Compulsory arbitration. In a previous direct request, the Committee had requested the Government to amend sections 8(1)(d), 12, 27 and 28 of the Industrial Relations Code so as to limit the possibility of prohibiting strikes and imposing compulsory arbitration only to those cases which would be in conformity with the Convention. The Committee notes from the Government's report that section 12 will be amended upon adoption of the draft Industrial Relations Amendment Bill through addition of a new section 12(A)(1) according to which the registrar may only refer a trade dispute to an arbitration tribunal if: (a) all the parties to the dispute request such referral; (b) the dispute is in the public services involving public servants exercising authority in the name of the State; (c) industrial action has been protracted or is tending to endanger or has endangered the personal health, safety or welfare of the community or part of it; (d) conciliation has failed and the parties are unlikely to resolve the dispute.

In this regard, the Committee once again recalls that compulsory arbitration is acceptable under the Convention only at the request of both parties to the dispute, in essential services in the strict sense of the term, and for public servants exercising authority in the name of the State. The existence of protracted disputes (subsection (c)) and the failure of conciliation (subsection (d)) are not per se elements which justify the introduction of compulsory arbitration. Furthermore, the word "welfare" introduced in relation to essential services (subsection (c)) may include issues which go beyond the health and safety of the population in a strict sense and, in that case, would be contrary to the Convention. ***The Committee requests the Government to amend the Draft Industrial Relations Amendment Bill so as to remove subsection (d) from draft section 12(A)(1)(d), as well as the reference to protracted industrial action and the "welfare of the community" from draft section 12(A)(1)(c) with a view to ensuring that compulsory arbitration is possible only where this is in conformity with the Convention.***

Furthermore, concerning the conciliation and mediation machinery, the Committee considers that it should have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness (see General Survey on freedom of association and collective bargaining, 1994, paragraph 171). The Committee observes in this regard that there are no specific time limits in the Industrial Relations Code for the exhaustion of conciliation proceedings and that sections 8(1)(a), (b), (c) and 9(1)(a) give the Registrar and the Minister the power to prolong the negotiation, conciliation and settlement procedure at their discretion, without any fixed time limits, while according to section 27(1), a strike which takes place before the exhaustion of procedures prescribed for the settlement of trade disputes, shall be unlawful. ***The Committee requests the Government to indicate the measures taken or contemplated to ensure that specific time limits are introduced in the Industrial Relations Code so that the mediation and conciliation procedure is not so complex or slow that a lawful strike becomes impossible in practice.***

Sanctions for strike action/essential services. In its previous comments, the Committee had requested the Government to lift the provision in section 37 of the Industrial Relations Code which has the effect of prohibiting

industrial action and imposing heavy penalties including imprisonment in cases where a strike might “expose valuable property to the risk of destruction”. The Committee notes with interest that the draft Industrial Relations Amendment Bill will amend section 37 of the Industrial Relations Code so as to lift this provision. ***The Committee requests the Government to keep it informed of progress made in the adoption of the Draft Industrial Relations Amendment Bill with a view to removing the provision of section 37 of the Industrial Relations Code which imposes heavy penalties including imprisonment for strikes in case they “expose valuable property to the risk of destruction”.***

The Committee also recalls that in its previous comments, it had requested the Government to amend section 37 of the Industrial Relations Code which imposes penalties of imprisonment and heavy fines for strikes in essential services. The Committee notes from the Government’s report that the draft Industrial Relations Amendment Bill will amend section 37 of the Industrial Relations Code so as to increase the relevant fines from \$100 to \$1,000 for strikes in essential services and from \$500 to \$2,000 for inciting others to participate in a strike in essential services; at the same time, the prison sentences of one year and 18 months, respectively, for strikes in essential services and incitement to participate, therein, have apparently not been amended.

The Committee further recalls that it had previously requested the Government to amend section 30 of the Industrial Relations Code, which imposes sanctions of imprisonment and heavy fines against unlawful strikes in general. The Committee notes from the Government’s report that the prison sentences have been lifted in the draft Industrial Relations Amendment Bill but that the applicable fines have been increased to \$1,000 from \$100 in case of participation in an unlawful strike and have remained at \$2,000 in case of incitement to participate in an unlawful strike.

In this respect, the Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore, measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***The Committee requests the Government to review the draft Industrial Relations Amendment Bill so as to amend sections 30 and 37 of the Industrial Relations Code in the manner indicated above.***

Articles 5 and 6. Right to establish and join federations and confederations and to affiliate with international organizations of workers and employers. In its previous comments, the Committee requested information on the provisions which guarantee the right of workers’ and employers’ organizations to join federations and confederations of their own choice and to affiliate with international organizations of workers and employers. The Committee notes from the Government’s report that the draft Trade Unions and Employers’ Organizations Amendment Bill will amend section 21(2) of the Trade Unions and Employers’ Organizations Act, 1998, so as to provide that workers’ and employers’ organizations shall have the right to join a federation of trade unions or a federation of employers’ organizations and to affiliate with and participate in the affairs of any international workers’ organization and to contribute to or receive financial assistance from those organizations. The Committee considers that the term “international workers’ and employers’ organizations” would be more appropriate than “international workers’ organizations” given that the right to affiliate with international organizations should be guaranteed not only to workers’ but also to employers’ organizations. ***It, therefore, requests the Government to amend the draft Trade Unions and Employers’ Organizations Amendment Bill and to keep it informed of progress made in the adoption of the Bill with a view to introducing provisions guaranteeing the right of employers’ and workers’ organizations to establish federations and to affiliate with international organizations of their own choosing.***

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

The Committee notes with interest from the Government’s report that the Kiribati tripartite committee drafted, with the assistance of the ILO, several amendments to national labour laws in order to give effect to the Committee’s previous comments. The Committee also notes however, that certain issues have not yet been addressed in the draft or are still under consideration.

Application of the Convention. In its previous comments, the Committee noted that section 3 of the Industrial Relations Code excludes prison officers from the application of the provision concerning collective labour disputes and reminded the Government that prison officers should enjoy the rights and guarantees enshrined in the Convention. The Committee notes from the Government’s report that due note has been taken of this comment which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress. The Government will inform the Committee on the outcome and measures taken as a result of these discussions. ***The Committee hopes that the discussions will lead to the amendment of section 3 of the Industrial Relations Code so that prison officers are not excluded from the rights and guarantees enshrined in the Convention.***

Articles 1 and 3 of the Convention. In its previous comments, the Committee had noted that protection against acts of anti-union discrimination existed only at the time of hiring, and requested the Government to take measures to amend the legislation so as to ensure comprehensive protection against such acts during the employment relationship and at the time of dismissal. The Committee had also requested the Government to take measures so that the legislation includes

express provisions for appeals and establishes sufficiently dissuasive sanctions against acts of anti-union discrimination for membership or participation in the activities of a trade union.

The Committee notes from the text of the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, that section 21 of the Trade Unions and Employer Organisations Act is to be amended by adding a subsection (3) according to which “nothing contained in any law shall prohibit any worker from being or becoming a member of any trade union, or cause a worker to be dismissed or otherwise prejudiced by reason of that worker’s membership or participation in the activities of a trade union”. Furthermore, according to subsection (4) no employer shall make it a condition of employment of any worker to neither be nor become a member of a trade union and any such condition in any contract of employment shall be void. The Committee also notes that according to subsection (5), “[a]ny employer who contravenes subsection (4) ... shall be liable to a fine not exceeding US\$1,000 and to a term of imprisonment not exceeding six months”. The Committee notes that whereas sufficiently dissuasive sanctions are provided for in relation to subsection (4), no sanctions are established in relation to a violation of subsection (3). ***The Committee therefore requests the Government to indicate in its next report the measures taken in order to modify the provisions of the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, so that sufficiently dissuasive sanctions are imposed where a worker is dismissed or otherwise prejudiced because of his or her trade union membership or participation in the activities of a trade union.***

Articles 2 and 3. In its previous comments, the Committee noted that, in the national legislation, no specific legal provisions dealt with the issue of mutual interference between employers’ and workers’ organizations and that there were no rapid procedures and sufficiently dissuasive sanctions against acts of interference by employers against workers and workers’ organizations. The Committee notes from the Government’s report that due note has been taken of this comment which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress. The Government will inform the Committee on the outcome and measures taken as a result of these discussions. ***The Committee hopes that the review currently under way will lead to measures to modify the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, so as to introduce provisions which ensure adequate protection against acts of interference in the establishment and functioning of trade unions as well as rapid procedures and dissuasive sanctions in this respect, in accordance with Articles 2 and 3 of the Convention.***

Article 4. The Committee notes with interest, that upon adoption of the Trade Unions and Employer Organisations Amendment Bill, section 41 of the Industrial Relations Code will be amended by introducing a comprehensive guarantee of the right to engage in collective bargaining over wages, terms and conditions of employment, the relations between the parties and other matters of mutual interest; this guarantee will apply to every trade union or group of trade unions and also cover public servants under the national conditions of service. Moreover, the amendment provides that regulations may be made generally for the effective exercise of the right to collective bargaining, recognition of most representative organizations and the regulation of collective agreements. ***The Committee requests the Government to indicate in its next report the progress made in the adoption of the draft amendment to section 41 of the Industrial Relations Code. It further requests the Government to specify the provisions which guarantee this right to federations and confederations and to indicate in the future any regulations adopted to promote the effective exercise of the right to collective bargaining.***

Furthermore, the Committee’s previous comments concerned sections 7, 8, 9, 10, 12, 14 and 19 of the Industrial Relations Code, which allow referral of any trade dispute to compulsory arbitration at the request of one party or by decision of the authorities. The Committee is addressing this issue under Convention No. 87.

Kuwait

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)

The Committee notes the Government’s report and its reply to the comments made by the International Trade Union Confederation (ITUC) on 10 August 2006. On 29 August 2008, the ITUC submitted additional comments on the application of the Convention. Both ITUC communications mainly refer to legislative issues already raised by the Committee in its previous observations.

The Committee had previously noted with interest the draft Labour Code, the provisions of which appear to resolve a number of discrepancies between the legislation and the provisions of the Convention that had been raised in its previous comments. In particular, it noted that the new draft Code appears to have eliminated the following provisions in the present Labour Code: the requirement of at least 100 workers to establish a trade union (section 71) and ten employers to form an association (section 86); the prohibition on joining a trade union for individuals under 18 years of age (section 72); the restrictions on trade union membership for non-national workers (section 72); the requirement for a certificate from the Minister of the Interior approving the founding members of a trade union (section 74); the prohibition on establishing more than one trade union per establishment, enterprise or activity (section 71); restrictions on the right to vote and to be elected to trade union office for non-nationals (section 72); the reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution (section 77); the restriction imposed on trade unions to

join federations only where the activities are identical, or where industries are producing the same goods or supplying similar services (section 79).

The Committee had also commented upon a number of other provisions of the draft Labour Code and requested the Government to report the progress made with respect to the draft Code's adoption. The Committee notes the Government's indication that a number of revisions have been made to the draft Labour Code, and that it was still before the People's Assembly (Majlis El Umma) for discussion and adoption. ***In these circumstances, the Committee expresses the hope that the Government will take the necessary measures to amend the draft Labour Code, in accordance with its comments below, and requests the Government to provide a copy of the final version of the draft Labour Code with its next report.***

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. Domestic workers (section 5 of the draft Labour Code). Previously, the Committee had requested the Government to amend section 5 of the draft Labour Code, which excludes domestic workers from the Code's provisions, or otherwise indicate the manner in which the right of domestic workers to establish and join organizations of their own choosing is ensured. It also requested the Government to provide a copy of the model contract it had promulgated for domestic workers and their employers. In this regard, the Committee notes that the Government requests assistance with regard to the difficulty in extending the draft Labour Code's provisions to domestic workers since, as domestic workers are considered members of the family, it is difficult for the labour inspection department to enter private households to verify the application of the Code. ***In these circumstances, the Committee expects that the assistance requested will be provided by the Office in the very near future so as to guarantee domestic workers the right to establish and join occupational organizations. The Committee further requests the Government to indicate the legislation which governs labour relations of domestic workers.***

Other categories of worker (section 5 of the draft Labour Code). Previously, the Committee had asked the Government to clarify the types of workers governed by other laws referred to in the exclusions set forth in section 5 of the draft Code. The Government states in this regard that the workers covered by other laws are government employees, seafarers and employees in the oil sector. ***The Committee requests the Government to indicate the manner in which the right to establish and join organizations of their own choosing is ensured to the abovementioned categories of workers and to provide copies of the legislation applicable to them – including the law governing the oil sector and the Civil Service Act.***

Article 3. Minister's excessive power to examine the financial books and records of workers' and employers' organizations, and the global prohibition on accepting donations and legacies without approval of the ministry (section 100 of the draft Labour Code). The Committee had previously requested the Government to indicate whether section 100 of the draft Labour Code had been revised so as to ensure the right of workers' and employers' organizations to organize their administration, including their finances, without interference by the public authorities. In respect of this matter, the Committee notes with interest the Government's indication that this provision has been annulled.

Overall prohibition on trade union political activities (section 100 of the draft Labour Code). Previously, the Committee had requested the Government to consider revising section 100 of the draft Code so as to eliminate the total ban on the political activities of workers' and employers' organizations, and to indicate the progress made in this regard. The Committee notes that the Government reiterates that the ban on political activities has been maintained, as such activities lie outside the purview of trade unions; the said prohibition is set out in subsection (1) of the new section 101 of the draft Labour Code. In these circumstances, the Committee once again recalls that legislation which prohibits all political activities for trade unions give rise to serious difficulties with regard to the provisions of the Convention. Some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interest of organizations in expressing their point of view on matters of economic and social policy affecting their members and workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 133). ***The Committee requests the Government to consider revising section 101 (formerly section 100) of the draft Code, so as to eliminate the total ban on political activities in keeping with the abovementioned principle, and to indicate any progress made in this regard.***

Compulsory arbitration (sections 120 and 124 of the draft Labour Code). The Committee had previously noted that under section 120 of the draft Code the Conciliation Committee may, if it is unable to settle a dispute, refer the unsettled issues to the arbitration tribunal. The Committee had also noted that section 124 – now section 125, according to the Government – allows the competent ministry to intervene in a dispute without being asked to do so by any of the disputing parties, if need be, to bring about an amicable settlement of the dispute, and may also refer the dispute to the Conciliation Committee or the arbitration tribunal, as it deems appropriate.

The Committee notes the Government's request for clarification of its previous comment concerning these sections. In this respect, the Committee recalls that, in as far as, compulsory arbitration prevents strike action, 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. ***In these circumstances, the Committee once again requests the Government to amend sections 120 and 124 of the draft Labour Code, so as to ensure their full conformity with the principles mentioned above.***

Article 5. Right of workers' and employers' organizations to establish federations and confederations. Right of employers to form federations (section 95 of the draft Labour Code). The Committee had previously noted that section 95 – now section 96, according to the Government – provides that employers shall have the right to form federations, according to the terms and conditions issued by the Minister, and requested the Government to provide information on any regulations issued by the Minister in this regard. The Committee notes the Government's indication that no regulations have been promulgated under it.

Restriction to one single federation (section 101 of the draft Labour Code). In its previous comment, the Committee requested the Government to amend section 101 of the draft Labour Code, which limits trade unions to the establishment of a single general federation. In this connection, the Committee notes with interest the Government's statement that this provision has been annulled. Nevertheless, the Committee further notes the Government's indication that section 102 has been amended to read as follows: "Trade unions which are proclaimed in accordance with the provisions of this chapter shall establish federations which defend their common interests. Proclaimed federations set up in accordance with the provisions of this chapter shall constitute a Confederation. The federations and the Confederation which are set up shall follow the same procedures as set out in the establishment of trade unions." The Committee observes that section 102, as amended, would appear to permit first-tier trade union and federation multiplicity but limits federations to the formation of a single confederation. ***In these circumstances, the Committee requests the Government to take the appropriate measures to amend section 102 of the draft Labour Code, so as to ensure the right of workers to establish the organization of their own choosing at all levels, including the possibility of forming more than one confederation.***

Lesotho

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1966)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 29 August 2008 concerning issues already raised by the Committee.

Article 3 of the Convention. The Committee recalls that its previous comments concerned sections 198F and 198G(1) of the Labour Code as introduced in the draft Amendment Bill (2006). In particular, the Committee had noted that section 198F provided access to the enterprise (in order to communicate with management, recruit members or perform other trade union functions) only to an authorized officer or official of a trade union which represented more than 35 per cent of the employees. The Committee had expressed its concern at practical effect that such a provision may have on the choice of workers of their trade union. The Committee notes the Government's explanation to the effect that the issue of access to the enterprise is guaranteed by section 198 of the Labour Code which provides for "reasonable facilities for conferring" and which will not be amended. The Government adds that the purpose of new section 198F is to conclude a written collective agreement regulating the issues of access which is mandatory in certain circumstances. The Committee notes that while section 198 imposes, in general terms, an obligation on employers to provide to trade union officers reasonable facilities, section 198F expressly grants specific advantages (access to premises to meet representatives of the employer, to recruit members, to hold a meeting of members and to perform any trade union functions in terms of a collective agreement) only to an authorized officer or official of a trade union that represents more than 35 per cent of the employees.

In addition, the Committee had previously noted that section 198G(1) specified that only the members of a registered trade union, which represented more than 35 per cent of the employees of an employer that employed ten or more employees, were entitled to elect workplace union representatives. The Committee had therefore requested the Government to amend section 198G(1) so as to allow all workers to either participate as candidates or voters in the election of workplace representatives. The Committee notes the Government's argument that the purpose of framing organizational rights is to require the employer, once the representativity threshold is met, to recognize these representatives. The Government is of the opinion that it would be inconsistent with the Convention to compel trade unions to allow non-members to vote in the election of trade union representatives.

The Committee considers that the 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 (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 98). ***The Committee reiterates its previous comments and requests the Government to indicate the manner in which the above provisions influence the workers' choice of their trade union organization, as well as their right to elect their representatives.***

The Committee had previously noted that section 51 of the draft Amendment Bill (amending section 232(5) of the Labour Code) provides that any strike in pursuance of a trade dispute that threatens the continuance of any essential service shall be unprotected. It further noted that under section 51 a strike that had commenced could be deemed to be

unprotected retroactively, in cases where the Labour Commissioner or the Labour Court find that the strike concerned an essential service; as a consequence, workers could be dismissed or incur liability in tort not only for participating in an unprotected strike, but also for any conduct in contemplation or furtherance of an unprotected strike (new section 231 of the Labour Code introduced by section 50 of the draft Amendment Bill). The Committee had therefore requested the Government to consider amending or supplementing the law by adding a list of specific services which are considered to be essential – i.e. services, the interruption of which might endanger the life, personal safety or health of the whole or part of the population – or, in the alternative, to amend section 232(5) so that a strike becomes unprotected only if it continues after the Labour Court has decided that it concerns an essential service. The Committee notes that the Government refers to legislation which lists those services deemed to be essential. **Noting, however, that it has not been attached, the Committee requests the Government to transmit a copy of the legislation setting out essential services in its next report.**

Finally, the Committee recalls that its previous comments concerned the Public Services Act, 2005. It notes that according to the Government, the Committee's comments on this law have been brought to the attention of the National Advisory Committee on Labour (NACOLA), and that NACOLA had in turn requested that these matters be referred to the Ministry of Public Service. **Noting this information, the Committee expresses the hope that the Government will soon be in a position to provide full information on the measures taken:**

- **to amend section 19 of the Public Services Act (2005) so as to ensure that the prohibition of the right to strike in the public service is limited to public servants exercising authority in the name of the State;**
- **to establish compensatory guarantees, such as arbitration machinery for those workers who may be deprived of the right to strike; and**
- **to ensure that public officers' associations established under the Public Services Act are guaranteed the right to establish federations and confederations and affiliate with international organizations.**

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

The Committee notes the Government's report and its reply to the 6 November 2006 comments submitted by the Congress of Lesotho Trade Unions (COLETU). It also notes the comments submitted by the International Trade Union Confederation (ITUC) on 29 August 2008, which primarily refer to matters previously raised by the Committee. **Referring to its previous comments on the 2006 draft Amendment Bill, which amends several provisions of the Labour Code Order 1992, the Committee once again requests the Government to indicate the progress made with respect to the Bill's adoption and to provide a copy of the legislation as soon as it is adopted.**

Article 4 of the Convention. Collective bargaining in the education sector. In its previous comments the Committee had taken note of statements submitted by the ITUC and COLETU on the Government's long-standing obstruction of collective bargaining in the education sector, including COLETU's observation that a case brought by its affiliate the Lesotho Teachers Trade Union (LTTU) had been pending before the High Court for 11 years, and had requested the Government to take all necessary measures so as to promote a prompt and negotiated solution to the long-standing disputes concerning teachers in the public sector.

The Committee notes that according to the Government, the case referred to by COLETU was filed in the Labour Court. The President of the Labour Court had recused himself in respect of this case, and the union has not pursued the matter through its legal counsel since. While noting this information, the Committee nevertheless regrets that the Government provides no indication that it has taken steps to promote a solution to the long-standing disputes in the education sector, as previously requested. **It therefore once again requests the Government to take all necessary measures so as to promote a prompt and negotiated solution to the long-standing disputes concerning teachers in the public sector and guarantee to them the rights enshrined in the Convention.**

Representativeness requirements for certification of a union as the exclusive bargaining agent. The Committee had previously noted that section 198B(2) of the Labour Code, as amended by the 2006 draft Amendment Bill, provides that the arbitrator may conduct a ballot "if appropriate" in the determination of disputes concerning trade union representativity. It had subsequently requested the Government to amend the Labour Code by introducing a formal requirement for ballots to be held in determination of trade union representativity, thereby removing the arbitrator's discretion as to whether a ballot is "appropriate" in the circumstances. In this respect, the Committee notes the Government's statement that leaving the decision to conduct a ballot to the arbitrator's discretion is justified, as not all disputes concerning trade union representativity – such as those concerning whether particular employees fall inside the relevant bargaining unit or not – may be resolved by resorting to a ballot. The Government further indicates that the decisions of the arbitrator are subject to review by the Labour Court. **The Committee trusts that under section 198B(2) of the Labour Code, as amended, disputes which require the holding of elections to determine which trade union is most representative are disposed of by means of a ballot. Additionally, the Committee once again 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.**

Recognition of the most representative union. The Committee had 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) specifies that “a majority of employees in the employ of an employer means over 50 per cent of those employees”. It had subsequently requested the Government to take the necessary legislative measures so as to ensure that when no union covers more than 50 per cent of the workers, collective bargaining rights are granted to all the unions in the unit, at least on behalf of their own members. The Committee notes that according to the Government, complying with the Committee’s request would require employers to enter into negotiations with several minority trade unions, leading to trade union fragmentation and inconsistent terms and conditions of employment for different employees. Such an approach, the Government further indicates, would be contrary to the country’s accepted industrial relations practices.

While noting this information, the Committee is compelled to recall that problems may arise when the law stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent; a representative union which fails to secure this absolute majority is thus denied the possibility of bargaining. The Committee considers that under such a system, if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). **Accordingly, the Committee requests the Government to take the necessary measures to amend the Labour Code so as to ensure respect for the abovementioned principle.**

Liberia

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, which are in the process of being translated. The points raised therein will be taken up by the Committee in its subsequent examination of the application of the Convention.

The Committee recalls that for many years it has been asking the Government to take the necessary steps to amend or repeal the following provisions, which are inconsistent with *Articles 2, 3, 5 and 10 of the Convention*:

- Decree No. 12 of 30 June 1980 prohibiting strikes;
- section 4601-A of the Labour Practices Law prohibiting agricultural workers from joining industrial workers’ organizations;
- section 4102, subsections 10 and 11, of the Labour Practices Law providing for the supervision of trade union elections by the Labour Practices Review Board; and
- section 4506 of the Labour Practices Law prohibiting workers in state enterprises and the public service from establishing trade unions.

In this regard, the Committee notes *with satisfaction* the Government’s statement that Decree No. 12 was repealed by an Act signed into law on 9 October; it requests the Government to provide a copy of the repealing legislation with its next report. The Committee further notes with interest the Government’s indication that it has initiated a labour law reform process that is being facilitated by the ILO. Under this reform process, consultations with stakeholders are being held until December 2008, and will be followed by a National Labour Conference in January 2009; the recommendations emanating from the consultations will be analysed and reviewed at the Conference, with a view to drafting a final revision of the laws. **Noting that the foreseen revisions will take into account provisions of the legislation that had previously been identified as in violation of ILO Conventions, including sections 4601-A, 4102 and 4506 of the Labour Practices Law, the Committee expresses the firm hope that the labour law reform process will result in their repeal or amendment in the near future and requests the Government to indicate, in its next report, the progress made in this regard.**

Finally, the Committee requests the Government to send its observations in respect of the 2006 ITUC comments concerning threats of arrest and prosecution of civil servants who took part in a strike in 2005.

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, which are in the process of being translated. The points raised therein will be taken up by the Committee in its next examination of the application of the Convention.

The Committee notes the Government’s indication that it has initiated a labour law reform process that is being facilitated by the ILO. Under the reform process, consultations with stakeholders are being held until December 2008, and will be followed by a National Labour Conference in January 2009; the recommendations emanating from the consultations will be analysed and reviewed at the Conference with a view to drafting a final revision of the laws. Further

noting that the foreseen revisions will take into account provisions of the legislation that have been highlighted by the Committee as contravening ILO Conventions, the Committee expresses the hope that the reform process will take into full consideration the matters the Committee has been commenting upon for many years, which concern the need for:

- legislation guaranteeing to workers adequate protection against anti-union discrimination at the time of recruitment, and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions;
- legislation guaranteeing to workers' organizations protection against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and
- legislation guaranteeing the right to collective bargaining to employees in state-owned enterprises and public servants who are not public officials engaged in the administration of the State.

The Committee, once again pointing out the seriousness of the problems it has raised, expresses the firm hope that the labour law reform process will result in the near future in bringing the legislation into full conformity with the requirements of the Convention. It further requests the Government to provide information in its next report on developments in this regard.

Libyan Arab Jamahiriya

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

Article 1 of the Convention. Protection against acts of anti-union discrimination. In previous comments, the Committee had drawn the Government's attention to the need to amend section 34 of Act No 107 of 1975 on Trade Unions, which does not provide for protection of workers against acts of anti-union discrimination at the time of recruitment. Moreover, the Committee had also referred to the absence of legal protection for public servants not engaged in the administration of the state, agricultural workers and seafarers, against acts of anti-union discrimination both at the time of recruitment and during the employment relationship.

The Committee notes that: (1) with respect to the absence of protection against acts of anti-union discrimination at the time of recruitment, the Government refers to its previous comments according to which discrimination at the time of recruitment is not possible as workers are mandatorily recruited and placed through official employment offices and trade union membership is not part of the criteria by which these employment offices place registered workers; (2) concerning the protection of public servants not engaged in the administration of the State, agricultural workers and seafarers, at the time of recruitment and during the employment relationship, the Government indicates that these categories of workers have their own union (Unions of Administration Workers, Unions of Peasants and Breeders and Unions of Seafarers and Ports) that ensure the protection and defence of their rights; (3) the Government's indication that a draft new Labour Relations Act is being submitted to the Fundamental People's Congress for its promulgation. ***While taking due note of the Government's information on the national practice, the Committee requests the Government to take the necessary measures to ensure that the new legislation to be adopted protects explicitly and through sufficiently dissuasive sanctions all workers (including public servants not engaged in the administration of the State, agricultural workers and seafarers) against all acts of anti-union discrimination at the time of recruitment and during the employment relationship, and requests the Government to indicate in its next report any steps taken or contemplated in this respect.***

Article 4 of the Convention. Collective bargaining. The Committee previously referred to sections 63, 64, 65 and 67 of the Labour Code, which require the clauses of collective agreements to be in conformity with the national economic interest, thus violating the principle of the voluntary negotiation of collective agreements and the autonomy of the bargaining parties. The Committee notes the Government's indication that the draft Act on labour relations has repealed the abovementioned provisions and has redrafted them so as to give collective bargaining full scope taking into account the Committee's previous observation. ***The Committee notes this information with interest and requests the Government to indicate any development concerning the adoption of the draft law on labour relations.***

The Committee had also referred to the absence of collective agreements covering public servants not engaged in the administration of the State, agricultural workers and seafarers. In this respect, the Committee notes the Government's information that these workers enjoy the full right to bargain collectively and that the new draft Labour Code regulates collective bargaining at its various levels. ***In this regard, the Committee expresses the hope that the new draft Labour Code or any other legislation will expressly grant public servants not engaged in the administration of the State, agricultural workers and seafarers the right to bargain collectively and invites the Government to communicate any collective agreement in force concerning these categories of worker.***

Finally, the Committee notes the comments submitted by the International Trade Union Confederation (ITUC) on 29 August 2008, according to which the Government sets salaries unilaterally. ***The Committee requests the Government to send its observations thereon. The Committee also requests the Government to provide statistics on the number of collective agreements presently in force by sector, and the number of workers they cover.***

Lithuania

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1994)

The Committee notes the Government's report and its reply to the 2006 comments of the International Confederation of Free Trade Unions (ICFTU).

Article 3 of the Convention. The Committee recalls that its previous comments concerned certain restrictions imposed on the exercise of the right to strike (sections 77, 78 and 80 of the Labour Code). The Committee notes that these legislative provisions have since then been amended and notes the text of the relevant amendments as entered into force on 1 July 2008. In this respect, the Committee wishes to raise the following points.

(a) *Unilateral determination of minimum service.* The Committee had previously requested the Government to amend section 80(2) of the Labour Code so as to ensure that, in the event of disagreement among the parties to the collective labour dispute on the minimum service, the definition of the service to be ensured may be determined by an independent and impartial body. The Committee notes that according to the new amendment to subsection 2, the minimum services shall be determined by the parties to the collective dispute within three days from the day of submission of warning about the strike to the employer. The Committee notes, however, that, according to subsection 3, if no agreement is reached by the parties to the dispute, the decision shall be made by the Government or a municipal executive body upon consultation with the parties to the dispute. The Committee considers that it would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161). As regards the legal requirement that any disagreement on the minimum services shall be settled by the authorities, the Committee is of the opinion that the legislation should provide for any such disagreement to be settled by an independent body, and not by the Government or a municipal executive body. **The Committee therefore requests the Government to take the necessary measures to amend section 80(3) of the Labour Code accordingly and to indicate any progress made in this respect.**

(b) *Strike ballot.* The Committee had previously requested the Government to amend section 77(1) of the Labour Code so as to lower the quorum (set at two-thirds of the enterprise employees voting in favour of a strike at the enterprise; and two-thirds of employees of a structural subdivision of the enterprise and at least half of the employees of the enterprise voting in favour of a strike in the structural subdivision of the enterprise) and to ensure that, account it taken only of the votes cast. The Committee notes with interest that according the new amendment, the right to adopt a decision to declare a strike is vested in the trade union according to the procedure laid down in its regulations. If an enterprise has no operational trade union and the meeting of workers has not conveyed the function of representation and protection of workers to a trade union of relevant economic branch, the labour council shall have to right to adopt a decision to declare a strike.

(c) *Compensatory guarantees.* In its previous comments, the Committee had requested the Government to provide information on the manner in which claims of workers in essential services are settled and on the relevant body responsible for taking the final decision in this respect. The Committee notes that, by virtue of the recent amendments, strikes are prohibited in first aid medical services and the demands put forward by the workers concerned are settled by the Government upon consultation with the parties to the collective labour dispute (section 78). The Committee recalls in this respect that if the right to strike is subject to restrictions or a prohibition, workers who are thus deprived of an essential means of defending their socio-economic and occupational interests should be afforded compensatory guarantees, for example conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery seen to be reliable by the parties concerned. It is essential that the latter be able to participate in determining and implementing the procedure, which should furthermore provide sufficient guarantees of impartiality and rapidity (see General Survey, op. cit., paragraph 164). **The Committee therefore requests the Government to amend section 78(1) accordingly and to indicate the measures taken or envisaged in this respect.**

(d) *Strikes in nuclear facilities.* With respect to the Committee's previous request to provide information on any use of section 199(4) of the Criminal Code providing for criminal liability for strikes at nuclear facilities, the Committee notes with interest the Government's indication that the Criminal Code of 1961 became invalid on 1 May 2003 and that the Criminal Code of 2000 (in force as of 1 May 2003) does not criminalize strikes at nuclear facilities.

Madagascar

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

In its previous comments, the Committee noted the observations made by the International Confederation of Free Trade Unions (ICFTU) in 2006 concerning cases of interference by the authorities in trade union matters, repression of trade unionists who participated in strikes in the public service and impediments to the right to strike in the maritime sector. In its reply, the Government indicates that, with regard to the trade union leader dismissed by the University of

Antananarivo for leaving his post, the latter was subject to a disciplinary measure as he did not want to return to his former post following a temporary appointment at the Ministry of the Public Service, Labour and Social Legislation. It was merely a penalty against a public employee who had failed in his professional duties and not a measure against a trade unionist. With regard to disputes in the maritime sector, the Government indicates that it organized a round-table meeting between the parties to the dispute prior to an investigation of the alleged anti-union acts, further to the recommendations of the Committee of Freedom of Association (Case No. 2391). ***The Committee requests the Government to provide in its next report the findings of the independent investigation into discriminatory practices in the maritime sector and any action taken on these findings.***

The Committee notes the comments dated 29 August 2008 of the International Trade Union Confederation (ITUC) concerning legislative matters already raised by the Committee in its previous comments, restrictions on the exercise of freedom of association in export processing zones, the risks of anti-union discrimination under a Decree of 2000 requiring trade unions, among other measures, to provide the list of their members, and interference by the authorities in the appointment of worker representatives to tripartite bodies. ***The Committee requests the Government to provide its observations in reply to the ITUC's comments.***

Legislative matters. Furthermore, in its previous comments, the Committee noted that Act No. 2003-044 of 28 July 2004 issuing the Labour Code did not take into account the Committee's comments on several issues of non-conformity with the Convention.

Article 2 of the Convention. Workers governed by the Maritime Code. The Committee noted previously that the Labour Code maintains the exclusion from its scope of workers governed by the Maritime Code, and that the Maritime Code does not contain sufficiently clear and precise provisions ensuring the right of the workers to whom it applies to establish and join trade unions, as well as the related rights. It requested the Government to take the necessary measures to ensure that this right is recognized by the legislation and to indicate any measure taken or envisaged in this regard. The Committee notes the Government's indication in its report that the Maritime Code of 2000 is under revision, that a draft new Code was presented in August 2008 during a workshop and that the draft text includes new provisions guaranteeing seafarers the right to establish and join unions, as well as all the related rights. ***The Committee notes these indications and requests the Government to provide a copy of the new Maritime Code once it has been adopted.***

Article 3. Representativeness of workers' and employers' organizations. The Committee noted previously that section 137 of the Labour Code provides that the representativeness of employers' and workers' organizations participating in social dialogue at the national level "shall be established with the elements provided by the concerned organizations and the labour administration". It indicated that, in order to avoid any interference by the public authorities in the decision regarding the representativeness of occupational organizations, this decision has to be made by an independent body having the confidence of the parties according to a procedure that offers full guarantees of impartiality. The Committee finally noted that a draft Decree on trade unions and representativeness had been submitted to the National Labour Council for discussion. The Government indicates that the draft text in question was not adopted unanimously and that discussions are still continuing on the matter. ***The Committee requests the Government to indicate any further developments in its next report.***

Compulsory arbitration. The Committee noted previously that, under sections 220 and 225 of the Labour Code, in the event of the failure of mediation, the collective dispute shall be submitted by the ministry responsible for labour and social legislation either to a contractual arbitration procedure, in conformity with the collective agreement between the parties, or to the arbitration procedure of the competent labour court. The arbitration award is final and without appeal and brings an end to the dispute, including any strike that has been called in the meantime. In this respect, the Committee emphasized that recourse to compulsory arbitration to end a collective labour dispute is only acceptable if it is at the request of both parties involved in the dispute and/or in the case of disputes in essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population. It indicated that, with the exception of cases in which it is derived from an agreement between the two parties, an arbitration procedure which gives rise to a final decision bringing an end to a strike constitutes, in sectors other than essential services, interference by the public authorities in the activities of trade unions, in conflict with *Article 3* of the Convention. Finally, it requested the Government to take all the necessary measures to amend the respective provisions of the Labour Code. The Government merely indicates that in the event of the failure of mediation it is the responsibility of the mediator (labour inspector or the ministry responsible for labour) to submit the dispute to arbitration. It adds that in certain cases the presence of the authorities in the settlement of disputes is requested by the employer to accelerate the procedure. ***The Committee therefore once again requests the Government to take the necessary measures to amend the provisions of the Labour Code so as to ensure that recourse to arbitration to bring an end to a collective labour dispute can only be decided upon at the request of both parties and/or in the case of a strike in essential services in the strict sense of the term, that is in services the interruption of which would endanger the life, health or personal safety of the whole or part of the population. Accordingly, the right of workers' organizations to organize their activities and to formulate their programmes without interference by the public authorities, including the exercise of the right to strike in sectors other than essential services, would be respected in accordance with Article 3.***

Requisitioning. The Committee noted previously that section 228 of the Labour Code provides that the right to strike "may only be limited by requisitioning in case of the disruption of public order or where the strike would endanger

the life, safety and health of the whole or part of the population". The Committee indicated that the reference to cases of "acute national crisis", rather than to the notion of the disruption of public order, would better reflect the position of the ILO supervisory bodies and would moreover lead to the repeal of section 21 of the Act No. 69-15 of 15 December 1969, which provides for the possibility of requisitioning workers in the event of the proclamation of a state of national necessity. ***Noting the Government's indication that it has taken due note of its comments, the Committee trusts that the Government will soon report measures to formally amend section 228 of the Labour Code and Act No. 69-15, referred to above, in accordance with the principals recalled in this respect.***

Sanctions in the event of strike action. The Committee noted previously that, under the terms of section 258 of the Labour Code, the "instigators and leaders of illegal strikes" shall be punished with a fine and/or imprisonment. The Committee recalls that it should only be possible to impose disciplinary sanctions for strike action in cases where the prohibitions in question are in conformity with the principles of freedom of association and that such sanctions should not be disproportionate to the seriousness of the violations. ***Nothing that the Government has taken due note of its comments, the Committee requests it to ensure that no penalty of imprisonment nor any other penal sanction may be imposed on workers or trade unionists who organize or participate in a peaceful strike. It requests the Government to indicate any measure adopted in this respect.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)

The Committee notes the comments made by the International Trade Union Confederation (ITUC), dated 29 August 2008, which refer to legislative matters already raised by the Committee in its previous comments, to the fact that trade union rights do not apply to workers in essential services, which include the radio and television broadcasting sectors and the banking sector, and to the absence of social dialogue in the mining sector and export processing zones. ***The Committee requests the Government to provide its comments in reply to the observations of the ITUC.***

Article 4 of the Convention. Determining representativeness. In its previous comments, referring to section 183 of the Labour Code which establishes a number of criteria for determining the representativeness of organizations of employers and workers, the Committee noted the Government's indication that a draft decree on trade unions and representativeness had been sent to the National Labour Council for debate. In its report, the Government indicates that the draft could not be adopted due to a lack of unanimous support and that discussions are still being held on the matter. ***The Committee requests the Government to indicate in its next report any developments in this regard and to provide a copy of any text adopted.***

Promotion of collective bargaining. Referring to the provisions of the Labour Code on collective bargaining, the Committee previously noted that the Labour Code protects, above all, collective bargaining in enterprises with more than 50 workers. It asked the Government to promote collective bargaining in small and medium-sized enterprises. The Government indicates in its report that no provision actually mentions the compulsory nature of bargaining for enterprises with fewer than 50 workers, but that such bargaining should not give rise to problems since it is in the workers' interest. ***The Committee requests the Government to provide information on the measures adopted to promote collective bargaining in enterprises employing fewer than 50 workers as well as on the collective agreements concluded in these enterprises.***

Article 6. Collective bargaining for seafarers and public servants. In its previous comments, the Committee noted that the Labour Code excludes public servants and maritime workers from its scope and asked the Government once again to take the necessary steps to ensure the adoption of specific provisions on the collective bargaining rights of seafarers governed by the Maritime Code and of public servants not engaged in the administration of the State. The Committee notes that the Government indicates in its report that the Maritime Code of 2000 is in the process of being revised, that a draft new Code was presented in August 2008 at a workshop, and that this draft includes new provisions guaranteeing the right of seafarers to establish and join trade unions and all related rights. ***The Committee notes this information with interest and trusts that the draft new Maritime Code will provide that the rights guaranteed by the Convention are extended to seafarers. The Committee requests the Government to provide a copy of the new Maritime Code as soon as it is adopted.***

With regard to the right of collective bargaining of public servants not engaged in the administration of the State, the Government indicates that these persons are governed by Act No. 94-025 of 17 November 1994 on the general conditions of service of contractual public employees, and also by Decrees Nos 64-213 and 64-214 of 27 May 1964, except for those provisions which have been repealed by the Act of 1994. These public servants are connected to the public bodies which employ them only by a precarious contractual link which may be revoked in circumstances arising from the labour regulations and from the provisions of the Act. The general labour regulations therefore apply by extension where other texts concerning these persons are not applied. In any case, the Committee holds the view that the situation as described by the Government is likely to create uncertainty with regard to the legal framework applicable and may therefore hinder the development of collective bargaining within the meaning of the Convention and other trade union activities. ***The Committee therefore requests the Government to adopt, without delay, 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 on their conditions of employment.***

The Committee trusts that the Government will take the necessary steps in the near future to ensure that the guarantees of the Convention apply to all public servants and public sector employees not engaged in the administration of the State and will give an account of any progress made in this regard in its next report. The Committee requests the Government to provide any collective agreement concluded in the public sector.

The Committee is examining the matter of compulsory arbitration when mediation fails in its observation on the application of Convention No. 87.

Malawi

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

The Committee notes the Government's report and its reply to the comments submitted by the International Trade Union Confederation (ITUC) dated 29 August 2008. The ITUC's comments mainly refer to matters previously raised by the Committee on the right to strike.

In its previous comments, the Committee, noting that sections 45(3) and 47(2) of the Labour Relations Act empower the parties concerned to apply to the Industrial Relations Court for a determination as to whether a particular strike involves an essential service, had requested the Government to provide information on any strike declared illegal and the reasons therefore, as well as on any decisions rendered by the Industrial Relations Court under these sections of the Labour Relations Act. The Government indicates in this regard that the procedures set out in the Labour Relations Act concerning strike action are often not followed by unions, which leads to many strikes being declared illegal, and adds that, with international assistance, it has intensified tripartite discussion on, among other things, the issue of illegal strikes. *The Committee once again requests the Government to provide information on any strike declared illegal and the reasons therefore, as well as on any decisions rendered by the Industrial Relations Court, under sections 45(3) and 47(2) of the Labour Relations Act.*

A request concerning other points is being addressed directly to the Government.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 concerning the application of the Convention in the informal sector. *The Committee requests the Government to provide its observations thereon.*

Malaysia

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) on 29 August 2008, according to which the Government in the National Labour Advisory Council (tripartite body) did not consult with the labour movement with regard to the tabling of the Industrial Relations (Amendment) Bill 2007 which restricts union rights in the process of recognition by the employer (i.e. the secret ballot of workers to be undertaken allows the employer to manipulate the size of the bargaining unit for the purpose of the election, etc.). *The Committee notes that the Government refers to tripartite consultation concerning the Bill; thus, it requests the Government to submit detailed observations to permit it to examine the Bill's conformity with the Convention and to provide a copy of the Bill once adopted.*

The Committee notes the comments by the ITUC reiterating issues previously raised by the Committee regarding long delays in the treatment of union claims to obtain recognition for collective bargaining purposes. The Committee notes that, according to the 2006 Government report, the cause of the delay is mainly due to the time taken by legal proceedings lodged either by trade unions or an employer against the decision of the Director-General of Trade Unions (DGTU) on issues of competency or membership verifications. The Committee notes that, according to the Government, the Bill is shortening the timeframe for recognition of trade unions. *The Committee requests the Government to submit more precise information on the ITUC's comments in the light of the provisions of the Bill and to indicate the average duration of proceedings for the recognition of a union, as well as the requirements for obtaining recognition.*

The Committee notes the Government's statement about the comments previously made by the ITUC with regard to the inefficiency of labour courts concerning the application of the provisions of the Convention. The Government indicated that: (1) efforts are made to further increase the number of Industrial Court chairmen who will be assigned to deal with cases in designated areas; (2) recently implemented and computerized case management in the Court will help the Court President to monitor more closely cases in the courts; and (3) this process is supposed to expedite the issuance of awards. On this matter, the Committee notes the ITUC's comments that the Government failed to apply any sanctions against employers who opposed the directives of the authorities granting trade union recognition or who have refused to

comply with Industrial Court orders to reinstate unlawfully dismissed workers. ***The Committee requests the Government to submit its observations on these matters.***

Restrictions on collective bargaining for certain categories of worker. The Committee had urged the Government to repeal section 15 of the Industrial Relations Act (IRA), which limited the scope of collective agreements for companies granted “pioneer status”, for instance with respect to election campaigns. The Committee notes with ***satisfaction*** the deletion of section 15 of the IRA due to the amendment of the aforementioned legislation.

The Committee notes that, according to the ITUC, 2.6 million migrant workers in Malaysia are prevented by law from organizing or applying to register a trade union and are barred from serving as officers of a trade union. The ITUC adds that the system for registering migrant workers discourages them from asserting their rights because it grants total discretion to employers to terminate workers for virtually any reason. The Committee notes that, according to the Government, foreign and local workers enjoy equal rights; migrant workers can join a union but cannot be elected as trade union officers. ***Recalling that workers, including migrant workers, should enjoy the right to elect their representatives freely, the Committee requests the Government to communicate its observations on the exercise of trade union rights by migrant workers in law and in practice.***

Scope of collective bargaining. The Committee had previously urged the Government to amend the legislation so as to bring 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”), into full conformity with *Article 4 of the Convention*. The Committee notes that the Bill amends section 13 by inserting three subject matters in a proposal for a collective agreement (training to enhance skills and knowledge of the workmen; annual review of the wage system; and a performance-based remuneration system). The Committee notes that according to the Government: (1) section 13(3) of the IRA is not intended to limit collective bargaining, but rather to provide for the right of employers to run their business in the most efficient way and to protect from abuse of the collective bargaining process; (2) these requirements are not absolute and matters relating to them may be brought to the Industrial Relations Department and, if no settlement is reached, the matter may be referred to the Industrial Court for adjudication; and (3) in matters concerning transfers, parties are allowed to discuss the procedures for promotion of a general character. The Committee underlines that section 13 of the IRA restricts the scope of negotiable matters. ***The Committee reiterates therefore that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 250) and once again requests the Government to amend section 13(3) of the IRA so as to remove these restrictions on collective bargaining matters. Furthermore, the Committee requests the Government to indicate whether there are any judicial decisions by the Industrial Court on this point and, if so, to transmit copies of the same in its next report.***

Compulsory arbitration. The Committee notes that section 26(2) of the IRA allows compulsory arbitration, by the Minister of Labour of his own motion even in case of failure of collective bargaining. The Committee recalls that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements established in the Convention, and thus the autonomy of bargaining partners (see General Survey, op. cit., paragraph 257). ***Therefore, the Committee requests 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 had previously requested the Government to provide information on the possibility of collective bargaining under the auspices of the National Joint Council and the Departmental Joint Council.

The Committee notes that the Government states that: (1) it has its own forum, i.e. the National Joint Council and the Department Joint Council, to discuss grievances in the public sector and to consider any suggestions to improve terms and conditions of employment of public servants; (2) the outcomes of consultations pertaining to salaries and remuneration are subject to the decision of the Cabinet Committee on Establishment and Salaries of Employees in the Public Sector, and are to be tabled and legislated in Parliament; and (3) it maintains its position of not recognizing the right to collective bargaining of public servant unions not engaged in the administration of the State.

The Committee recalls that, while the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by the Convention, the special characteristics of the public service require some flexibility in its application. Thus, legislative provisions allowing Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations, or to establish an overall “budgetary package”, within which the parties may negotiate monetary or standard-setting clauses (i.e. reduction of working hours, varying wage increases according to levels of remuneration), are compatible with the Convention, provided they leave a significant role to collective bargaining (see General Survey, op. cit., paragraphs 261–264). The Committee considers that simple consultation 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 requests 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.***

Mali

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

The Committee notes the observations of 29 August 2008 by the International Trade Union Confederation (ITUC) on the application of the Convention in practice which refer in particular to the requisitioning of airport services during a general strike in June 2007. In its reply of October 2008, the Government denies the use of requisitioning in airport services or any other sector.

Article 3 of the Convention. Right of workers' organizations to formulate their programmes without interference from the public authorities. In its previous comments, the Committee recalled the need to amend section L.229 of the 1992 Labour Code in order to limit the power of the Minister of Labour to resort to arbitration to end strikes liable to cause an acute national crisis. This provision allows the Minister of Labour to refer some disputes to compulsory arbitration, not only where they involve essential services the interruption of which is likely to endanger the life, personal safety or health of the population, but also where the dispute is liable to "jeopardize the normal operation of the national economy or involves a vital industrial sector". The Committee notes that in its report, the Government states that a draft amendment has been prepared and is to be submitted to the Higher Labour Council. ***The Committee trusts that the Higher Labour Council will shortly examine the draft amendment of section L.229 to bring this provision into line with the Convention. It asks the Government to indicate in its next report any progress made in this regard.***

The Committee's previous comments also addressed the matter of Decree No. 90-562 P-RM of 22 December 1990 establishing the list of services, positions and categories of workers strictly indispensable to the maintenance of a minimum service in the event of a strike in the public service, which had not been submitted for consultation to the social partners at the preparation stage and which was inconsistent with the requirements of the Convention. The Committee notes the information that a draft revision of the Decree is being prepared in consultation with the social partners. ***The Committee trusts that the draft revision of Decree No. 90-562 P-RM of 22 December 1990 will be adopted shortly, in consultation with the social partners concerned. The Committee requests the Government to indicate in its next report any new developments in this regard.***

Malta

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

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

In its previous comments, the Committee had requested the Government, pursuant to comments by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 10 August 2006, alleging death threats against leaders of the General Workers Union (GWU), to conduct an inquiry into these allegations and to provide information on the result. ***The Committee requests the Government to send its observations in its next report concerning these allegations.***

The Committee also once again requests the Government to send its observations on the comments made by the ICFTU in 2006 with regard to suspensions of strikers, freezing of union assets and suits filed against unions following industrial action.

Article 3 of the Convention. In its previous comments, the Committee had requested the Government to clarify whether sections 74 and 75 of the Employment and Industrial Relations Act 2002, continue to impose compulsory arbitration over disputes of interest – just like the repealed Industrial Relations Act, 1976 – or whether the jurisdiction of the industrial tribunal (under section 75(1) of the Act) is now limited to disputes of rights only. The Committee had also requested information on the number of strikes and the incidents of recourse to the Minister's power to refer disputes to the Industrial Tribunal at the request of only one party. The Committee notes that the Government's report does not contain any information on these points.

The Committee had noted the Government's reply to the request previously addressed to it with regard to the resolution of eight strikes held in 2003, to the effect that all of them were resolved through mediation by the authorities and not through recourse to the Industrial Tribunal.

The Committee recalls once again that restrictions on strike action through a compulsory arbitration procedure seriously limit the means available to trade unions to further and defend the interests of their members and are acceptable only in cases of essential services in the strict sense of the term, or public employees exercising authority in the name of the State, and at the request of both parties. ***The Committee once again asks the Government to clarify whether the Industrial Tribunal's jurisdiction is limited to questions arising from disputes of right, or whether it is also entitled to hear disputes of interest and issue binding decisions thereon and, if so, to take the necessary measures to amend sections 74 and 75 of the Employment and Industrial Relations Act 2002, so as to ensure that compulsory arbitration may be imposed only in cases of essential services in the strict sense of the term and public employees exercising authority in the name of the State.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)

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

Article 1 of the Convention. In its previous comments, the Committee had requested the Government to clarify the procedures for the examination of allegations of anti-union dismissals by public officers, port workers and public transport workers given that these categories of workers are excluded from the jurisdiction of the industrial tribunal pursuant to section 75(1) of the Employment and Industrial Relations Act 2002 (EIRA). **Noting with regret that the Government's report does not provide information in this regard, the Committee once again requests the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals by public officers, port workers and public transport workers.**

Articles 2 and 3. Protection against acts of interference. In its previous comments, the Committee had observed that the EIRA did not expressly protect employers' and workers' organizations from acts of interference by one another, nor did it provide for a rapid and effective appeals procedure or sanctions in the case of breach as is required to ensure compatibility with the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 232). While noting the Government's indication that section 2 of the EIRA includes in the definition of "trade dispute" a dispute between "employers and workers" and "workers and workers", so that, if an act of interference is alleged, any one of the parties can refer the matter to the industrial tribunal, the Committee notes that there is no explicit prohibition of acts of interference in the EIRA. **The Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts.**

Article 4. Collective bargaining. In its previous comments, the Committee took note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2447 with regard to the need to amend section 6 of the National Holidays and Other Public Holidays Act so as to ensure that this provision: (i) does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday; and (ii) does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday on the basis of a collective agreement (see 34th Report of the Committee on Freedom of Association, paragraph 752). **Noting that the Government's report does not contain any information in this regard, the Committee once again requests the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act.**

In its previous comments, the Committee had requested the Government to indicate whether collective bargaining with trade unions representing less than 50 per cent of employees is possible, at least on behalf of their own members. The Committee takes due note of the Government's report according to which nothing in the law precludes employers from negotiating with unions representing less than 50 per cent of employees.

In its previous observations, the Committee had noted with concern that section 74 of the EIRA entitles the Minister to refer an unresolved trade dispute to the industrial tribunal at the request of one party and that the industrial tribunal's decision in this matter will be binding. The Committee had also noted that, pursuant to section 80 of the EIRA, in its capacity to decide trade disputes, the industrial tribunal is obliged to take into consideration the Government's social and economic policies and plans. **The Committee recalls that, except in the case of public servants engaged in the administration of the State or essential services in the strict sense of the term, it is generally contrary to the principle of the voluntary negotiation of collective agreements established in the Convention, and thus the autonomy of the bargaining parties, for binding arbitration to be imposed by the authorities at the request of one party (see General Survey, op. cit., paragraph 257).** The Committee points out an observation to the Government on this point under Convention No. 87.

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

Mauritania

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)

The Committee previously asked the Government to reply to the observations of the International Confederation of Free Trade Unions, dated 10 August 2006, relating to problems in giving effect to the Convention in practice (registration applications blocked at the Office of the Public Prosecutor and pressure from the public authorities in favour of a trade union organization). The Committee notes that, in its reply, the Government refutes the observations made by the ICFTU concerning the blocking of trade union registrations at the Office of the Public Prosecutor and points out, as an example, the recent registration (March 2008) of a tenth trade union confederation. The Committee also notes the observations of the International Trade Union Confederation (ITUC), dated 29 August 2008, which relate to legislative matters already raised by the Committee.

In its previous comments, the Committee asked the Government to take the necessary measures to amend its legislation so as to bring it into full conformity with the Convention.

Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing, without previous authorization. The Committee previously asked the Government to amend section 269 of the Labour Code in order to remove any obstacles that prevent minors who have access to the labour market from exercising the right to organize. In its reply, the Government maintains that parental authorization was deemed necessary to protect minors and that this position does not contradict the provisions of the Convention. The Committee is bound to recall that, under *Article 2* of the Convention, the minimum age for joining a trade union in full freedom must be the same as that

established for admission to employment, without the permission of the parents or guardian being necessary. *The Committee therefore trusts that the Government will take the necessary measures without delay to amend section 269 of the Labour Code in order to guarantee the right to organize of minors who are of the minimum legal age for admission to employment (14 years according to section 153 of the Labour Code), whether as workers or as apprentices, without the permission of their parents or guardians being necessary.*

Furthermore, the Committee has been making comments for several years on the need to ensure the exercise of freedom of association of magistrates. The Committee notes that the Government reiterates that magistrates are not allowed to set up trade union organizations but may form neutral associations for the defence of their material and moral interests. In this regard, the Committee is bound to recall that magistrates are not covered by the exceptions allowed by *Article 9* of the Convention and that they ought to enjoy, like all other categories of workers, the right to establish and join trade unions of their own choosing, in accordance with *Article 2* of the Convention. *The Committee therefore trusts that the Government will take the necessary measures without delay to ensure that magistrates enjoy the right to establish and join occupational organizations of their own choosing and will indicate all measures taken or envisaged in this regard.*

Article 3. Right of workers' organizations to elect their representatives in full freedom and to organize their administration and activities without interference from the public authorities. In its previous comments, the Committee noted that section 278 of the Labour Code extends the procedure for the establishment of trade unions to any changes in their administration or management, and therefore has the effect of subjecting such changes to the approval, either of the Prosecutor-General or of the courts. The Committee indicated that this provision therefore gives rise to serious risks of interference by the public authorities in the organization and activities of trade unions and their federations. It recalled that the establishment or amendment of the statutes of an organization of workers is the responsibility of the organization itself and should not be subject to the prior consent of the public authorities in order to take effect. It therefore asked the Government to amend section 278 of the Labour Code so as to provide that any change in the administration or management of a union may take effect as soon as the competent authorities have been notified and without the requirement of their approval.

Compulsory arbitration. In its previous comments, the Committee observed that sections 350 and 362 of the Labour Code allow compulsory arbitration in instances which go beyond essential services in the strict sense and in situations which cannot be deemed to constitute an acute national crisis. The Committee recalled that the prohibition or restriction of the right to strike by means of compulsory arbitration can be justified only in the cases of: (1) essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (2) an acute national crisis, and then only for a limited period and to the extent necessary to meet the requirements of the situation. The Committee therefore asked the Government to amend the relevant sections of the Labour Code so as to limit the prohibition on strikes by means of compulsory arbitration only to essential services in the strict sense of the term and to situations of acute national crisis.

Duration of mediation. In its previous comments concerning the prohibition on strikes for the duration of the mediation procedure established under section 362 of the Labour Code, the Committee recalled that it was possible to require the exhaustion of conciliation and mediation procedures before a strike may be called, on condition that the procedures are not so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness. However, the Committee considered that the maximum period of 120 days for mediation provided for in section 346 of the Labour Code was too long. The Committee therefore asked the Government to indicate the measures taken or envisaged to amend section 346 of the Labour Code.

The Committee notes that the Government indicates in its report that activities have recently been carried out with technical support from the Office aimed at validating various draft texts implementing the Labour Code. It adds that the amendments requested to the sections of the Labour Code which are the subject of comments by the Committee (sections 278, 350–362, 346, etc.) could be examined in the process under way of revising the texts implementing the Labour Code. *The Committee notes these indications and hopes that the Government's next report will give an account of concrete progress made in the revision of the Labour Code (through the adoption of implementing texts or any other measures) to bring it into full conformity with the Convention. The Committee trusts that the Government will take due account of all the points raised and hopes that the technical assistance provided to the Government by the Office will continue with regard to these matters.*

The Committee is addressing a direct request to the Government on other matters.

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 Employment Relations Act 2008 (ERA) which, once proclaimed, will replace the Industrial Relations Act 1973 (IRA). The Committee notes that the ERA contains significant improvements in relation to the freedom of association provisions of the IRA, by recognizing among other things the right

to organize of firefighters and prison officers and largely abolishing the discretionary powers of the registrar over the establishment and activities of trade unions. ***The Committee requests the Government to indicate in its next report progress made with regard to the proclamation of the ERA and to transmit the relevant text as soon as it enters into force.***

The Committee also notes that certain discrepancies remain between some provisions of the ERA and the Convention, especially in relation to the mechanism for the resolution of industrial disputes. The Committee examines these issues in a request addressed directly to the Government.

The Committee further takes note of the comments of the Federation of Parastatal Bodies and other Unions (FPBOU) transmitted with the Government's report, as well as the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, concerning the application of the Convention. In particular, the Committee would like to draw the Government's attention to the following issues raised by the ITUC.

Article 2 of the Convention. Right to organize. The Committee notes the serious issues raised by the ITUC with regard to the vulnerability of migrant workers to trade union rights violations and the specific cases mentioned by the ITUC as an illustration of coordinated action by the Government and employers in order to send (mostly women) migrant workers back to their country of origin on the grounds of "breach of contract" for having staged a strike. The ITUC also refers to hostility to trade unions by employers in the export processing zones (EPZs) and difficulties to make contact with migrant workers as trade unionists do not have access to the workplace; as a result, union density in the EPZs is below 12 per cent. The Committee takes note of the Government's reply according to which the work stoppages to which the ITUC refers were all illegal strikes as a result of which certain workers were repatriated by their employer. The Government adds that migrant workers have the same rights as other workers and regular inspection visits are carried out at workplaces where migrant workers are employed.

The Committee recalls that in a previous direct request it had requested the Government to provide statistical information on the unionization levels of migrant workers in the EPZs and offshore companies. It notes that according to the Government, section 13 of the ERA provides that any non-citizen shall be entitled to be a member of a trade union provided they hold a work permit. According to the Government, it is difficult to provide statistical information on the unionization levels of migrant workers in the EPZs and offshore companies, since there is no specific trade union catering exclusively for migrant workers and they are free to join any trade union of their choice. ***The Committee requests the Government to indicate the measures taken in order to guarantee migrant workers their trade union rights both in law and in practice.*** The Committee notes that an appropriate measure in this regard could be to allow for the organization of awareness-raising activities in the EPZs to apprise migrant workers of the advantages of unionization. ***The Committee also requests the Government to take the necessary measures for the collection of data on unionization levels of migrant workers in the EPZs and offshore companies.***

The Committee further notes that the ITUC refers in its comments to the prosecution of the President of the Fédération des Syndicats du Service Civil (FSSC) and the President of the Government Servants Association (GSA), for contravening the Public Gathering Act. The Committee notes that this issue is currently under examination by the Committee on Freedom of Association in the framework of Case No. 2616 and the Government has been requested to facilitate a speedy resolution of this case which is pending on appeal, and raise with the competent authorities the possibility of giving a favourable review to this matter (351st Report, paragraphs 990–1015).

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

The Committee notes with interest the adoption of the Employment Relations Act, 2008 (ERA) which, once proclaimed, will replace the Industrial Relations Act 1973 (IRA) and introduce provisions against acts of interference as well as measures for the promotion of collective bargaining. ***The Committee requests the Government to indicate in its next report the progress made with regard to the proclamation of the ERA and to transmit the relevant text as soon as it enters into force.***

The Committee also takes note of the comments of the Federation of Parastatal Bodies and other Unions (FPBOU) transmitted with the Government's report, as well as the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 concerning the application of the Convention.

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee takes note of the comments made by the FPBOU with regard to the prevalence of anti-union discrimination in the textile sector, especially vis-à-vis migrant workers. The FPBOU also refers to obstacles faced by unions in meeting workers inside or even outside the work premises. Finally, reference is made to the need to review the EPZ Act. The Committee notes from the Government's report that it is an offence under the law to dismiss or discriminate against a migrant worker on trade union grounds and that regular visits to EPZs are carried out by the Ministry of Labour. ***The Committee requests the Government to reply in detail to the comments made by the FPBOU.***

Article 2. Protection against acts of interference. The Committee's previous comments concerned the need to adopt legislation providing for protection against acts of interference. The Committee notes from the Government's report that sections 30 and 33 of the ERA prohibit acts of interference in the establishment, functioning or administration of a

workers' or employers' organization. They also prohibit the practice of promoting or giving assistance to a trade union with the objective of placing it or maintaining it under the employer's control. In its previous comments, the Committee had expressed the hope that in addition to the prohibition of acts of interference, the ERA would make provision for rapid appeals procedures, coupled with sufficiently dissuasive sanctions, in order to provide full and effective protection. ***The Committee requests the Government to indicate in its next report the provisions of the ERA which establish rapid appeals procedures, coupled with sufficiently dissuasive sanctions against such acts.***

Article 4 of the Convention. Promotion of collective bargaining. The Committee had previously commented on the low rate of collective bargaining in export processing zones (EPZs). The Committee notes that according to the Government, the ERA contains measures to encourage collective bargaining in line with *Article 4*. The Committee regrets that the Government makes no reference to specific measures to promote collective bargaining in EPZs, as it had previously requested. ***It once again requests the Government to indicate in its next report the concrete measures undertaken to promote collective bargaining in the specific sector of the EPZs.***

In its previous comments, the Committee had requested the Government to transmit its observations on comments made by the ITUC concerning restrictions on the right to negotiate salaries in the public sector. The Government indicates that the Committee on Freedom of Association enquired into a complaint made by the Mauritius Labour Congress with regard to legislative amendments adopted in June 2003 restricting the right of the Public Service Unions to declare a dispute in relation to remuneration or allowances of any kind (Case No. 2398), and that in its 338th Report, the CFA concluded that the complaint did not call for further examination. ***The Committee requests the Government to provide further information in its next report on the practice followed in 2007-2008 with regard to negotiations over salaries in the public sector.***

The Committee also notes the comments dated 16 May 2007 by the National Trade Union Confederation (NTUC) with regard to the setting up of a National Pay Council (NPC) by the Government in a way which bypassed the right of workers' representatives to be chosen freely by their respective trade union organizations. The Committee notes that the issue is treated by the Committee on Freedom of Association in the framework of Case No. 2575 and that in its latest examination of this Case, the Committee on Freedom of Association requested the Government to continue to hold full and frank consultations with the representatives of the social partners whose representativeness has been objectively proven, on ways to improve the composition and functioning of the NPC. ***The Committee requests the Government to indicate in its next report the progress made in these consultations and their outcome.***

Mexico

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1950)

The Committee notes the comments of 29 August 2008 by the International Trade Union Confederation (ITUC) referring to: (1) serious acts of violence against, and the arbitrary arrests of trade unionists; (2) the difficulties in organizing and joining unions due to collective protection contracts and exclusion clauses in the electronics industry; and (3) the denial of the right to organize to workers recruited under service provision contracts and other types of precarious contract. ***The Committee requests the Government to provide its observations on these matters.***

Article 2 of the Convention. Trade union monopoly in government agencies imposed by the Federal Act on State Employees and by an Act regulating the Constitution. The Committee points out that it has been commenting for many years on the following provisions:

- (i) the prohibition of the coexistence of two or more unions in the same state agency (sections 68, 71, 72 and 73 of the Federal Act on State Employees);
- (ii) the ban on trade unionists leaving the union of which they have become members (an exclusion clause under which trade unionists who leave the union lose their jobs) (section 69 of the Federal Act on State Employees);
- (iii) the ban on unions of public servants joining trade union organizations of workers or rural workers (section 79 of the Federal Act on State Employees);
- (iv) the extension of the restrictions applying to trade unions in general to the Single Federation of Unions of State Employees (section 84 of the Federal Act on State Employees); and
- (v) the imposition by law of the trade union monopoly of the National Federation of Banking Unions (section 23 of the Act to regulate article 123(XIIIbis)(B), of the Constitution).

The Committee notes that in its report the Government: (1) reiterates, in response to (i) above, that the right of state employees to organize freely is guaranteed by article 123(X)(B), of the Constitution which lays down the right of workers to associate in order to defend their common interests and use to the right to strike when the rights laid down in this provision are violated generally and systematically; (2) again reiterates, in response to (ii) above, that pursuant to jurisprudential ruling No. 43/1999 issued by the Supreme Court of Justice, the Federal Conciliation and Arbitration Tribunal upheld the resignations of workers from membership of various unions and the applications for membership of others; and (3) states that three legislative proposals have recently been submitted on freedom of association (the first

consists of a bill to amend and supplement various provisions of the Political Constitution, the Federal Labour Act and the Federal Act on State Employees, which gives constitutional rank to the election of trade union executive committees; a second amendment, inter alia, of sections 68, 69, 71, 72, 78 and 79 of the Federal Act on State Employees; and a third reform supplementing or repealing several provisions of the Federal Labour Act and the Federal Act on State Employees and promoting trade union pluralism and abolition of the trade union exclusion clause).

At a general level, the Committee wishes to emphasize that any system of trade union unity or monopoly imposed directly or indirectly by law is at odds with the principle of full freedom for workers and employers to establish organizations laid down in *Article 2* of the Convention. It points out that in drafting the Convention, the intent of the International Labour Conference was not to impose trade union pluralism of a compulsory nature but to ensure at least the possibility of establishing various organizations. There is thus a fundamental difference between trade union monopoly which is established and maintained by law and a single organization which is the result of a decision taken freely by the workers or their trade unions and not the implementation of a law adopted for the purpose. As the Committee has already pointed out, it is not necessarily incompatible with the Convention for legislation to establish a distinction between the most representative trade union organization and other trade union organizations, provided that this distinction amounts to no more than the recognition of certain rights to the most representative trade union (particularly with regard to representation for the purposes of collective bargaining or consultation by governments). But to allow such a distinction on no account implies that the existence of other trade unions which some of the workers wish to join may be prohibited. The Committee notes with interest the various parliamentary initiatives to harmonize the legislation with the Convention.

In these circumstances, the Committee requests the Government to take the necessary steps to amend sections 68, 69, 71, 72, 73, 79 and 84 of the Federal Act on State Employees and section 23 of the Act to regulate article 123(XIIIbis)(B) of the Constitution so as to bring them fully into line with the Convention and the abovementioned jurisprudential ruling. The Committee also asks the Government to provide information on the progress of the abovementioned legislative proposals in parliament and expresses the firm hope that any amendment of the legislation will take account of the comments it has been making for years.

Article 3. Ban on re-election in trade unions (section 75 of the Federal Act on State Employees). The Committee notes that the Government again states that the Federal Conciliation and Arbitration Tribunal applies ruling no. CXXVII/2000 of the Supreme Court of Justice establishing that section 75 of the Federal Act on State Employees which prohibits the re-election of trade union leaders is in breach of freedom of association laid down in article 123 of the Constitution and that the Court recognizes re-election where it is allowed by the statutes of the trade union. ***The Committee accordingly requests the Government to amend section 75 of the Federal Act on State Employees to align it with the case law of the Supreme Court of Justice and bring it into conformity with the Convention and current practice.***

Ban on foreign nationals being members of trade union executive bodies (section 372(II) of the Federal Labour Act). The Committee recalls that in an earlier observation it noted that a set of draft reforms to the Federal Labour Act had been prepared and submitted to parliament as a Bill on 12 December 2002. The Committee notes that the Government reports that the Bill was referred on 13 December 2007 to the Review Committee for study. ***The Committee expresses the hope that the amendments to the Federal Labour Act, including the amendment of section 372(II) will be implemented in the very near future and requests the Government to provide information on the matter in its next report.***

Limited right to strike of public officials who do not exercise authority in the name of State. The Committee recalls that for many years it has been commenting on the following issues:

- (i) State employees – including workers in the banking sector – have the right to strike only if there is general and systematic violation of their rights (section 94, title 4, of the Federal Act on State Employees, and section 5 of the Act to regulate article 123(XIIIbis)(B) of the Constitution). The Committee notes that with regard to the banking sector, the Government states that the Act to Regulate the Banking and Loans Service (to which the Committee has not so far referred) has been repealed by the Credit Institutions Act. It is the Committee's view that State employees – including employees in the banking sector – who do not exercise authority in the name of the State should be able to exercise the right to strike where, even though there is no general and systematic violation of rights, the situation is nonetheless serious. ***In these circumstances, the Committee requests the Government to take steps to this end and to provide information on any amendments envisaged to the legislation.***

The Committee likewise observes that section 121 of the Credit Institutions Act, referred to in the previous paragraph, establishes that the “National Banking Commission shall ensure that ... during the strike as many offices as are indispensable shall remain open and as many workers as are strictly necessary to perform the functions shall continue to work”. The Committee observes in this connection that the National Banking Commission is not tripartite. It reminds the Government that workers' organizations should be able to take part, should they so wish, in determining the minimum service to be maintained in the event of a strike, along with employers and the public authorities (see General Survey on freedom of association and collective bargaining, 1994, paragraph 161). ***The Committee requests the Government to take the necessary steps to this end and to indicate any developments in this regard.***

- (ii) The Committee observes that section 99(II) of the Federal Act on State Employees lays down the requirement that in order to call a strike, two-thirds of the workers in the public body concerned must be in favour. The Committee notes that the Government states once again that the right to strike of public servants is not expressly established in the Convention, that the Committee has acknowledged that there may be a general ban on strikes in exceptional circumstances and that strikes may be regulated by provisions governing procedures and arrangements for carrying out strikes, and that the Federal Act on State Employees is accordingly in line with the provisions of the Convention. As regards workers who do not exercise authority in the name of the State, the Committee considers that the ballot method, the quorum and the majority required should not be such that exercise of the right to strike becomes very difficult, or even impossible in practice (see General Survey, op. cit., paragraph 170). ***In these circumstances, the Committee requests the Government to take the necessary measures to amend section 99(II) accordingly and to keep it informed on this matter.***

Requisitioning. In its previous observation the Committee noted that several laws on the public service (Act to Regulate Railways, Act on the National Vehicle Register, Act on General Channels of Communication, and the Rules governing the Ministry of Communications and Transport) make provision for the requisitioning of staff where the national economy could be affected. The Committee notes that according to the Government, the Act on the National Vehicle Register was repealed by the Act on the Public Register of Vehicles of 1 September 2004 and that the Rules governing the Federal Telecommunications Commission have been replaced by new rules which took effect on 5 January 2006. The Committee observes that other laws and regulations not mentioned by the Government are still in force. It reminds the Government that the forced mobilization of workers on strike would be justified only for the purpose of ensuring the operation of essential services in the strict sense of the term (see General Survey, op. cit., paragraph 163). ***The Committee accordingly asks the Government once again to take steps to amend the provisions that do not refer to essential services in the strict sense of the term (such as the Act to Regulate Railways, the Act on General Channels of Communication) and the Rules governing the Ministry of Communications and Transport and to provide information in its next report on all measures taken to this end.***

Republic of Moldova

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 alleging obstacles to registration of trade union organizations, threats against a trade union leader and an attack of his home, and referring to the matters raised by the Committee and by the Committee on Freedom of Association in Case No. 2317 (interference by the Government in trade union internal affairs). In respect of the allegation of the Government's interference, the Committee notes that the ITUC alleges that the merger of the ITUC-affiliated Confederation of Trade Unions of the Republic of Moldova (CSRM) and the trade union confederation Solidaritate was a result of pressure exerted by the Government. In this respect, the Committee notes that in Case No. 2317, the Committee on Freedom of Association took note of the merger agreement and while it deeply regretted that the Government failed to take steps to investigate the alleged acts of interference in the internal affairs of the CSRM and its affiliate organizations, it also regretted that none of the complainant organizations provided information on the merger and its impact on the CSRM and its affiliates. The Committee on Freedom of Association firmly requested the Government once again to instigate the necessary inquiries on all of the previous allegations (see 350th Report, paragraph 1418). The Committee on Freedom of Association will continue examining this matter in the framework of the follow-up of this case. ***The Committee requests the Government to send its observations on the ITUC comments.***

Article 2 of the Convention. Right of employers and workers to form and join organizations of their own choosing. The Committee recalls that it had previously requested the Government to keep it informed of developments regarding the draft bill amending the Law on Employers' Organizations, and in particular, its section 6, which required at least ten employers to create an employers' organization. The Committee notes the Government's indication that the draft amendment to section 6 of the Law, which would reduce the minimum membership requirement, was presented for coordination to the relevant bodies and social partners and will soon be submitted to the Government for approval. ***Considering that the requirement provided for in section 6 is too high and is likely to be an obstacle to the free establishment of employers' organizations, the Committee trusts that this section will soon be amended and requests the Government to indicate any progress made in this respect.***

The Committee had previously requested the Government to indicate whether primary trade unions and territorial sectoral and intersectoral trade unions, which are not affiliated to national sectoral and intersectoral trade unions, could be granted legal personality. The Committee notes the Government's indication that pursuant to section 10 of the Law on Trade Unions, primary trade union organizations may acquire the status of legal entity only if they are members of a national branch or national intersectoral trade union. The Committee therefore understands that all trade union organizations should belong to national trade union organizations. In the light of the recent controversial merger of the two national trade union centres into one, the Committee expresses its concern at the situation of factual monopoly where trade unions formed outside of the national structure would not be able to engage fully in the activities of defending and

promoting the interests of their members. ***The Committee therefore requests the Government to amend section 10(5) of the Law on Trade Unions so as to guarantee the right of workers to establish and join organizations of their own choosing, including those outside of the existing national trade union structure and to indicate the measures taken or envisaged in this respect.***

Article 3. Right of workers' organizations to organize their activities. The Committee had previously noted that according to section 363(3) of the Labour Code, strikers are obliged "to provide uninterrupted functioning of the equipment and installations which, if stopped, could endanger the life and health of people or cause irreparable damage to the enterprise" and requested the Government to indicate the manner in which the workers under this section were determined. The Committee notes that according to the Government, the national legislation does not regulate the appointment of employees to provide the minimum service to ensure the continuous operation of equipment and facilities which, if stopped, could endanger the human life and health or could cause irrecoverable damage to the entity. The Committee points out that it is important that the provisions regarding the minimum services to be maintained in the event of a strike are established clearly, that they must be genuinely and exclusively minimum services and that the determination of minimum services and the *minimum* number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. ***The Committee therefore requests the Government to consider, in consultation with the social partners, the adoption of legislative provisions expressly providing for the participation of the relevant trade union and employers' organizations in determining the minimum services to be ensured in the event of a strike and to indicate the measures taken or envisaged in this respect.***

The Committee had previously noted that according to section 369 of the Labour Code, workers employed in communication services, employees of continuously working enterprises and workers of enterprises manufacturing products for the defensive needs of the country were prohibited from participating in strikes and had requested the Government to specify the workers concerned by the prohibition in section 369(2)(c) and (h) and to detail the "continuously working enterprises" in which the right to strike is prohibited. The Committee notes the Government's indication that the categories of employees who may not participate in a strike are exhaustively listed in the nomenclature approved by the Government's Decision No. 656 of 11 June 2004, the draft version of which was coordinated with all social partners and organizations at the national level. At the same time, the Government states its readiness to discuss this issue in order to find out the opinion of the social partners and to eventually submit proposals for the amendment of the Labour Code. ***The Committee requests the Government to transmit with its next report Decision No. 656 of 11 June 2004 providing for the list of categories of workers who are prohibited from striking, and to indicate any developments concerning discussions on this subject with the social partners.***

In its previous comments, the Committee had noted that according to section 357(1) of the 2002 Criminal Code, an unlawful strike was punishable by a fine in the amount of 500 conventional units, or by unpaid labour for public benefit for the period from 100 to 240 hours, or by imprisonment for a period of up to three years, and that according to section 358(1), the organization of, or active participation in collective actions, breaking violently public order, related to the obstruction of the normal functioning of transport, enterprises, institutions and organizations shall be punished by the imposition of a fine in the amount of 500 conventional units, or by imprisonment for a period of up to three years. On that occasion, the Committee recalled that restrictions on the right to strike can only be imposed in essential services in the strict sense of the term and with respect to public servants exercising authority in the name of the State and that disciplinary sanctions should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Furthermore, the Committee recalled that since the application of disproportionate penal sanctions did not favour the development of harmonious and stable industrial relations, if measures of imprisonment were to be imposed where violence against persons or property has been committed, they should be justified by the seriousness of the offences committed. In this respect, the Committee had requested the Government to indicate the measures taken or envisaged to amend the abovementioned sections of the Criminal Code in accordance with the principle above. The Committee notes the Government's indication that over the last years, the courts have not heard cases of liability for organizing illegal strikes. ***In these circumstances, the Committee reiterates its previous request to take the necessary measures to amend sections 357(1) and 358(1) of the Criminal Code according to the abovementioned principles and requests the Government to indicate the measures taken or envisaged in this respect.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)

Articles 1 and 2 of the Convention. Sanctions against acts of anti-union discrimination and acts of interference. The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 alleging insufficient protection against acts of anti-union discrimination and interference in trade union affairs, the issues previously raised by the Committee. It further notes Case No. 2317 pending before the Committee on Freedom of Association, which requested the Government to actively consider, in full and frank consultations with social partners, legislative provisions expressly sanctioning violations of trade union rights and providing for sufficiently dissuasive sanctions against acts of interference in trade union internal affairs (see 350th Report, paragraph 1422(b)).

The Committee recalls in this respect that it had previously noted the Government's indication that the Parliament was discussing the draft of the new Code on Contraventions which sought the introduction of a fine for obstruction of lawful activities of trade unions and their bodies by high-level civil servants. The Committee notes with interest the Government's indication that the new Code on Contraventions was adopted on 24 October 2008. Section 61 of the Code provides for the application of fines in the amount of 40 to 50 conventional units (one unit equals 20 MDL) for the obstruction of the workers' right to establish and join trade unions. It further notes the Government's indication that a working group, constituted of representatives of the Ministry of Economy and Trade, the National Confederation of Trade Unions and the Ministry of Justice, examined the possibility of setting administrative sanctions against acts of interference in trade union activities, which is currently not provided for in section 61. ***The Committee requests the Government to indicate any new developments in this respect and to ensure that these sanctions are applied through effective and expeditious procedures. The Committee further requests the Government to provide a copy of the relevant provisions of the Code on Contraventions.***

Article 4. Compulsory arbitration. The Committee recalls that it had requested the Government to amend section 360(1) of the Labour Code according to which, if the parties to the collective labour dispute have not reached an agreement or disagree with the decision of the reconciliation commission, either party has the right to submit an application to settle the conflict in the judicial tribunals. The Committee notes the Government's indication that section 360(1) is not applicable at the stage of elaboration of the initial draft collective agreement, in which case, section 32 applies. According to the latter, if within three months from the beginning of negotiations, consent has not been achieved on some of the agreement's provisions, the parties are obliged to sign a collective agreement containing the clauses on which agreement has been reached. The disagreements that have not been settled are subject to further collective negotiations or are resolved according to the provisions of the Labour Code. As to the referral of the dispute to the judiciary, the Government indicates that this occurs when a party to the conflict feels that its rights have been violated. The Government also indicates that arbitration is a good solution for the collective conflicts which arise from the arbitrary interests under negotiation. While noting this information, the Committee refers to the clear wording of section 360(1) and once again recalls that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements established in the Convention and thus the autonomy of the bargaining partners. Recourse to compulsory arbitration in cases where the parties do not reach an agreement through collective bargaining should be permissible only in the context of essential services in the strict sense of the term (i.e. services, the interruption of which would endanger the life, safety or health of the whole or part of the population) or for public servants engaged in the administration of the State. ***The Committee therefore once again requests the Government to take the necessary measures to amend the legislation so as to ensure that referral of the dispute to the judicial tribunals is possible only upon request by both parties to the dispute, or for essential services in the strict sense of the term or for public servants engaged in the administration of the State. The Committee requests the Government to indicate the progress made in this respect.***

Mozambique

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)

The Committee notes from the Government's report that a new Labour Act (Act No. 23/2007) has been adopted.

The Committee observes that some provisions of the Labour Act are not consistent with the Convention:

- section 149, which allows the central body of the labour administration 45 days within which to register an employers' or workers' organization. In the Committee's view, a protracted registration procedure is a serious obstacle to the establishment of an organization and amounts to a denial of the right of workers and employers to set up organizations of their own choosing. The Committee suggests reducing the time limit to 30 days, for example;
- section 189, which provides for compulsory arbitration for the essential services listed in section 205 which include the postal service, the loading and unloading of animals and perishable foodstuffs, weather monitoring and fuel supply, and also for export processing zones (section 206 and Decree No. 75/99). The Committee recalls that compulsory arbitration to end collective labour disputes or strikes is acceptable only when requested by both parties to the dispute or in cases where the strike may be restricted or prohibited, namely in the case of a dispute in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. In these circumstances, the Committee takes the view that any disputes that arise in the abovementioned services should not be subject to compulsory arbitration and that they could be dealt with under the mediation and conciliation procedures provided for by law;
- section 207, which provides that the notice of strike must state the duration of the strike. In the Committee's view, workers and their organizations should be able, if they so wish, to call an indefinite strike;
- section 212, which allows a strike to be ended by a decision of the mediation and arbitration body. The Committee considers that this is a decision for the workers and the organizations that called the strike;

- section 268(3), which provides that any breach of sections 199 (freedom to work of non-strikers), section 202(1) and section 209(1) (on minimum services) constitutes a breach of discipline for which the workers on strike are civilly and penally liable. The Committee reminds the Government that strikes should not be subject to penal sanctions except in the event of non-compliance with prohibitions on strikes that are consistent with the principles of freedom of association, and that any penalty imposed for unlawful activities relating to strikes should be proportionate to the offence or misconduct, and that imprisonment for those organizing or participating in a peaceful strike should be excluded by the authorities.

While noting the Government's information that the Labour Act was adopted by consensus, that the legislation is undergoing revision and a legal reform technical unit has been set up for the purpose, and that some provisions of the Labour Code that are not consistent with the Convention will be amended in due course with assistance from the ILO, the Committee expresses the hope that these amendments will be made in the near future and will cover all the points it has raised. It requests the Government to provide information in its next report on any measures taken in this regard.

Public servants. In its previous comments, the Committee noted that public servants do not have the right to organize. It noted that according to the Government, the Labour Code does not cover this matter and that through the Ministry of the Public Service a preliminary draft of a general law on public servants has been submitted to Parliament and is to regulate exercise of the right of association by this category of workers. The Committee recalls that in its previous observation it took note of a preliminary draft of a law on the exercise of trade union activities in the public administration and pointed out that the following provisions raised problems of conformity with the Convention:

- section 2(2), which excludes firefighters, members of the judiciary and prison guards from the scope of the future Act. The Committee recalls that *Article 2 of the Convention* provides that all workers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing and that, in accordance with *Article 9* of the Convention, only the armed forces and the police may be excluded from the right to organize;
- section 42(2), which provides that public officials have the right to strike once conciliation, mediation and arbitration procedures have been exhausted. The Committee points out in this connection that compulsory arbitration upon application by only one of the parties in the public administration may be imposed only in the case of public servants exercising authority in the name of the State;
- section 43, which allows disciplinary, civil and penal sanctions to be imposed when a strike affects the rights and interests of third parties, when it impedes or disrupts exercise of the right to work by officials or employees who are not on strike and when it disrupts the operation of services which are not on strike. The Committee recalls in this connection that sanctions for strike action should be possible only where the prohibitions are consistent with the principles of freedom of association; that applying disproportionate penal sanctions is not conducive to the development of harmonious and stable industrial relations; and that if penalties of imprisonment are to be imposed at all, they should be justified by the seriousness of the offences committed and should be subject to regular judicial review. In any event, a right of appeal should exist in this respect (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 177);
- section 46(2), which establishes sentences of imprisonment and fines in instances where a strike picket obstructs the freedom of services to operate normally. The Committee refers the Government in this connection to the principle set forth in the previous paragraph.

In these circumstances, the Committee expresses the hope that the preliminary draft of the general law on public servants which will regulate the right of association and which is before Parliament, will be in full conformity with the Convention. The Committee requests the Government to provide information in its next report on the progress of this draft legislation.

Comments by workers' organizations. In its previous observation, the Committee noted comments by the International Confederation of Free Trade Unions (ICFTU) referring to large-scale dismissals of workers in export processing zones as a reprisal for exercising the right to strike, and asked the Government to send detailed information on the circumstances in which the strike took place, the authority that declared the strike to be unlawful and the authority that allowed the dismissals. The Committee notes the Government's response that in the case of the two strikes referred to by the ICFTU: (1) there was breach of the requirements, set in section 9 of Decree No. 75/99 of 12 October regulating working conditions in industrial export processing zones, concerning compulsory arbitration, which may be imposed ex officio by the labour administration body and prior notification of strikes, and the stipulation that strikes may be called only by the provincial or national union after confirmation from the Industrial Export-Processing Zone Council that minimum services are guaranteed; and (2) the workers dismissed filed a complaint with the Labour Court. The Committee reminds the Government that enterprise unions should likewise be able to exercise the right to strike, and refers the Government to its comments on compulsory arbitration. It recalls that dismissals of strikers on a large-scale involve a serious risk of abuse and place freedom of association in grave jeopardy. It hopes that in reviewing the dismissals in question, the judicial authorities will take into consideration the comments on the legislation.

Lastly, the Committee notes the comments of 29 August 2008 by the International Trade Union Confederation (ITUC) on the application of the Convention, and serious acts of violence against workers on strike in the sugar cane plantation sector. ***The Committee requests the Government to send its comments thereon.***

Myanmar

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)

The Committee notes the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2268 and 2591 (351st Report, approved by the Governing Body at its 303rd Session, November 2008 paragraphs 1016–1050; 349th Report approved by the Governing Body at its 301st Session, paragraphs 1062–1093). It also notes the comments of the International Trade Union Confederation (ITUC) dated 29 August 2008 on grave matters which arose in the course of 2007 as well as its previous comments on very serious issues which arose in 2005–06 and the Government's response to some of these issues:

1. In reply to the ITUC comments relating to severe repression by the Government of the September 2007 uprising against the military Government of the State Peace and Development Council (SPDC) which had been led by Buddhist monks, and supported by workers, students, and citizen activists, the Committee notes the Government's indication that ten persons died and 14 were injured; in total, 2,284 persons were found to have been involved in the unrest in Yangon and 643 persons outside Yangon; among them a total of 2,836 persons (2,235 from Yangon and 601 out of Yangon) were released; 91 remained under arrest (49 from Yangon and 42 from outside Yangon); these were involved in violence and terrorist acts and necessary measures were being taken against them in accordance with the laws. The Government adds that the SPDC is making efforts for the emergence of a peaceful, modern, disciplined, flourishing, democratic nation upholding the three main National Causes; the vast majority of the people have already adopted the Constitution, the fourth step of the seven-step road map, to shape the future State; on 23 September 2008 the Government released from prison 9,002 prisoners with good conduct and discipline, for social and family reasons.

2. The Committee notes that the ITUC refers to the arrest, heavy-handed interrogation and long prison sentences imposed on six workers (Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min) who participated in a 2007 May Day event at the "American center" in Yangon and tried to relay news to the outside world through the Burma-Thai border; significant harassment of their lawyers by the authorities which prompted them to withdraw from the case on 4 August; the conviction of the six workers on 7 September to 20 years imprisonment for sedition and additional convictions of Thurein Aung, Wai Lin, Kyaw Win, and Myo Min to another five years in prison for association with the Federation of Trade Unions of Burma (FTUB) under section 17(1) of the Unlawful Associations Act and to three years for illegally crossing a border, as a result of which their jail time amounted to 28 years in total. The six activists filed appeals which were dismissed, prompting them to file their appeals to the Supreme Court, where they were pending at year's end.

The Committee notes that according to the Government, the Supreme Court has held hearings on this case which is pending before it. The Government regrets the request made by the Committee on Freedom of Association in Case No. 2591 (see below) for the release of the six activists which, according to the Government, constitutes interference with the internal affairs of the country. The Government adds that: (i) *Article 8 of the Convention* requires workers and their organizations to respect the law of the land; (ii) the six persons were not workers at a factory or workplace; (iii) they were arrested not for holding a May Day event but for inciting hatred or contempt for the Government (section 124(A) of the Penal Code), for being a member of or contacting an unlawful association (section 17(1) of the Unlawful Association Act, 1908) and for illegally leaving and re-entering the country (section 13(1) of the Immigration (Emergency) Provisions Act, 1947); (iv) the FTUB does not represent any workforce in Myanmar; it is a terrorist group in the guise of a workers' organization; (v) the authorities allow the detainees to meet with guests and relatives; they also allowed Mr Thomás Ojea Quintana, Special Rapporteur on the situation of human rights in Myanmar, to meet with Thurein Aung, Kyaw Kyaw and Su Su Ngwe on 5 August 2008; upon request for medical (dental) treatment of Thurein Aung, the Government arranged for a dentist to cure him; (vi) the Special Rapporteur also met with the Minister of Labour and the Human Rights Committee. As for the FTUB, in particular, the Government adds that: (i) after the adoption of the Constitution, the organizations and associations in Myanmar will need to be established under the existing laws of the country and should have locus standi; (ii) the FTUB is not represented anywhere in the workforce of the country; it is illegally established outside the country by persons who absconded and are fugitives from justice; (iii) there is strong and firm evidence that the FTUB has committed terrorist acts uncovered in June 2004; by virtue of the International Convention on the Suppression of Terrorism and the International Convention for the Suppression of the Financing of Terrorism the Government issued Declaration No. 172006 on 12 April 2007 announcing that the FTUB was a terrorist group.

In this regard, the Committee notes the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2591 (349th Report, paragraphs 1062–1093 and 351st Report, paragraphs 144–150), according to which "it is undeniable that the six persons were punished for exercising their fundamental right to freedom of association and the freedom of expression". It observes that their convictions were based on such acts like, for example, holding a public lecture to discuss "problems encountered by workers at their respective workplaces, which had an effect of agitating them" or preparing a speech on "salaries, disproportionate prices for goods, right to take leaves, pension and the failure of the Government to address these issues", which were considered by the Government and the courts as "defam[ing] the Government". The Committee also notes that the Committee on Freedom of Association called on the Government to recognize the FTUB as a legitimate trade union organization and to allow for the free operation of any form of organization of collective representation of workers including the legalization of the FTUB (349th Report,

paragraphs 1083, 1089, 1092; 351st Report, paragraph 1038). With regard to the appeal filed by the workers to the Supreme Court, the Committee on Freedom of Association indicated its deep concern at “the indication in the [first instance] judgement that the court explicitly ordered the destruction of all but some evidence presented to it (Case No. 82), thus rendering any review by a higher tribunal virtually impossible” (349th Report, paragraph 1088). As a result, the Committee on Freedom of Association called for the immediate release of the six activists, Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min.

3. The Committee notes that the ITUC refers to the imprisonment of Myo Aung Thant, member of the All Burma Petro-Chemical Corporation Union, who has now been in jail for over 11 years after having been convicted for high treason for maintaining contacts with the FTUB (under section 122(1) of the Penal Code). The Committee notes that according to the Government, Myo Aung Thant is still in prison for breaking the laws of the country and it is impossible to release him, and ITUC should not interfere in the internal judicial affairs of an ILO member State. The Committee notes in this regard the conclusions and recommendations reached by the Committee on Freedom of Association in its interim report concerning Case No. 2268 (351st Report, paragraphs 1016–1050) in which the Committee on Freedom of Association deplored the Government’s refusal to consider the release of Myo Aung Thant and strongly urged the Government to take the necessary steps to ensure his immediate release from prison.

4. The Committee notes that the ITUC refers to the killing of Saw Mya Than – FTUB member and official of the Kawthoolei Education Workers’ Union (KEWU), allegedly murdered by the army in retaliation for a rebel attack. The Committee notes that according to the Government, Saw Mya Than’s death was an accident caused by the KNU, an insurgent organization. The Committee notes that the Committee on Freedom of Association requested the Government in the framework of Case No. 2268 to institute an independent inquiry into the alleged murder of Saw Mya Than – to be carried out by a panel of experts considered impartial by all the parties concerned.

5. The Committee notes that the ITUC refers to the detention and sentencing of Burma Railway Union leader U Tin Hla, a long-serving electrician with the Myanmar Railway Corporation. He was arrested along with his entire family on 20 November 2007; while his family was later released, he was charged under section 19(a) of the Penal Code for possession of explosives which were, in fact, electric wires and tools in his toolbox; after a brief trial, he was sentenced to seven years in prison; in reality, his crime was apparently his very active efforts to organize workers from the railways and other sectors to support the popular uprising of the Buddhist monks and people in late September 2007. He was 60 years old when arrested and there are significant concerns for his health in prison. His requests to see a doctor have been denied.

The Committee notes that according to the Government, the ITUC always refers to an imaginary union when making allegations on persons; U Tin Hla was not a member of a union, but rather a supervisor working in Myanmar Railways and there is no union under the Myanmar Railways. On 14 November 2007 at about 9.30 pm the Police Force of Yangon Division made a surprise check at his house and found him with 337 point 30 carbine bullets and 13 9mm bullets. The Township Court convicted him to seven years’ imprisonment.

6. The Committee notes that the ITUC refers to the arrest on 13 November in Yangon of Su Su Nway, the activist who brought a forced labour complaint to the ILO which subsequently resulted in the first successful conviction of four local officials for procuring forced labour; she was arrested for her actions in supporting workers’ participation in the September uprising; at the end of the year, she was being held in Insein prison, awaiting trial on charges of sedition. The Committee notes that according to the Government, this case does not relate to workers’ rights; following complaint No. 2469/07, Su Su Nway was charged under sections 143 and 147 of the Penal Code and the case is before a special court in Insein Prison (Criminal Regular Trial No. 10/2008).

7. The Committee notes that the ITUC refers to:

- the disappearance on 22 September 2007 of Lay Lay Mon, a female labour activist who is a former political prisoner, after helping organize workers to support protesting monks and citizens in the uprising in Yangon; she is believed to be incarcerated in Insein prison but at year end there was no news of if, or when, she would be brought to trial;
- the disappearance of labour activist Myint Soe during the last week of September 2007 after being active in engaging with workers to increase their involvement in the September uprising.

8. The Committee notes that the ITUC refers to the arrest by the military authorities on 8 and 9 August 2006 of seven members of the family of the FTUB member and activist Thein Win at their house in the Kyun Tharyar section of Pegu city. While in detention, several male members of the family were tortured while being interrogated. On 3 and 4 September 2006, the authorities released four of the family members. According to the latest communication by the ITUC, three of Thein Win’s siblings (Tin Oo, Kyi Thein and Chaw Su Hlaing) were sentenced to 18 years in jail under section 17(1) and (2) of the Unlawful Associations Act. Tin Oo suffered such intensive torture during detention that he has now become mentally unstable and there are fears for his health.

The Committee notes that according to the Government, Thein Win and six other persons were prosecuted under Criminal Procedure No. 1475/06 at the Township Court of Justice of Toungoo in Pegu Division on 20 September 2008. They were connected to a bomb blast in Paenwegone and the insurgency as well as to participation in terrorist activities. The Southern Military Command made the necessary investigation and the father, mother, brother, sister and sister-in-law

were released in September 2006. They went back to their residence and on 2 October 2006 they ran away from Myanmar to Maesauk, Thailand.

9. The Committee notes that the ITUC refers to the arrest in March 2006 of five underground democracy and labour activists for a variety of offences connected to efforts to provide information to the FTUB and other organizations considered as illegal by the regime, and to organize peaceful anti-SPDC demonstrations. All five were sentenced to long prison terms and four were serving those terms in Insein prison (U Aung Thein, 76 years old, sentenced to 20 years; Khin Maung Win, sentenced to 17 years; Ma Khin Mar Soe, 17 years; Ma Thein Thein Aye, 11 years; and U Aung Moe, 78 years old, sentenced to 20 years); according to the latest communication by ITUC, they are still serving their sentence.

10. The Committee notes that the ITUC refers to intimidation by the army of the 934 workers at Hae Wae Garment, located in South Okkapala Township in Yangon, who went on strike on 2 May 2006 to demand better terms and conditions of work. The 48 workers allowed to meet with the authorities were forced to sign a written statement that indicated that there were no problems at the factory. A detachment of 12–20 police officers were regularly present in the factory after workers returned to work.

11. The Committee notes that the ITUC refers to the:

- arrest and sentencing to a four-year prison term with hard labour of Naw Bey Bey, an activist member of the Karen Health Workers' Union (KHWU); she was supposedly held in Toungoo;
- arrest, torture and killing of Saw Thoo Di, a.k.a. Saw Ther Paw, a Karen Agricultural Workers' Union (KAWU) committee member from Kya-Inn township, Karen State, by an armed column of Infantry Battalion 83 outside his village on 28 April 2006.

12. The Committee notes that the ITUC refers to the shelling of the Pha village with mortars and rocket propelled grenades by Light Infantry Battalion 308 which had been sent by the SPDC military upon learning that, on 30 April 2006, the FTUB and Federation of Trade Unions–Kawthoolei (FTUK) were preparing a May Day workers' rights commemoration.

13. The Committee notes that the ITUC refers to the discovery in early June 2005 by the SPDC of an underground network of ten FTUB organizers in the Pegu area who were providing support and education to workers and serving as a networking and information link to FTUB structures abroad. Seven men and three women were arrested. In a press conference held on 28 August 2005, the SPDC leaders accused the organizers of having used satellite phones to convey information from inside Burma to the FTUB, which then provided information to the ILO and the international trade union movement. The arrested FTUB members were taken to the infamous Aug Tha Pay interrogation centre in Mayangone district of Yangon where they were investigated and tortured by special branch police and the Bureau of Special Operations (military intelligence) personnel during the months of June and July. On 29 July 2005, they were transferred to Insein prison, and their case sent to a special court that conducts its hearings inside the prison. During the secret trial, they were denied access to outside council or witnesses, and the proceedings clearly did not meet international judicial standards. They were all found guilty and were sentenced on 10 October 2005. Wai Lin and Win Myint, as key leaders of the network, respectively received sentences of 25 years and 18 years; the other five men and two of the women (Hla Myint Than, Major Win Myint, Ye Myint, Thein Lwin Oo, Aung Myint Thein, Aye Chan, Kin Kyi), each received seven-year jail terms, and bank clerk Ma Aye Thin Khine was sentenced to three years of imprisonment. In its latest communication, the ITUC adds that, at the end of 2007, all these FTUB members were still being detained in Insein prison.

The Committee deeply regrets that the Government's response fails to acknowledge any of the fundamental rights and basic civil liberties of workers contained in the Convention. The Committee regrets the dismissive tone of the Government's reply to the comments by ITUC as well as the paucity of the information provided which is in stark contrast to the extreme gravity of the issues raised by ITUC. It strongly condemns the Government's view that comments made by workers' organizations under article 23 of the ILO Constitution and recommendations made by the ILO supervisory bodies to remedy violations of the fundamental rights of workers constitute interference in internal affairs. It emphasizes in this regard that the membership of a State in the International Labour Organization carries with it the obligation to respect in national legislation freedom of association principles and the Conventions which the State has freely ratified including Convention No. 87. The Committee stresses that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, as regards the reported torture, cruelty and ill-treatment, the Committee points out that trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and governments should give the necessary instructions to ensure that no detainee suffers such treatment (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 29–30). In addition, noting that several trade unionists have been tried by special courts inside prisons and taking note of court orders to destroy evidence thus rendering any appeal virtually impossible, the Committee emphasizes that it should be the policy of every government to ensure observance of human rights and especially of the right of all detained or accused persons to receive a fair trial with all guarantees of due process.

The Committee, noting that there is currently no legal basis to the respect for, and realization of, freedom of association in Myanmar, recalls once again that while trade unions are expected under *Article 8* of the Convention to respect the law of the land, “[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention”. The authorities should not seize on legitimate trade union activities as a pretext for arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities. In this regard, the Committee deeply regrets that ordinary trade union activities like speeches on socio-economic issues of direct interest to the workers, participation in May Day events and the mere communication of information to the FTUB are considered by the Government as criminal activity and punished with severe prison sentences. The Committee emphasizes that the holding of public meetings and the voicing of demands of a social and economic nature on the occasion of May Day are traditional forms of trade union action and trade unions should have the right to organize freely whatever meetings they wish to celebrate on May Day; freedom of expression which should be enjoyed by trade unionists should also be guaranteed when they wish to criticize the Government’s economic and social policy. With regard to the conviction of trade unionists for passing a border and the Government’s comments on the FTUB being an “alien” organization, the Committee emphasizes that in accordance with the principle enshrined in the Universal Declaration of Human Rights, everyone has the right to leave any country, including his own, and to return to his country and that forced exile of trade union leaders and unionists constitutes a serious infringement of human rights and trade union rights, since it weakens the trade union movement as a whole when it is deprived of its leaders. With regard to the Government’s reference to other Conventions, in order to justify violations of this fundamental Convention, the Committee emphasizes that a state cannot use the argument that other commitments or agreements justify the non-application of ratified ILO Conventions.

The Committee therefore once again most strongly deplores the serious alleged acts of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities, including the mere sending of information to the FTUB and participation in May Day activities. The Committee urges, once again, the Government to provide information on measures adopted and instructions issued without delay so as to ensure respect for the fundamental civil liberties of trade union members and officers and to take all necessary measures to release all those who have been imprisoned for the exercise of trade union activities immediately and to ensure that no worker is sanctioned for the exercise of such activities, in particular for having contacts with workers’ organizations of their own choosing. Furthermore, recalling that the right of workers and employers to freely establish and join organizations of their own choosing cannot exist unless such freedom is established and recognized both in law and in practice, the Committee urges the Government to indicate all measures taken, including instructions issued, to ensure the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile.

Concerning the legislative framework (*Articles 2, 3, 5 and 6* of the Convention), the Committee notes the comments made by ITUC on issues that have already been raised by the Committee over the years, including the prohibition of trade unions and the absence of any legal basis for freedom of association in Myanmar (repressive anti-union legislation, obscure legislative framework, military orders and decrees further limiting freedom of association, a single trade union system established in the 1964 Law and an unclear constitutional framework); the Federation of Trade Unions of Burma (FTUB) forced to work underground and accused of terrorism; “workers’ committees” organized by the authorities; and the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers’ Union of Burma (SUB) which is affiliated to the FTUB and the International Transport Workers’ Federation (ITF).

The Committee notes that according to the Government:

- the Referendum for the adoption of the Constitution was successfully held and the “yes” vote amounted to 92.4 per cent according to Announcement No. 10/2008 of 15 May 2008 by the Commission for Holding the Referendum of the Government of the Union of Myanmar. Chapter VIII on Citizenship, Fundamental Rights and Duties of Citizens provides in paragraph 354 that: “There shall be liberty in the exercise of the following rights subject to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality: (a) the right of the citizens to express freely their convictions and opinions; (b) the right of the citizens to assemble peacefully without arms; (c) the right of the citizens to form associations and unions.”;
- as a consequence of these provisions, a legislative framework has been established and the initial steps are being taken for the establishment of trade unions at the basic level, aimed at free and independent workers’ organizations. Basic workers’ organizations have already been formed in 11 industrial zones;
- furthermore, work is now beginning at the respective Committees on amending, reviewing and revising the provisions of the various labour laws adopted on the basis of the 1964 Law Defining the Fundamental Rights and Responsibilities of the People’s Workers. Moreover, the issues raised by the Committee on the Trade Disputes Act 1929 and Trade Union Act 1926 are addressed in the New State Constitution through Chapter IV on Legislation, Chapter VIII on Citizenship, Fundamental Rights and Duties of Citizens and Chapter XV on General Provisions. As for Orders Nos 2/88 and 6/88, the Government indicates that during this transitional period, it will need to draw up measures of protection against persons who will attempt to generate hatred or contempt or excite or provoke disaffection towards the Government established by law in the Union of Myanmar or for the constituent units

thereof. But, as a result of the New State Constitution, in future, Order 6/88 will be addressed through the drafting of the new Trade Union Law, and the procedures of the registration of the workers' organizations will be included in this new law;

- finally, concerning seafarers, the Government indicates that the Department of Marine Administration under the Ministry of Transport has allowed those Myanmar seafarers who are working on board ships to inform and complain to the Seamen Employment Control Division (SECD) and also inform and complain to the ITF or any other valid association for the prejudice suffered to their interests and their rights.

The Committee recalls that, for several years, it has indicated that there exist some pieces of legislation containing important restrictions to freedom of association or provisions which, although not directly aimed at freedom of association, can be applied in a manner that seriously impairs the exercise of the right to organize. More specifically: (1) Order No. 6/88 of 30 September 1988 provides that the "organizations shall apply for permission to form to the Ministry of Home and Religious Affairs" (section 3(a)), and states that any person found guilty of being a member of, or aiding and abetting, or using the paraphernalia of, organizations that are not permitted shall be punished with imprisonment for a term which may extend to three years (section 7); (2) Order No. 2/88 prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime; (3) the Unlawful Association Act of 1908 provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine (section 17.1); (4) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (5) the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers establishes a compulsory system for the organization and representation of workers and imposes a single trade union; (6) the 1929 Trade Disputes Act contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to Courts of Inquiry or to Industrial Courts.

While noting the Government's indications on the adoption of the Constitution and upcoming legislative reforms, the Committee must, however, observe that there is currently no legal basis to the respect for, and realization of, freedom of association in Myanmar and that the broad exclusionary clause of section 354 of the Constitution subjects the exercise of this right "to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality". The Committee notes with deep regret that the drafting of section 354 of the Constitution may continue to give rise to continued violations of freedom of association in law and practice. Recalling the particularly serious and urgent issues that this Committee has been raising for nearly 20 years now, the Committee deplores this persistent failure to take any measures to remedy the legislative situation which constitutes a serious and ongoing breach by the Government of its obligations flowing from its voluntary ratification of the Convention. Furthermore, the Committee deeply regrets the exclusion from any meaningful consultation of the social partners and civil society as a whole, which would be a necessary foundation for the establishment of a legislative framework on the particularly serious and urgent issues raised in relation to the application of the Convention. It must also express serious doubts as to whether the "trade unions" referred to by the Government actually reflect the free choice and interests of workers within the current framework of a total absence of an enabling legislative framework and recurrent violations of freedom of association in practice.

The Committee once again urges the Government to furnish without delay a detailed report on the concrete measures taken to enact legislation guaranteeing to all workers and employers the right to establish and join organizations of their own choosing, as well as the rights of these organizations to exercise their activities and formulate their programmes and to affiliate with federations, confederations and international organizations of their own choosing without interference from the public authorities. It further urges the Government in the strongest terms to immediately repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act, so that they cannot be applied in a manner that would infringe upon the rights of workers' and employers' organizations. It requests the Government to communicate any steps taken towards the adoption of draft laws, orders or instructions to guarantee freedom of association so that it may examine their conformity with the provisions of the Convention.

[The Government is asked to supply full particulars to the Conference at its 98th Session and to reply in detail to the present comments in 2009.]

Namibia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)

The Committee notes the comments submitted by the Public Service Union of Namibia (PSUN) dated 26 October 2007, and by the International Trade Union Confederation (ITUC) dated 29 August 2008, concerning the application of the Convention and, in particular, the exclusion of prison service staff from the provisions of the new Labour Act of 2007, and hence from the guarantees afforded by the Convention.

Article 2 of the Convention. Right to organize of prison staff. The Committee notes the adoption of the new Labour Act of 2007, which is not yet in force. The Committee notes that section 2(2)(d) of the Labour Act excludes members of the Namibian Prison Service from the Labour Act's provisions, unless the Prisons Service Act, 1998 (Act No. 17 of 1998) provides otherwise. The Committee further notes, in this regard, that the Prisons Service Act does not provide for the extension of the new Labour Act's guarantees to the Namibian Prison Service; nor does it contain any provisions establishing freedom of association rights for the latter.

The Committee notes the Government's indication that it is willing to consider the issue, and that it is therefore thought appropriate to first consult widely with all the relevant parties before a decision is taken on whether to amend the Labour Act or the Prisons Service Act in order to give effect to the principles of freedom of association and the right to organize, as well as to provide for effective mechanisms to deal with and resolve labour disputes. The Committee further notes that, according to the Government, the consultation process – which would include the ILO – will take considerable time before any tangible decision to change the legislation can be taken. ***In these circumstances, the Committee expresses the hope that the necessary legislative amendments to guarantee to the prisons service the rights provided under the Convention will be adopted in the near future and requests the Government to indicate, in its next report, any developments in this regard.***

A request concerning other points is being addressed directly to the Government.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1995)

The Committee notes that the Government's report has not been received. It further notes the comments submitted by the Public Service Union of Namibia (PSUN) in a communication of 26 October 2007, and by the International Trade Union Confederation (ITUC) in a communication of 29 August 2008, concerning the application of the Convention and, in particular, the exclusion of prison service staff from the provisions of the new Labour Act of 2007, and hence from the guarantees afforded by the Convention.

Article 6 of the Convention. Rights of prison staff. The Committee notes the adoption of the new Labour Act of 2007 which has not yet entered into force. The Committee notes that section 2(2)(d) of the Labour Act excludes members of the Namibian prison service from the Labour Act's provisions, unless the Prisons Service Act provides otherwise. The Committee further notes, in this regard, that the Prisons Service Act does not provide for the extension of the new Labour Act's guarantees to the Namibian prison service; nor does it contain any provisions establishing freedom of association rights for the latter.

In these circumstances, the Committee recalls that all public service workers, with the sole possible exception of the armed forces, the police, and public servants directly engaged in the administration of the State, should enjoy the rights enshrined in the Convention, including the right to collective bargaining. ***The Committee expresses the hope that the necessary legislative amendments to guarantee, to the prisons service, the rights provided under the Convention will be adopted in the near future and requests the Government to indicate, in its next report, any developments in this regard.***

A request concerning other points is being addressed directly to the Government.

Nepal

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)

The Committee notes with interest from the Government's report and the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, that the Interim Constitution which entered into force in 2007 guarantees in *Articles 12 and 30* the right to organize and engage in collective bargaining. Moreover, the Civil Service Ordinance Act which previously revoked the right of public servants to form and belong to trade unions, has been amended by the Civil Service Act thus restoring the right of public employees (up to Gazetted Third Class) to organize and bargain collectively. ***The Committee requests the Government to specify the categories of public employees included in the gazetted and non-gazetted classes and which ones are covered by the legislative recognition of the right to organize and engage in collective bargaining.***

The Committee also takes note of the National Directive Act, 1962 and the Civil Service Act communicated by the Government. The Committee will comment on them once a translation is available. Finally, the Committee takes note of the draft National Labour Commission Act drafted by a national tripartite task force on the basis of widespread consultations, in order to address shortcomings in the system of grievance and dispute resolution. The Committee raises certain issues in relation to this draft Act below.

Article 1 of the Convention. Anti-union discrimination. The Committee's previous comments concerned the need for provisions providing explicit protection against acts of anti-union discrimination, accompanied by effective and sufficiently dissuasive sanctions. The Committee notes from the Government's report that based on the constitutional provision concerning discrimination and section 23(a) of the Trade Union Act, 1992, which explicitly discourages anti-union discrimination in respect of employment, there have hardly been any acts of anti-union discrimination brought to the

notice of the authorities. However, maximum protection will be explicitly ensured through the upcoming labour market reform and the revision of the related laws by the tripartite task force. ***The Committee requests the Government to indicate in its next report the measures taken or contemplated in order to introduce in 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.***

Article 2. Acts of interference. The Committee's previous comments concerned the need to ensure the enactment of a provision providing protection to workers' and employers' organizations against acts of interference by one another, and including effective and sufficiently dissuasive sanctions guaranteeing adequate protection to trade unions against acts of interference in their establishment, functioning or administration and, in particular, against acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial or other means, with the objective of placing such organizations under the control of employers or employers' organizations. The Committee notes from the Government's report that interference is hardly practised in Nepal although there is no explicit provision against such activities in the legislation. The issue shall be addressed in the course of the labour market reform. ***The Committee requests the Government to indicate in its next report the measures taken or contemplated in order to introduce in the legislation a prohibition of acts of interference as well as rapid appeal procedures and dissuasive sanctions against such acts.***

Article 4. Collective bargaining. 1. Compulsory arbitration. The Committee notes that according to section 9(4) of the draft National Labour Commission Act, this National Labour Commission will have the power, in applying the Essential Services Act, 1957 and section 30 of the Trade Union Act, to arbitrate interests disputes in the hotel and transportation sectors as well as in cases where the authorities consider that the economic development of the country so requires. The Committee recalls that compulsory arbitration imposed either at the request of one party to a dispute or by the authorities at their own initiative, raises problems with regard to the application of *Article 4* of the Convention (General Survey of 1994 on freedom of association and collective bargaining, paragraphs 256–258). ***The Committee therefore requests the Government to indicate in its next report the measures taken to address the set of provisions noted above in the context of labour market reform so as to ensure that compulsory arbitration is not imposed at the initiative of one party to an interests dispute in the hotel and transportation sectors or at the initiative of the authorities where they consider that the country's economic development so requires; compulsory arbitration would only be acceptable in essential services in the strict sense of the term and for public servants exercising authority in the name of the State.***

2. Composition of arbitration bodies. The Committee notes that section 6 of the draft National Labour Commission Act provides that the Appointment Committee responsible for determining the composition of the National Labour Commission shall consist, inter alia, of two persons duly nominated by the Federation of Nepal Chamber of Commerce and Industry. The Committee considers that any decisions concerning the participation of workers' and employers' organizations in a tripartite body – especially one entrusted with mediation, conciliation and arbitration proceedings – should be taken in full consultation with all the organizations whose representativity has been objectively proved. The Committee considers, thus, that the members of the Appointment Committee should not be determined by reference to a specific organization by name, but rather to the “most representative” organization. ***The Committee therefore requests the Government to avoid any reference to the Federation of Nepal Chamber of Commerce and Industry or any other organization in the draft National Labour Commission Act, and to refer rather to the “most representative” employers' organization.***

3. Measures to promote collective bargaining. In its previous comments, the Committee had noted that according to the ITUC, although the Labour Act provides for collective bargaining, the necessary structure for the implementation of the provisions is not in place. The Committee notes that in its latest comments of August 2008, the ITUC indicates that owing to a combination of worker inexperience and employer reluctance, there is, in fact, little collective bargaining and the related agreements only cover around 10 per cent of workers in the formal economy. The Committee notes from the Government's report that strategy No. 3.2.6 of the Labour and Employment Policy 2062 states that collective bargaining (which now includes 155 collective agreements at the level of plants and eight at national level) will be encouraged through legal and institutional provisions and by building an environment conducive to the organization of workers and employers in the informal economy. ***The Committee requests the Government to indicate in its next report the impact of these measures as well as any further measures taken to promote collective bargaining and to provide statistical data on the scope of the collective agreements which have already been concluded.***

Netherlands

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

Protection against acts of interference. The Committee's previous comments concerned the need to introduce safeguards in the process of extension of sectoral collective agreements to ensure trade union independence and avoid the

weakening of sectoral collective agreements. In this regard, the Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2628 (351st Report approved by the Governing Body at its 303rd Session (November 2008)). The Committee notes with satisfaction from the Government's report that: (i) the previous policy was one in which the Minister of Social Affairs and Employment had authority to declare a collective agreement universally binding in a certain branch of industry and to grant dispensation (exemption) more or less automatically when so requested by parties which had previously concluded collective agreements at a lower level; (ii) this policy had to be abandoned following a decision of the Council of State which decided on 27 October 2004 that such a dispensation decision is open to objection and appeal and that there must be a clearer set of procedural rules; in response, the Government changed the regulations from 1 January 2007 after prior consultations with the Labour Foundation and the other relevant parties not represented in the Labour Foundation; and (iii) as a result, the Minister can grant upon request an exemption from an order declaring a collective agreement universally binding for a branch of the industry, if due to compelling arguments, the application of the provisions of the collective agreement in question cannot reasonably be required of certain businesses or subsectors; compelling arguments exist in particular if the specific characteristics of the business or subsector differ on essential points from those to which the universally binding agreement is to apply; it is also required that the parties applying for an exemption have themselves concluded a legally binding collective agreement, and that they are independent with respect to each other. The Committee further notes that according to the Government, if the collective agreement whose provisions are declared universally binding contains minimum provisions, the provisions of the other collective agreement will continue to be effective in so far as they are more favourable. If, however, the collective agreement whose provisions are declared universally binding contains more favourable conditions than the other collective agreement, the order declaring universally binding status will result in these more favourable conditions applying across the board for all employers and employees in the branch of the industry.

Protection against anti-union discrimination. In its previous comments the Committee had invited the Government to initiate discussions with the most representative employers' and workers' organizations with a view to identifying appropriate means for addressing the issue of the protection against acts of anti-union discrimination other than dismissal (for instance, transfer, relocation, demotion and deprivation or restriction of remuneration, social benefits or vocational training) to trade union members who are not trade union representatives. The Committee notes that the Government considers that there is no serious imminent reason to initiate the discussions and will therefore send a request to the most representative organizations of employers and workers represented in the Labour Foundation to assess the need for such discussions amongst the social partners. The Committee recalls that *Article 1 of the Convention* requires protection against all acts of anti-union discrimination for all "workers" with the only possible exceptions contained in *Article 6* of the Convention. ***The Committee requests the Government to indicate the measures taken or contemplated in the framework that it intends to create, with a view to ensuring comprehensive protection against acts of anti-union discrimination, other than dismissal, to trade union members.***

Comments of the FNV. The Committee takes note of the comments made by the Netherlands Trade Union Confederation (FNV) in a communication dated 29 August 2008 concerning the impact which an opinion published by the Netherlands Competition Authority (NMA) has had in practice, by discouraging negotiations with employers at the sectoral level, on the terms and conditions of contract labour (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 observes that the FNV refers to serious matters and recalls that Article 4 of the Convention establishes the principle of free and voluntary collective bargaining and the autonomy of the bargaining parties. It requests the Government to provide detailed comments in this regard.***

Aruba

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

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

Article 3 of the Convention. In its previous comments, the Committee had asked the Government to amend or repeal section 374(a) to (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964, which prohibited the right to strike by public employees under threat of imprisonment.

The Committee had noted that, in the Government's opinion, the abovementioned provisions are in conformity with the Convention, as they do not prohibit public employees from striking. According to the Government, section 374(a) of the Penal Code refers to imprisonment or fine of a public official in the case when he or she, while performing his or her duties, acts with the aim to cause stagnation or to permit the continuation of stagnation, neglects or refuses to perform labour corresponding to his or her inherent duties as a public official. The Government further indicated that section 82(2) of Ordinance No. 159, which states that punishment may be exacted on public employees who neglect or refuse to perform labour as any good public official is expected to perform is aimed at an individual's refusal to perform his or her duties, and not at collective or individual strikes. The Government further indicated that the Penal Code will not be affected by a revision of the labour legislation as the Penal Code falls under the competency of the Ministry of Justice. However, the Code is currently under evaluation by a special committee established in March 2003. It is estimated that its work will be completed in approximately two years. After the evaluation period, the work on the suggested amendments will commence.

The Committee recalls that, in its 1992 report, the Government acknowledged that strikes by public employees, including teachers in the public sector, were forbidden by law (section 347(a) to (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964), although in practice public employees had resorted to strikes on several occasions and that the local courts had considered such strikes to be legal on condition that they were justified. The Committee recalls that the principle whereby the right to strike may be limited or prohibited in the public service or in essential services would become meaningless if legislation defined the public services or essential services too broadly. The Committee considers that the prohibition should be limited to public servants exercising authority in the name of the State or to services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. *Noting that the Penal Code is currently under evaluation, the Committee hopes that the Code, as well as section 82 of Ordinance No. 159, will be reviewed in accordance with the Committee's comments and asks the Government to indicate any progress in this respect. The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

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

Nicaragua

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

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

The Committee also notes the comments made by the International Trade Union Confederation (ITUC) on 29 August 2008 on the application of the Convention. *The Committee requests the Government to send its observations on the previous comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC) in 2005 and 2006, concerning the prosecution of seven trade union leaders, impediments to the registration of the executive board of a trade union and a strike in the education sector that was declared unlawful by the administrative authority.*

Article 3 of the Convention. The Committee recalls that in its previous observations it asked the Government to amend sections 389 and 390 of the Labour Code which provide for compulsory arbitration of a dispute where 30 days have elapsed since the calling of a strike. The Committee once again points out that, if a dispute is referred to compulsory arbitration after 30 days, the arbitration award should be binding only if all the parties agree to it, or where the strike has been called in an essential service in the strict sense of the term or during an acute national crisis. *The Committee requests the Government to provide information in its next report on the measures taken or envisaged to amend these sections as outlined above.*

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

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

The Committee also notes the comments made by the International Trade Union Confederation (ITUC), dated 29 August 2008, on the application of the Convention. *In this regard, the Committee requests the Government to send its observations on the comments concerning the imposition of compulsory arbitration and anti-union dismissals in export processing zones and several companies.*

Article 2 of the Convention. Protection against acts of interference. The Committee recalls that, in its previous observation, it noted that the fines envisaged in the legislation (from 2,000 to 10,000 cordobas, with 2,000 cordobas being equivalent to US\$147) cannot be considered as dissuasive nor as adequate protection against acts of interference by employers or their organizations in trade union affairs and emphasized the need for the legislation to provide for sanctions that are sufficiently effective and dissuasive against such acts. *The Committee reiterates once again the need for the legislation to provide for sanctions that are sufficiently effective and dissuasive against acts of interference by employers or their organizations in trade union affairs and asks the Government to inform it of any measures adopted in this respect in its next report.*

Article 4. Promotion of collective bargaining. The Committee recalls that, in its previous observations, it took note of the statistics provided by the Government on the number of collective agreements concluded (and workers covered by them) in both the public and the private sectors and requested the Government to take measures to encourage the negotiation of collective agreements in export processing zones and to provide information in its subsequent report on any measures adopted in this respect. *The Committee asks the Government, once again, to take measures to encourage collective bargaining in export processing zones and to keep it informed of any developments in this regard.*

Niger

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)

Articles 3 and 10 of the Convention. Provisions on requisitioning. The Committee recalls that, for many years, it has been asking the Government to amend section 9 of Ordinance No. 96-009 of 21 March 1996 regulating the exercise of

the right to strike of state officials and officials of territorial communities so as to restrict its scope only to cases in which work stoppages are likely to provoke an acute national crisis, to public servants exercising authority in the name of the State, or to essential services in the strict sense of the term. The Government had previously indicated that the revision of the abovementioned Ordinance was before the National Tripartite Committee responsible for the implementation of the recommendations produced by the brainstorming meetings to discuss the right to strike and the representativity of organizations. However, in its 2006 report, the Government indicated that the revision of the Ordinance had been hindered by the lack of agreement between the social partners and the Government and by problems relating to the representativity of trade union organizations. ***The Committee notes with regret that, in its latest report, the Government still does not provide an account of the measures taken to amend section 9 of Ordinance No. 96-009 despite the Committee's repeated requests. The Committee trusts that the Government will not fail to take without delay all the necessary measures to that end and recalls the possibility of seeking technical assistance from the Office in that regard.***

Nigeria

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

The Committee notes that the Government's report has not been received. The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 concerning legislative issues already raised by the Committee, as well as comments concerning violations of the right to strike, arrest and detention of strikers, police repression during demonstrations and the refusal to recognize a trade union. ***The Committee requests the Government to submit its observations thereon as well as on the 2006 comments by the International Confederation of Free Trade Unions (ICFTU, now ITUC).***

The Committee recalls that in its previous observation, it had noted the Trade Union (Amendment) Act (2005) and draws the attention of the Government to the following points.

Article 2 of the Convention. Legislatively imposed trade union monopoly. In its previous comments, the Committee had raised its concern over the legislatively imposed trade union monopoly and in this respect, it requested the Government to amend section 3(2) of the Trade Union Act, which restricts the possibility of other trade unions from being registered where a trade union already exists. The Committee noted that there is no such amendment in the language of the Trade Union (Amendment) Act. The Committee reiterates that under *Article 2* of the Convention, workers have the right to establish and to join organizations of their own choosing without distinction whatsoever (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 45). ***It therefore urges the Government to amend section 3(2) of the principal Trade Union Act so as to ensure that workers have the right to form and join organizations of their own choosing even if another organization already exists.***

Organizing in export processing zones (EPZs). The Committee had noted the Government's statement that the Federal Ministry of Labour and Productivity is still in discussion with the EPZ authority on the issues of unionization and entry for inspection in the export processing zones. The Committee notes the ITUC's comments, according to which section 13(1) of the Nigeria Export Processing Zones Authority Decree (1992) makes it difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the EPZs. ***The Committee therefore once again requests the Government to take the necessary measures in the near future to ensure that EPZ workers are guaranteed the right to form and join organizations of their own choosing, as provided by the Convention, and to transmit a copy of any new laws adopted in this respect. It further requests the Government to indicate the measures taken or envisaged to ensure that representatives of workers' organizations have reasonable access to EPZs in order to appraise the workers in the zones of the potential advantages of unionization.***

Organizing in various government departments and services. In its previous comments, the Committee requested the Government to amend section 11 of the Trade Union Act, which denied the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and Nigeria Telecommunications. The Committee notes that this section was not amended by the Trade Union (Amendment) Act. The Committee had noted that according to the Government's statement, the Collective Labour Relations Bill, pending before the lower chamber of Parliament will address this issue. The Committee recalls that workers, without distinction whatsoever, shall have the right to establish and to join organizations of their choosing and that the only exceptions authorized by the Convention are members of the police and armed forces, who should be defined in a restrictive manner and should not include, for example, civilian workers in the manufacturing establishments of the armed forces. Furthermore, the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of *Article 9* of the Convention (see General Survey, op. cit., paragraphs 55 and 56). ***The Committee therefore requests the Government to take the necessary measures to amend section 11 of the Trade Union Act, which is still in force, and indicate the progress made towards the adoption of the Collective Labour Relations Bill and send a copy of the legislation, once it is adopted.***

Minimum membership requirement. The Committee had previously expressed its concern over section 3(1) of the Trade Union Act requiring 50 workers to form a trade union. The Committee considers that even though this minimum

membership would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprise organizations, particularly in small enterprises. ***In these circumstances, the Committee is therefore bound to reiterate that this number is too high and requests the Government to take the necessary measures to reduce the minimum membership requirement, particularly in respect of enterprise trade unions, and thus ensure the right of workers to form organizations of their own choosing.***

Article 3. The right of organizations to organize their administration and activities and to formulate programmes without interference from the public authorities. Export processing zones (EPZs). The Committee recalls that it had previously requested the Government to indicate the measures taken or envisaged to ensure that workers in EPZs have the right to freely organize their administration and activities and to formulate their programmes without interference by the public authorities, including through the exercise of industrial action. ***Noting the Government's indication that the EPZ authority is not opposed to trade union activities and that the Federal Ministry of Labour and Productivity is still in discussion on this issue, the Committee reiterates its previous request and expects that the necessary measures will be taken without delay so as to ensure that workers in EPZs enjoy the rights under the Convention.***

Administration of organizations. The Committee recalls that, in its previous comments, it had requested the Government to amend sections 39 and 40 of the Trade Union Act in order to limit the broad powers of the registrar to supervise the union accounts at any time and to ensure that such a power was limited to the obligation of submitting periodic financial reports, or in order to investigate a complaint. The Committee notes that these sections were not amended under the new legislation and that the Government refers to the Collective Labour Relations Bill. ***The Committee trusts that the new legislation to which the Government refers will address this matter.***

Right to strike. Compulsory arbitration. The Committee had noted that section 30, as amended by subsection (6)(d) of the Trade Union (Amendment) Act, continues to rely on the Trade Disputes Act to restrict strike action through the imposition of a compulsory arbitration procedure leading to a final award. The Committee has already pointed out on several occasions that such a restriction, which is binding on the parties concerned, constitutes a prohibition which seriously limits the means available to trade unions to further and defend the interest of their members, as well as their right to organize their activities and to formulate their programmes. Furthermore, the Committee notes the ITUC's comments, according to which section 4(e) of the Nigeria Export Processing Zones Authority Decree (1992) impedes trade unions from handling the resolution of disputes between employers and employees by granting this responsibility to the authorities managing these zones. The Committee recalls that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, and thus the autonomy of bargaining partners (see General Survey, op. cit., paragraph 257). ***The Committee therefore once again requests the Government to take the necessary measures to amend section 7 of Decree No. 7 of 1976, amending the Trade Disputes Act in order to limit the possibility of imposing compulsory arbitration to only essential services in the strict sense of the term, public servants exercising authority in the name of the State or in the case of acute national crisis. Also, the Committee requests the Government to amend section 4(e) of the Nigeria Export Processing Zones Authority Decree (1992) in order to guarantee the autonomy of the bargaining partners without giving the right to the authorities to impose compulsory arbitration.***

Majority required to declare a strike. The Committee had noted that section 6 of the Trade Union (Amendment) Act amends section 30 of the principal Act by inserting subsection (6)(e), which requires the observance of a simple majority of all registered trade union members for the calling of a strike. The Committee considers that if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast (see General Survey, op. cit., paragraph 170). ***It therefore requests the Government to take the necessary measures to amend the new section 30(6)(e) accordingly, so as to bring it into conformity with the Convention.***

Restrictions relating to essential services. The Committee had noted with concern that section 6 of the new Act relies on the definition of "essential services" provided for in the Trade Disputes Act (1990) to restrict participation in a strike. Specifically, the Trade Disputes Act defines "essential services" in an overly broad manner so as to include, among others, services for or in connection with: the Central Bank of Nigeria, the Nigerian Security Printing and Minting Company Limited, any corporate body licensed to carry out banking business under the Banking Act, the postal service, sound broadcasting, maintaining ports, harbours, docks or aerodromes, transportation of persons, goods or livestock by road, rail, sea or river, road cleaning, and refuse collection. The Committee recalls that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraph 159). ***It once again requests the Government to take the necessary measures to amend the Trade Disputes Act's definition of "essential services".***

The Committee reminds the Government that in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to the third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term (see General Survey, op. cit., paragraph 160).

Restrictions relating to the objectives of a strike. The Committee had noted with concern section 30 of the Trade Union Act as amended by section 6(d) of the new Act, limiting legal strikes to disputes constituting a dispute of rights,

defined as “a labour dispute arising from the negotiation, application, interpretation or implementation of a contract of employment or collective agreement under the Act or any other enactment of law governing matters relating to terms and conditions of employment”, as well as to a dispute arising from a collective and fundamental breach of employment or collective agreement on the part of the employee, trade union or employer. The Committee considers that the legislation appears to exclude any possibility of a legitimate strike action to protest against the Government’s social and economic policy affecting workers’ interests. The Committee recalls that organizations responsible for defending workers’ socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection, and the standard of living (see General Survey, op. cit., paragraph 165). **Therefore, it requests the Government to take the necessary measures to amend section 6 of the new Act so as to ensure that workers enjoy the full right to strike and, in particular, to ensure that workers’ organizations may have recourse to protest strikes aimed at criticizing the Government’s economic and social policies without sanctions.**

Other restrictions. The Committee had noted that section 42(1)(B) of the Trade Union Act, as amended, requires that “no trade union or registered federation of trade unions or any member thereof shall in the course of any action compel any person who is not a member of its union to join and strike or in any manner whatsoever, prevent aircraft from flying or obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike”. The Committee observes that this section appears to provide for two prohibitions: firstly, with regard to compelling non-union members to participate in a strike action and, secondly, the prohibition to obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike. The Committee recalls that taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace should not be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers. As to the second prohibition, the broad wording of this section could potentially outlaw any gathering or strike picket. The Committee recalls that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and, in any event, not such as to place substantial limitation on the means of action open to trade union organizations. In addition, given that aircraft-related services, with the exception of air traffic controllers, are not in themselves considered to be essential services in the strict sense of the term, a strike of workers in that sector or related services should not be the subject of an overall ban, as could be implied from the wording of this section. **The Committee therefore requests the Government to take the necessary measures to amend section 42(1)(B) so as to bring it into conformity with the Convention and the above principles, so as to ensure that any restrictions placed on strike actions aimed at guaranteeing the maintenance of public order are not such as to render any such action relatively impossible or ban it for certain workers beyond those in essential services in the strict sense of the term.**

Sanctions against strikes. The Committee had noted that section 30 of the Trade Union Act, as amended by section 6(d) of the new Act, makes strikers liable to the possibility of both paying a fine and being imprisoned up to six months, which might lead to a penalty which is disproportionate to the seriousness of the violation. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. **The Committee therefore requests the Government to take the necessary measures in order to amend its legislation so as to bring it into conformity with the principle above.**

Article 4. Dissolution by administrative authority. In its previous comments, the Committee had requested the Government to amend section 7(9) of the Trade Union Act by repealing the broad authority of the Minister to cancel the registration of workers’ and employers’ organizations, as the possibility of administrative dissolution under this provision involved a serious risk of interference by the public authority in the very existence of organizations. The Committee had noted the Government’s statement that this matter will be addressed in the Collective Labour Relations Bill. **Noting that section 7(9) of the principal Act is still in force, the Committee requests the Government to take the necessary measures to amend it and to provide a copy of the new legislative Act once it is adopted.**

Articles 5 and 6. The right of organizations to establish federations and confederations and to affiliate with international organizations and the application of the provisions of Articles 2, 3 and 4 to federations and confederations of employers’ and workers’ organizations. The Committee had noted that section 8(a)(1)(b) and (g) of the new Act requires federations to consist of 12 or more trade unions in order to be registered. **In this respect, the Committee requests the Government to provide information on the practical application of this requirement and, in particular, the level at which federations are established.**

The Committee expresses the firm hope that appropriate measures will be taken in the very near future to make necessary amendments to the laws referred to above in order to bring them into full conformity with the Convention. It requests the Government to indicate the measures taken or envisaged in this respect.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1960)

The Committee notes that the Government's report has not been received. The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, concerning refusals to negotiate with trade unions, acts of interference by employers, anti-union practices against workers' representatives, including dismissals. **The Committee requests the Government to submit its observations thereon and to reply to the matters raised by the Committee's previous comment which it repeats as follows.**

Trade Union (Amendment) Act. In its previous observations, the Committee had commented upon on a section of Decree No. 1 of 1999 which conditioned the provision of check-off facilities upon the insertion of "no strike" and "no lock-out" clauses in relevant collective bargaining agreements. The Committee notes with satisfaction that this provision has been abrogated by the Trade Union (Amendment) Act of 2005. The Committee notes with interest that this new legislation provides that a "membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member".

Bill on collective labour relations. The Committee notes the Government's statement, according to which the National Assembly has not yet passed the bill on collective labour relations. **The Committee recalls that ILO technical assistance has been provided to the authorities and hopes that the future legislation will be in full conformity with the requirements of the Convention. The Committee requests the Government to send the new law once adopted.**

Comments made by the Organization of African Trade Union Unity (OATUU) and the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention. The Committee notes the comments made by the OATUU in a communication dated 20 August 2004, as well as the ICFTU in communications dated 31 August 2005 and 10 August 2006. The comments concern in particular the fact that: (1) certain categories of worker are denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Mining Company Limited, the Prison Service and the Central Bank of Nigeria) and therefore are deprived of the right to collective bargaining; (2) only unskilled workers are protected by the Labour Act against anti-union discrimination by their employer; (3) every agreement on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Council Acts according to the Trade Dispute Act (it is an offence for an employer to grant a general or percentage increase in wages without the approval of the Minister); (4) article 4(e) of the 1992 Decree on Export Processing Zones states that "employer-employee" disputes are not matters to be handled by trade unions but rather by the authorities managing these zones; and (5) article 3(1) of the same Decree makes it very difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the export processing zones (EPZs). **The Committee requests the Government to send its reply on these comments.**

Concerning the abovementioned point (1), the Committee observes that the Committee on Freedom of Association has underlined that the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of Article 9 of Convention No. 87 (see 343rd Report of the Committee on Freedom of Association, paragraph 1027). **The Committee requests the Government to amend section 11 of the Trade Union Act (1973) so that these categories of workers are granted the right to organize and to bargain collectively, as well as for all public employees not engaged in the administration of the State.**

Norway

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

Articles 3 and 10 of the Convention. The Committee recalls that over the years, it has referred to the need to limit the possibility of imposing compulsory arbitration to the essential services in the strict sense of the term or to public servants exercising authority in the name of the State.

The Committee takes note of the Government's observations that governmental intervention in strikes can only take place if the Norwegian Parliament (*Stortinget*) adopts a law and that this does not happen with regard to any collective labour dispute at the discretion of the public authorities, but rather after a careful evaluation of the impact of a strike on the life, health or personal safety of the population. The health surveillance authorities monitor the situation closely and only when it is reported from them that life and health is endangered, is a proposal of compulsory arbitration is put before Parliament. An exception from this has been the oil conflict which would cause a full stop in all Norwegian oil production which would have a devastating impact on volatile and already extremely high oil prices. As for the strike in the elevator service which ended through compulsory arbitration in 2006, the Government indicates that it had lasted for nearly six months and had given rise to safety concerns due to the lack of repairs and maintenance. The Government adds that in 2006, acts imposing compulsory arbitration have been adopted in conflicts in the insurance and financial services sector (Acts Nos 10 and 18 of 16 June 2006). Another intervention took place in the public sector involving the police, Food Safety Authority and Institute of Public Health. With regard to the issue of minimum services, the Government indicates that responsibility for minimum services agreements first of all rests with the conflicting parties which are responsible for

the consequences of the industrial action. According to many basic agreements, industrial parties before a conflict breaks out enter into the agreements which are necessary to see to it that the conflict is handled and develops in a secure manner. The Government considers it to be the responsibility of the parties to handle these matters and this is done in most cases.

The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2545 concerning the imposition of compulsory arbitration in 2006 in the insurance and financial services sectors which are not essential in the strict sense of the term (349th Report, paragraphs 1111–1156). It notes that the Committee on Freedom of Association requested the Government to avoid, in the future, enacting legislation which has the effect of bringing to an end all industrial action in a dispute, especially where it relates to a sector that cannot be considered essential in the strict sense of the term and take into account the possibility of a negotiated minimum service.

The Committee invites the Government once again to ensure that compulsory arbitration through legislative intervention is imposed only in cases where the life, personal safety or health of the whole or part of the population is threatened or where the strike concerns public servants exercising authority in the name of the State, and requests the Government to continue to provide information on any decisions by Parliament imposing compulsory arbitration.

Pakistan

Right of Association (Agriculture) Convention, 1921 (No. 11) (ratification: 1923)

The Committee once again notes with regret that the Government's report has not been received.

The Committee notes the comments submitted by the Pakistan Workers Federation (PWF) in a communication dated 21 September 2008, in which it reiterates the information contained in its 2007 communication to the effect that agricultural workers are excluded from the application of the provisions of the Industrial Relations Ordinance (IRO) 2002 and that they have no right to freedom of association.

In its last observation, the Committee had observed that small agricultural holdings which do not run an establishment or farmers working on their own or with their family appeared to be excluded from the IRO 2002 and therefore from the provisions on freedom of association. The Committee notes that the Industrial Relations Act, amending the IRO 2002, was adopted in November 2008 and that it will be an interim law, which will lapse on 30 April 2010. During this period, a tripartite conference will be held to draft a new legislation in consultation with all stakeholders.

Furthermore, with reference to its comments under Convention No. 98, the Committee notes the Government's statement at the Conference Committee in 2006 that the Ministry of Food and Agriculture and provincial governments had been advised to help streamline the work and activities of rural workers' organizations in keeping with the Government's obligations under the Convention and that the Constitution of Pakistan provided clear guarantees to form or join "associations" to all Pakistani citizens, including rural workers. The Committee also notes from the Government's 2006 report on the application of Convention No. 98 that while no trade union of agriculture was registered, there were numerous agricultural workers' associations in place in the country to safeguard their interests.

The Committee requests the Government to indicate whether these associations enjoy collective bargaining rights under the Pakistani legislation. The Committee expresses the hope that the new legislation will ensure specifically that those engaged in agriculture, that appear to be excluded from the provisions on freedom of association of the IRO 2002, enjoy the same rights of association and combination as industrial workers. It also requests information on the number of trade unions and associations of agricultural workers.

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

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) and the Pakistan Workers' Federation (PWF) in communications dated 29 August and 21 September 2008, respectively. The comments of both unions concern legislative issues as well as the application of the Convention in practice raised in the previous observation of the Committee. The ITUC further alleges arrest of a number of trade union leaders. The Committee recalls that the right of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of these organizations and it is for the governments to ensure that this principle is respected. *The Committee requests that the Government provide its observations thereon, as well as on the 2005 and 2006 comments of the International Confederation of Free Trade Unions (ICFTU), alleging massive arrests and measures of retaliation against strikers, denial of registration of a union, limitation to the right of demonstration, harassment of women trade union leaders, suspension of a trade union and the possible use of section 144 of the Code of Criminal Proceedings against a trade union gathering and the 2005 comments of the All Pakistan Federation of Trade Unions (APFTU).* The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos 2229 (see 349th Report) and 2399 (see 344th and 350th Reports), dealing with the same issues.

The Committee recalls that its previous observations concerned the need to amend the Industrial Relations Ordinance (IRO) 2002. The Committee notes that the Industrial Relations Act, amending the IRO 2002, was adopted in November 2008 and that it will be an interim law, which will lapse on 30 April 2010. During this period, a tripartite conference will be held to draft a new legislation in consultation with all stakeholders. *The Committee expresses the hope that the new legislation will take into account its previous comments with regard to the IRO 2002.*

In particular, the Committee trusts that the new legislation will guarantee the right to form and join organizations to defend their own social and occupational interests to the following categories of workers:

- managerial and supervisory staff;
- workers who were excluded by virtue of section 1(4) of the IRO 2002, namely workers employed in the following establishments or industries: installations or services exclusively connected with the armed forces of Pakistan including the Ministry of Defence lines of the railways; Pakistan Security Printing Corporation or the Security Papers Limited or Pakistan Mint; administration of the State other than those employed as workmen by the railways, post, telegraph and telephone departments; establishments or institutions maintained for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on a commercial basis; institutions established for payment of employees' old-age pensions or for workers' welfare; and members of the watch and ward, security or fire service staff of an oil refinery or of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum products or of a seaport or an airport;
- workers of charitable organizations;
- workers at the Karachi Electric Supply Company (KESC);
- workers at Pakistan International Airlines (PIA) (Chief Executive's Order No. 6);
- agricultural workers; and
- export processing zone (EPZ) workers.

The Committee further trusts that, under the new legislation, the following restrictions on the right to strike will be lifted:

- the possibility to impose compulsory arbitration at the request of one party to end a strike action (reference is made to sections 31(2) and 37(1) of the IRO 2002). In this respect, the Committee recalls that a provision, which permits either party unilaterally to request the intervention of the public authorities for the settlement of a dispute through compulsory arbitration leading to a final award, effectively undermines the right to strike by making it possible to prohibit virtually all strikes or to end them quickly. Such a system seriously limits the means available to trade unions to further and defend the interests of their members as well as their right to organize their activities and to formulate their programmes and is not compatible with *Article 3* of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 153);
- the right of the federal or provincial Government to prohibit a strike which had lasted for more than 15 days at any time before the expiry of 30 days, "if it was satisfied that the continuance of such strike was causing serious hardship to the community or was prejudicial to the national interests" and to prohibit the strike if it considered that it "was detrimental to the interests of the community at large". In this respect, the Committee recalls that prohibitions or restrictions of the right to strike should be limited to essential services in the strict sense of the term, or to situations of an acute national crisis. The Committee had previously considered that the wording above, as previously provided for in section 31 of the IRO 2002, was too broad and vague to be limited to such cases;
- sanctions previously imposed by section 39(7) for contravening a labour court's order to call off a strike (dismissal of the striking workers; cancellation of the registration of a trade union; debarring of trade union officers from holding office in that or any other trade union for the unexpired term of their offices and for the term immediately following). In this respect, the Committee recalls that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, existence of heavy and disproportionate sanctions for strike action may create more problems than they resolve. Since the application of disproportionate sanctions does not favour the development of harmonious and stable industrial relations, the sanctions should not be disproportionate to the seriousness of the violation (see General Survey, op. cit., paragraphs 177 and 178). More specifically, the Committee considers that the cancellation of trade union registration, in view of the serious and far-reaching consequences which dissolution of a union involves for the representation of workers' interests, would be disproportionate even if the prohibitions in question were in conformity with the principles of freedom of association.

The Committee requests the Government to provide a copy of the new legislation once it is adopted.

The Committee recalls that, in its previous observation, it had noted that under section 32 of the IRO 2002, the federal or provincial Government could prohibit a strike related to an industrial dispute in respect of any public utility services, at any time before or after its commencement, and refer the dispute to a board of arbitrators for compulsory arbitration and that a strike carried out in contravention of an order made under this section was deemed illegal. The

Committee had also noted that Schedule I setting out the list of public utility services included services which could not be considered essential in the strict sense of the term – oil production, postal services, railways, airways and ports. The Schedule also mentioned watch and ward staff and security services maintained in any establishment. Furthermore, for a number of years, the Committee had been requesting the Government to amend the Essential Services Act, which included services beyond those which can be considered essential in the strict sense of the term. ***Considering that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the Committee once again requests the Government to amend the Essential Services Act so as to ensure that workers employed in oil production, postal services, railways, airways and ports may have recourse to strike action and so that compulsory arbitration may only be applied in these cases at the request of both parties.*** The Committee recalls that, rather than imposing a prohibition on strikes, in order to avoid damages which are irreversible or out of proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, the authorities could establish a system of negotiated minimum service of public utilities. ***Considering the heavy penal sanctions linked to violation of the Essential Services Act, the Committee further asks the Government to amend this Act so as to ensure that its scope is limited to essential services in the strict sense of the term. The Committee also requests that the Government specify the categories of workers employed in the “watch and ward staff and security services maintained in any establishment”.***

In its previous comments, the Committee had noted the Government’s indication that measures to review and ultimately reform section 27-B of the Banking Companies Ordinance of 1962 – which restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, under penalty of up to three years’ imprisonment – were under way. ***The Committee once again requests the Government to indicate the progress made in repealing these restrictions, either by exempting from the occupational requirement a reasonable proportion of the officers of an organization, or by admitting, as candidates, persons who have been previously employed in the banking company.***

The Committee is addressing a direct request on other points directly to the Government.

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, which concern matters raised in the Committee’s previous observation and contain allegations of violations of collective bargaining rights, weak labour law enforcement by the Government, and cases of anti-union discrimination and interference. ***The Committee requests the Government to provide its observations thereon, as well as on the comments sent by the International Confederation of Free Trade Unions (ICFTU, now ITUC) on 12 July 2006, also referring to examples of violations of the Convention in law and in practice.***

The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos 2229 (see 349th Report) and 2399 (see 344th and 350th Reports), dealing with similar issues.

The Committee recalls that the Conference Committee on the Application of Standards, after noting the long-standing nature and the seriousness of the discrepancies between the Convention and national law, had requested the Government, in June 2006, to send a detailed report containing full information on all issues raised, as well as draft texts concerning the application of the Convention. The Committee notes with regret that the Government’s report has not been received.

The Committee recalls that it had previously noted the discussion in the Conference Committee, which took place in June 2006, in which the Government’s representative stated that the Government was working towards resolving these outstanding problems in the near future, in cooperation with workers’ and employers’ organizations.

The Committee recalls that its previous observations concerned the need to amend the Industrial Relations Ordinance (IRO) 2002. The Committee notes that the Industrial Relations Act, amending the IRO 2002, was adopted in November 2008 and that it will be an interim law, which will lapse on 30 April 2010. During this period, a tripartite conference will be held to draft new legislation in consultation with all stakeholders. ***The Committee expresses the hope that the new legislation will take into account its previous comments with regard to the IRO 2002.***

Scope of application of the Convention. (a) *Denial of the rights guaranteed by the Convention in export processing zones (EPZs).* The Committee had previously noted the Government’s indication that EPZ Employment Relations Rules had been prepared in response to the concerns raised regarding the denial of labour rights in this sector and that these draft rules had been sent to the Ministry of Law, Justice and Human Rights for review and would be provided to the Committee once the process was completed. ***Hoping that, in the very near future, the new rules will provide EPZ workers with all the rights and guarantees enshrined in the Convention, the Committee once again requests the Government to send a copy of these rules as soon as they are adopted.***

(b) *Denial of the rights guaranteed by the Convention to other categories of worker.* ***The Committee expresses the hope that the new legislation will guarantee the right to organize of the following categories of worker employed in the following establishments or industries:***

- *Workers employed in installations or services exclusively connected with the armed forces of Pakistan, including the Ministry of Defence railway lines; the manufacturing establishment of the armed forces; the Pakistan Security Printing Corporation or the Security Papers Limited or Pakistan Mint; establishments or institutions maintained for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on a commercial basis; institutions established for payment of employees' old-age pensions or for workers' welfare; members of the watch and ward, security or fire service staff of an oil refinery or of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum products or of a seaport or an airport, persons who are employed mainly in a managerial or administrative capacity, as well as workers of charitable organizations;*
- *workers in Pakistan International Airlines (PIAC);*
- *workers in the agricultural sector;*
- *workers employed in the Karachi Electric Supply Company (KESC).*

The Committee had previously noted the Government's indication that after promulgation of the IRO 2002, the KESC workers were entitled to the right of association. However, following an application filed by the Trade Union of the KESC, the National Industrial Relations Commission (NIRC) had issued an order to the effect that the IRO was not applicable to the KESC. The Trade Union of the KESC had appealed to the bench of the NIRC and, according to the Government, the ban on KESC trade union activities had been lifted. The NIRC had further considered a dispute regarding registration of a labour union in the KESC and had ordered that a referendum be held to prepare for the determination of a collective bargaining agent. Following the referendum, labour unions should have been fully restored in the KESC. ***The Committee requests the Government to take all necessary measures to ensure that the KESC workers and the trade union existing in the enterprise enjoy the rights afforded by the Convention in practice and once again requests the Government to indicate the situation including the decision taken by the NIRC on the registration of a labour union and on the determination of a collective bargaining agent.***

Article 1 of the Convention. (a) Sanctions for trade union activities. The Committee had previously noted the Government's statement that measures to review and ultimately reform section 27-B of the Banking Companies Ordinance of 1962 – according to which imprisonment and/or fines were imposed in cases which include the use of bank resources (such as telephones) or of carrying on trade union activities during office hours, pressure tactics, etc. – were under way. ***The Committee expresses the firm hope that the Government will repeal these restrictions in the near future and requests the Government to indicate any developments in this respect.***

(b) Lack of sufficient legislative protection for workers dismissed for their trade union membership or activities. The Committee had previously noted the All Pakistan Federation of Trade Unions' (APFTU) statement, according to which the newly-imposed section 2-A of the Service Tribunals Act had debarred workers engaged in autonomous bodies and corporations such as the Pakistan Water and Power Development Authority (WAPDA), railway, telecommunication, gas, banks, the Pakistan Agricultural Storage and Supply Corporation (PASSCO), etc., from seeking redress for their grievances from the labour courts, labour appellate tribunals and the NIRC in the case of unfair labour practices committed by the employer. In this respect, the Committee had noted the Government's statement at the Conference Committee in June 2006 that measures to review and ultimately reform section 2-A of the Services Tribunal Act were under way. ***The Committee once again requests the Government to indicate the measures taken to reform section 2-A of the Services Tribunal Act and to ensure that appropriate means of redress are available to the workers concerned.***

Article 2. Protection against acts of interference. The Committee had previously noted the Government's indication that workers and employers enjoy adequate protection against any act of interference by each other or each other's agents or members in their establishment. According to the Government, this principle had been applied by means of legislation under which the field formation of the Directorate of Labour Welfare and the Minimum Wages Board had been established, and the workers authorized to form a trade union and determine a collective bargaining agent for executing agreements between the employers and the workers. ***The Committee once again requests the Government to state in its next report the specific provisions of the legislation which prohibit and penalize acts of interference by organizations of workers and employers (or their agents) in each other's affairs.***

Article 4. Collective bargaining. With reference to the new Industrial Relations legislation to be adopted, the Committee expects that it will be in full conformity with Article 4 of the Convention and in particular that it will ensure that:

- *if there is no union representing the required percentage to be designated as a collective bargaining agent, collective bargaining rights are not denied to the existing unions, at least on behalf of their own members;*
- *the three-year time span, within which no application for determination of the collective bargaining agent at the same establishment may be made once a registered trade union has been certified as the collective bargaining agent, is reduced to a more reasonable period or that the challenge of the most representative organization could take place in advance of the expiration of the applicable collective agreement;*
- *the choice of collective bargaining unit may only be made by the partners themselves, since they are in the best position to decide the most appropriate bargaining level.*

The Committee requests the Government to provide a copy of the new legislation once it has been adopted.

Panama

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)

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

The Committee takes note of the comments of 29 August 2008 by the International Trade Union Confederation (ITUC) on the application of the Convention. The Committee notes that the ITUC alleges very serious acts of violence against officials of the Construction and Allied Workers' Union (SUNTRAC) and the arrest of one official of the same union. **The Committee requests the Government to send its observations on this matter.** The Committee further notes the comments of the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP), on issues raised by the Committee.

The Committee recalls that its comments refer to the following matters which raised problems of compliance with the Convention:

Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations.

- Sections 174 and 178, last paragraph, of Act No. 9 (“establishing and regulating administrative careers”) of 1994, which laid down respectively that there shall not be more than one association in an institution and that associations may have provincial or regional branches, but not more than one branch per province. The Committee observes that Act No. 24 of 2 July 2007 amending and supplementing Act No. 9 on Administrative Careers has not abolished the trade union monopoly imposed by the latter. FENASEP is of the view that these provisions should not be amended because to allow more than one single association or branch would fragment the trade union movement. The Committee points out that although it may be in the workers' interest to avoid a proliferation of trade unions, the unity of the trade union movement should not be imposed by the State through legislative measures, because intervention of this kind is contrary to the principle laid down in *Articles 2 and 11* of the Convention. **The Committee requests the Government to take the necessary steps to amend the legislation to this effect.**
- Section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code) which requires too large a membership (ten) for the establishment of an employers' organization and an even larger membership (40) for the establishment of a workers' organization at the enterprise level; and the requirement of a large number (50) of public servants to establish an organization of public servants under the Act on Administrative Careers. The Committee observes that Act No. 24 of 2 July 2007 amends Act No. 9 on Administrative Careers and provides (section 9) that in an institution where no association exists, 40 public servants are needed in order to constitute an organization of public servants. This number is acceptable to FENASEP. The Committee recalls in this connection that a minimum membership of 40 workers to establish a union would be permissible in the case of industrial unions, but the minimum should be lower in the case of an enterprise union or a base-level union in an establishment so as not to obstruct the creation of such organizations. The Committee also reiterates that a membership of ten for the establishment of an employers' organization is too large and may be an obstacle to the creation of such organizations. **The Committee requests the Government to take the necessary steps to amend the legislation accordingly.**
- Denial to public servants of the right to establish unions. The Government indicated previously that the interpretation by the National Council of Organized Workers (CONATO) was inconsistent with reality; the right of association of public servants is established in Act No. 9 of 20 June 1994 and in practice, FENASEP operates in the same way as any other private sector organization and participates in CONATO and the International Labour Conference. The Committee notes that in its comments, FENASEP states under the Act of Administrative Careers, that non-career public servants, public servants in appointive posts governed by the Constitution, public servants in elective posts and those in service may not organize. **The Committee requests the Government to send its comments on this point.**

Article 3. Right of organizations to elect their representatives in full freedom. Article 64 of the Constitution stipulates that the members of the executive body of a trade union must be of Panamanian nationality. As the Committee has already pointed out, provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors in which they account for a significant share of the membership. In the Committee's view, the national legislation should allow foreign workers to take up trade union office at least after a reasonable period of residence in the host country (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 118). **The Committee accordingly asks the Government to take the necessary steps to have the legislation amended so as to ensure compliance with the abovementioned principle.**

Right of organizations to organize their administration. The Committee observes that section 180A of Act No. 24 of July 2007, amending the Administrative Careers Act No. 9, provides that public servants who are not affiliated to the association of public servants and enjoy the improvements obtained in conditions of work will have the ordinary and

extraordinary trade union dues deducted from their salaries and paid to the association during the duration of the agreement. In this respect, the Committee considers that imposing by legislative means the payment of an ordinary contribution to the association which obtained improvements in the labour conditions by public servants who are not members raises problems of conformity with the Convention to the extent that it may influence the right of public servants to freely choose the association to which they wish to be affiliated. ***In these conditions, the Committee requests the Government to modify section 180A of Act No. 24 of July 2007 so as to eliminate the requirement to pay ordinary trade union dues imposed on public servants who are not affiliated to associations, with the possibility of providing, in turn, for the payment of a smaller amount than the ordinary trade union contribution for the benefits derived from collective bargaining.***

Right of organizations to organize their activities and formulate their programmes without interference.

- Denial of the right to strike in export processing zones (Act No. 25). The Committee recalls that the right to strike may be restricted or banned only in the event of an acute national crisis and in respect of public servants exercising authority in the name of the State or in services which are essential in the strict sense. In the Committee's view, to deny the right to strike in export processing zones is inconsistent with this principle. ***It therefore asks the Government to take the necessary steps to ensure that workers' organizations in these zones may exercise the right to strike.***
- Denial of the right to strike in enterprises which have been in existence for less than two years pursuant to Act No. 8 of 1981. CONATO previously pointed out that section 12 of the Act provides that no enterprise shall be compelled to conclude collective agreements during its first two years of operation and that the general legislation allows strikes only in pursuance of collective bargaining or in other limited cases. ***The Committee requests the Government to take the necessary steps to guarantee the right to strike of the workers and their organizations in these enterprises.***
- Denial of the right to strike of public servants. The Government indicated previously that the Constitution allows special restrictions in cases determined by law. The Committee recalls that the banning of strikes in the public service should be restricted to public servants exercising authority in the name of the State (see General Survey, op. cit., paragraph 158). ***The Committee asks the Government to take the necessary steps to guarantee the right to strike for public servants who do not exercise authority in the name of the State.***
- Ban on federations and confederations from calling strikes and on strikes against the Government's economic and social policy, and unlawfulness of strikes that are unrelated to an enterprise's collective agreement. The Committee points out that federations and confederations should have the right to strike and that organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living (see General Survey, op. cit., paragraph 165). ***The Committee requests the Government to take steps to amend the legislation so as to bring it in conformity with these principles and so as not to restrict the right to strike related to a collective agreement.***
- Authority of the Regional or General Labour Directorate to refer labour disputes to compulsory arbitration in order to stop a strike in a public service enterprise, including when the service is not essential in the strict sense of the term, such as transport (sections 452 and 486 of the Labour Code). ***The Committee requests the Government to take the necessary steps to amend the legislation to provide that compulsory arbitration is possible in the transport sector only at the request of both parties.***
- Obligation to provide minimum services with 50 per cent of the staff in establishments which provide "essential public services" but which go beyond essential services in the strict sense of the term and include transport, and the penalty of summary dismissal of public servants for failure to comply with the requirement concerning minimum services in the event of a strike (sections 152.14 and 185 of Act No. 9 of 1994). ***The Committee requests the Government to take the necessary steps to amend the legislation to ensure that: (1) the organizations of the workers concerned may participate in determining minimum services and the number of workers who are to provide them, and that in the event of disagreement, the matter shall be resolved by an independent body; and (2) the penalty of summary dismissal is abolished.***
- Legislation interfering with the activities of employers' and workers' organizations (sections 452.2, 493.1 and 497 of the Labour Code) (closure of the enterprise in the event of a strike and compulsory arbitration at the request of one party). ***The Committee asks the Government to indicate any amendments envisaged to ensure that compulsory arbitration is allowed only at the request of both parties to the dispute in the case of public servants exercising authority in the name of the State or in essential services in the strict sense of the term, and to ensure that in the event of a strike, the management staff may have access to the enterprise if they so wish.***

The Committee notes with regret that the abovementioned discrepancies between Panama's law and practice and the Convention have existed for many years and that some of the restrictions mentioned are serious. The Committee recalls that in its previous observation it took note of the Government's statement that it intended to harmonize national law and practice with Conventions Nos 87 and 98, that this would require a tripartite consensus but that there were glaring

differences in the views of the social partners. *The Committee asks the Government to take the necessary steps, in consultation with the social partners, to bring the legislation into line with the Convention and with the principles of freedom of association. It requests the Government to report on any measures taken to this end.*

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

The Committee notes that the Government's report has not been received. It also notes the comments by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) referring to issues raised by the Committee, and the comments by the International Trade Union Confederation (ITUC) stating that there are no collective agreements in the export processing zones and that employers interfere in the establishment of trade unions in the building sector. *The Committee requests the Government to send its comments on these matters.*

Articles 1 and 4 of the Convention. The Committee notes with *satisfaction* that Act No. 24 of 2 July 2007 to amend the Administrative Careers Act contains provisions to protect public servants against acts of anti-union discrimination, and establishes the right of associations of public servants to collective bargaining. The Committee notes, however, that according to FENASEP, the right to collective bargaining has not been regulated. *The Committee requests the Government to provide information in this regard and to indicate whether municipal workers and workers in decentralized institutions enjoy the right to collective bargaining.*

Article 4. In its previous observation, the Committee requested the Government to fulfil the commitments it made to the technical assistance mission carried out in February 2006 to hold meetings with the social partners in the form of seminars or workshops with ILO support and to promote actively tripartite dialogue on the following issues which are pending:

- (a) section 12 of Act No. 8 of 1981 provides that no enterprises (other than building enterprises) shall be required to conclude a collective labour agreement in the first two years of operations, which in practice could involve denial of the right to collective bargaining;
- (b) the need to amend the legislation so that in the case of strikes attributable to the employer, the payment of wages for strike days is not imposed by the legislation (section 514 of the Labour Code) but is a matter for collective bargaining between the parties involved;
- (c) the requirement that the number of representatives of the parties in negotiations shall be from two to five (section 427 of the Labour Code).

In its previous comments the Committee took the view that such restrictions were inconsistent with the Convention and noted that the Government was ready to harmonize national law and practice with the Convention in respect of these provisions if it had the agreement of the employers' and workers' organizations, particularly the National Council of Organized Workers (CONATO) and the National Council of Private Enterprise of Panama (CONEP). *Since CONATO and CONEP hold different views, on which it commented in its last observation, the Committee requests the Government to continue to promote tripartite dialogue and to provide information on the activities (seminars and workshops) carried out and on developments on these issues.*

The Committee also asked for a tripartite discussion to be held on collective bargaining in the private sector with groups of non-unionized workers (section 431 of the Labour Code), a matter on which the views of the Government, CONATO and CONEP differed. *The Committee reminds the Government that collective bargaining with groups of non-unionized workers should be possible only in the absence of a union, and asks the Government to examine this matter in the context of the abovementioned tripartite dialogue so as to ensure that there is no collective bargaining with groups of workers when there is a trade union in the bargaining unit.*

Lastly, the Committee took note of restrictions on collective bargaining in the maritime sector pursuant to section 75 of Legislative Decree No. 8 of 1998, which establishes the conclusion of collective agreements as an option, which in practice leads to the denial of workers' claims by employers and about which an application had been lodged for this legislation to be found unconstitutional. The Committee also noted the Government's statement that a draft of a new Maritime Code was to be submitted to the Legislative Assembly. *The Committee asks the Government to report on this matter.*

Papua New Guinea

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

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

The Committee took note that the third draft Industrial Relations Bill, which was last revised on 14 August 2006 following widespread consultations with the social partners, has entered its third phase, and incorporates some technical inputs provided by the ILO. The said Bill replaces the draft Industrial Relations Act of 2003 as part of an ongoing effort, commenced in 2003, to review and consolidate the labour legislation. To this end, section 257 of the current Bill repeals the Industrial Organizations Act,

the Industrial Relations Act, the Industrial Relations (Amendment) Act of 1992, the Industrial Relations (Amendment) Act of 1998, the Public Service Conciliation and Arbitration Act, and the Teaching Service Conciliation and Arbitration Act.

Power of the minister to assess collective agreements on grounds of public interest. Previously, the Committee had requested the Government to amend section 32 of the draft Industrial Relations Act of 2003, which confers a broad power on the Minister of Labour to assess collective agreements on grounds of public interest – a principle that also applied to the public sector. The draft legislation had stated that “The minister may, on behalf of the State, appeal as of right against the making of an award or order (including an award or order made by consent) or the certification of an agreement, on the ground that the making of the award or order, or the certification of the agreement, is contrary to public interest”. In this respect, the Committee notes that this provision has been retained in the most recent draft legislation – as section 32(1) of the third draft Industrial Relations Bill. **Noting the Government’s indication that section 32 of the draft Bill has been highlighted for further review in January 2007, and that further improvements are needed to ensure the legislation’s compatibility with the Convention, the Committee recalls once again that such legislative provisions will only be compatible with the Convention if they merely stipulate that approval of collective agreements may be refused if the collective agreement has a procedural flaw, or does not conform to the minimum standards laid down by general labour legislation, and requests the Government to take measures to ensure that section 32(1) of the third draft Industrial Relations Bill is in conformity with this principle. The Committee reiterates its hope that the technical assistance currently being provided by the ILO would contribute to the resolution of this matter.**

Compulsory arbitration. The Committee had previously noted that the previous draft industrial relations legislation appeared to institute a system of compulsory arbitration when conciliation between the parties failed. The Committee notes in this regard that sections 151 and 152 of the previous draft Industrial Relations Act – which appeared to grant the commissioner the authority to commence compulsory arbitration proceedings where the power to initiate conciliation proceedings had not previously been exercised – have been retained as sections 151 and 152 of the third draft Industrial Relations Bill. In this connection, the Committee noted with regret the Government’s indication that it has opted to retain the same approach and system of compulsory arbitration, without significant changes from the previous draft legislation. Nevertheless, the Government had indicated that the sections concerning dispute settlement in the third draft Industrial Relations Bill would be subject to further deliberation at the National Tripartite Consultative Council meeting in early 2007, following which amendments would be drafted by an interim national consultant. **In these circumstances, the Committee requests the Government to amend sections 151 and 152 of the third draft Industrial Relations Bill, so as to ensure that compulsory arbitration may only be possible for public servants engaged in the administration of the State or in the framework of essential services in the strict sense of the term.**

The Committee expresses its hope that its comments will be fully taken into account in the finalization of the third draft Industrial Relations Bill and asks the Government to transmit a copy of the said legislation once it is adopted.

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

Paraguay

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

The Committee notes the Government’s report, which is basically confined to mentioning the legislative provisions relative to the Convention. The Committee also notes the comments made by the International Trade Union Confederation (ITUC), dated 29 August 2008. The Committee observes with concern that the ITUC refers to serious acts of violence by the police force against workers from the sugar and steel sectors who participated in demonstrations, as well as the arrest of trade unionists. **The Committee requests the Government to send its observations on this matter, as well as on the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC) in 2005, which referred, among other things, to numerous acts of violence including assassinations of trade unionists.**

The Committee recalls that for many years, it has been making comments on the lack of compliance of various legislative provisions with the Convention.

Article 2 of the Convention. *The requirement of an excessively high number of workers (300) to establish a branch trade union (section 292 of the Labour Code).* The Committee recalls that, although the requirement of a minimum number of members to be able to establish an organization is not in itself incompatible with the Convention, the minimum number should be fixed in a reasonable manner so that the establishment of organizations is not hindered (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 81). In this regard, the Committee considers that the number of 300 workers to establish a branch trade union is too high and constitutes an obstacle for the establishment by workers of organizations of their own choosing. **The Committee therefore requests the Government to take the necessary measures to amend the legislation to reduce the requirement of 300 workers to establish a branch trade union to a reasonable number.**

The prohibition for workers to join more than one union even if they have more than one part-time employment contract, whether at the level of the enterprise, industry, occupation or trade, or institution (section 293(c) of the Labour Code). The Committee recalls that Article 2 of the Convention establishes the right of workers to join organizations of their own choosing and that, in this respect, workers who have more than one occupation in different enterprises or sectors should be able to join the unions that correspond to each of the categories of work that they perform and to be members, at the same time, if they so wish, of a union at the level of the enterprise and the occupation. **The Committee requests the Government to take the necessary measures to amend the legislation as indicated above.**

Article 3 of the Convention. *Imposition of excessive requirements to be able to hold office in the executive body of a trade union: the need to be an employee in the enterprise, industry, occupation or institution, whether active or on leave*

(section 298(a) of the Labour Code), to have reached the age of majority and to be an active member of the union (section 293(d) of the Labour Code). The Committee recalls that provisions which require the members of a trade union to belong to the respective occupation and that the officers of the organization be chosen from among its members are contrary to the Convention. Provisions of this type infringe the right of organizations to elect representatives in full freedom by preventing qualified persons, such as full-time union officers, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. When national legislation imposes conditions of this kind on all trade union leaders, there is also a real risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office. In order to bring such legislation into conformity with the Convention, it would be desirable to make it more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization (see General Survey, op. cit., paragraph 117). **Under these conditions, the Committee requests the Government to take the necessary measures to amend the legislation (sections 293(d) and 298(a)) in accordance with the principles indicated above.**

The requirement that trade unions must comply with all requests for consultations or reports from the labour authorities (sections 290(f) and 304(c) of the Labour Code). The Committee recalls that problems of compatibility with the Convention arise when the law gives the administrative authorities powers to examine the books and other documents of an organization, conduct an investigation and demand information at any time. The Committee considers that such an obligation should be confined to submitting annual financial reports or in cases of denunciations by union members of violations of the law or the union's rules (see General Survey, op. cit., paragraphs 125 and 126). **The Committee therefore requests the Government to amend the legislation in accordance with the principle set out above.**

The submission of collective disputes to compulsory arbitration (sections 284–320 of the Code of Labour Procedure). In its previous observation, the Committee noted that, according to the Government, these provisions were tacitly repealed by article 97 of the Constitution of the Republic enacted in 1992, which provides that “the State shall facilitate conciliatory solutions to labour disputes and social dialogue. Arbitration shall be optional.” **The Committee therefore requests the Government, in accordance with the provisions of the Constitution and with a view to avoiding any possible ambiguity of interpretation, to take the necessary measures to explicitly repeal sections 284–320 of the Code of Labour Procedure, which provide for compulsory arbitration in collective disputes.**

The requirement that, for a strike to be called, its sole purpose must be directly and exclusively linked to the workers' occupational interests (sections 358 and 376(a) of the Labour Code). The Committee reminds the Government that trade union organizations, which are responsible for defending the socio-economic and occupational interests of workers, should, in principle, be able to use strike action in support of their positions in the search for solutions to problems posed by major economic and social policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living. **The Committee requests the Government to take the necessary measures to amend sections 358 and 376 in accordance with the principle recalled above.**

Section 362 of the Labour Code which establishes the obligation to ensure a minimum service in the event of a strike in public services that are essential to the community, without the requirement to consult the employers' and workers' organizations concerned. The Committee recalls that workers' organizations should be able, if they so wish, to participate in defining minimum services along with employers and the public authorities, and that any disagreement as to the number and duties of the workers concerned should be settled by an independent body and not unilaterally by the administrative authorities. **Under these conditions, the Committee requests the Government to take the necessary measures to guarantee explicitly in the legislation the right of workers' and employers' organizations to participate in defining minimum services and, where disagreements arise, as to the number and duties of the workers concerned, they should be settled by an independent body.**

In view of the fact that the Committee has been making these comments for many years, without progress being achieved in practice, it strongly encourages the Government to take the necessary measures to bring its legislation into conformity with the Convention without delay. The Committee urges the Government to seek technical assistance from the Office to that end.

[The Government is asked to supply full particulars to the Conference at its 98th Session and to reply in detail to the present comments in 2009.]

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

The Committee takes note of the Government's report which basically limits itself to mentioning the legislative provisions relating to the Convention.

The Committee also notes the comments from the International Trade Union Confederation (ITUC), dated 29 August 2008 referring to matters already raised by the Committee and also to acts of anti-union discrimination (dismissals of trade union leaders and members for exercising their union rights) and an act of interference by an enterprise in the internal affairs of a trade union. **The Committee requests the Government to send its observations in this respect. The Committee also requests the Government once again to send its observations on the comments of the International**

Confederation of Free Trade Unions (ICFTU, now ITUC) of 2005 referring to: (1) acts of anti-union discrimination against trade union leaders and members and delays in the administration of justice; and (2) the fact that collective agreements must be submitted to compulsory arbitration, and also the comments of the Trade Union of Maritime Dock Workers of Asunción (SEMA) regarding interference by employers in that sector through the creation of trade unions favourable to the enterprise.

Articles 1 and 2 of the Convention. Protection against acts of discrimination and anti-union interference. The Committee recalls that for many years it has been commenting on:

- the absence of legal provisions affording protection to workers who are not trade union leaders against all acts of anti-union discrimination (article 88 of the Constitution affords protection only against discrimination based on trade union preferences); and
- the absence of adequate penalties for non-observance of the provisions relating to the employment stability of trade unionists and to acts of interference in workers' and employers' organizations by each other (the penalties laid down in the Labour Code for failure to comply with the legal provisions on this point in sections 385, 393 and 395 are not a sufficient deterrent).

The Committee recalls that in its previous observation it noted that, except in the case of repeated anti-union acts by the employer, the penalties established are not a sufficient deterrent. ***The Committee therefore requests the Government to take the necessary steps to adopt provisions which provide adequate protection through deterrent penalties against acts of anti-union discrimination and interference and to keep the Committee informed of all further developments.***

The Committee also requests the Government once again to provide information on the steps taken to overcome the problem of delays in the application of justice in relation to acts of anti-union discrimination and interference.

Article 6. Public servants not engaged in the administration of the State. The Committee recalls that in its previous observation it considered that sections 49 and 124 of the Public Service Act do not afford adequate protection against all acts of anti-union discrimination within the meaning of *Article 1* of the Convention (which not only covers dismissal but also transfers and other prejudicial measures) and recalled that the protection afforded to workers and trade union officials against acts of anti-union discrimination constitutes an essential aspect of freedom of association (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 202 and 203). ***The Committee therefore requests the Government to take the necessary measures to establish in the legislation adequate protection against acts of anti-union discrimination against public servants, including those who are not trade union leaders, and also sufficiently dissuasive sanctions for those who commit violations.***

Bearing in mind that it has been making these comments for many years without progress being achieved in practice, the Committee urges the Government to take the necessary measures without delay to bring the legislation into conformity with the Convention. The Committee strongly encourages the Government to avail itself of technical assistance from the Office to this end.

[The Government is requested to report in detail in 2009.]

Peru

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

The Committee notes the Government's reply to the comments made by the National Union of Public Employees of the Armed Forces (SINEP-FFAA) dated 7 April 2006, concerning the refusal to grant it legal personality, in which it reports that, in a decision of 3 May 2006, the trade union organization was registered automatically.

The Committee also notes the comments made by the General Confederation of Workers of Peru (CGTP), dated 23 January and 16 May 2007, which refer to the following violations of the trade union rights of the Single Union of Public Education Workers (SUTEP): (1) the declaration of regular basic education as an essential service by means of Act No. 28988 of 19 March 2007, and (2) the creation of the national register of supply teachers to replace teachers on strike by means of Ministerial Decision No. 0080-2007-ED of 23 February 2007.

With regard to the declaration of regular basic education as an essential service (Act No. 28988), the Committee observes that, under section 82 of the Industrial Relations Act, the sole purpose of such declaration is to ensure minimum services in the event of a strike. In this regard, the Committee considers that the declaration of regular basic education as an essential service for the purposes of imposing a minimum service does not raise problems of conformity with the Convention.

With regard to the creation of the national register of supply teachers to replace teachers on strike (Ministerial Decision No. 0080-2007-ED), the Committee recalls that strikers should only be replaced: (a) in the case of a strike in an essential service in the strict sense of the term in which strikes are prohibited by the legislation, and (b) if the strike results in an acute national crisis. ***Under these circumstances, the Committee requests the Government to take the necessary measures to repeal Ministerial Decision No. 0080-2007-ED on the replacement of teachers on strike.***

The Committee also notes the comments made by: (1) the International Trade Union Confederation (ITUC) dated 29 August 2008, which refer to serious acts of violence against demonstrators and the arrest of trade union leaders for participating in a strike; (2) the Autonomous Confederation of Peruvian Workers (CATP), sent with the Government's report, which refer to the refusal to register the Union of Workers of the Public Ombudsperson, and the hiring of workers to replace State workers on strike; and (3) the National Coordinating Committee of Ministry of Health Workers, dated 3 October 2008. ***The Committee requests the Government to provide its comments on this subject.***

Furthermore, the Committee notes the various cases currently before the Committee on Freedom of Association relating to matters being examined by the Committee.

Article 3 of the Convention. Right of workers' organizations to elect their representatives in full freedom. The Committee recalls that in its previous observation, it noted a bill approving mechanisms to ensure transparency in the election of executive boards of trade unions, federations and confederations of public sector workers, which amends section 5(a) of Act No. 26487 (Basic Act on the National Register of Identity and Civil Status) and section 5 of Act No. 26486 (Basic Act on the National Elections Commission), which contained various provisions which were not in conformity with the Convention. In this regard, the Committee notes with interest that this bill was shelved permanently on 13 December 2007.

Right of workers' organizations to organize their activities and formulate their programmes. The Committee recalls that for many years, it has been making comments on the following provisions of the Industrial Relations Act:

- The power of the labour administration to determine minimum services, in the event of disagreement, when a strike is declared in essential public services (section 82). In this regard, the Committee recalls that since minimum services restrict one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161) and, in the event of disagreement with regard to the establishment of this minimum service, the legislation should provide for the disagreement to be settled by an independent body and not by the labour authority.
- Section 73(b) which provides that the decision to call a strike has to be adopted in the form expressly set out in the statutes and must in any event represent the will of the majority of the workers concerned. In this regard, the Committee recalls that if the legislation provides that a vote is required by workers before a strike can be held, it should be ensured that account is taken only of the votes cast, and that the required quorum or majority are fixed at a reasonable level (see General Survey, op. cit., paragraph 170).

The Committee also recalls that in its previous comments, it noted the drafting of the General Labour Bill which repealed the Industrial Relations Act and therefore the provisions in question, and asked the Government to provide information on the progress of the abovementioned Bill. In this regard, the Committee notes that the Government points out in its report that, in September 2006, the Congressional Committee on Labour entrusted to the National Council for Labour and Employment Promotion (CNTPE) the revision of the General Labour Bill. To that end, the CNTPE appointed an ad hoc committee whose work was ratified by the plenary meeting of the CNTPE on 27 October 2006 and referred to the Congressional Labour Committee. The Bill is currently on the agenda of the plenary of the Congress for discussion. ***The Committee hopes that the General Labour Act adopted will be in complete conformity with the Convention. The Committee requests the Government to continue providing information on developments relating to this Bill in its next report and whether it amends the sections in question.***

Article 6. Right of workers' organizations to establish federations and confederations. The Committee recalls that, in its previous comments, it asked the Government to take the necessary measures to amend section 19 of Supreme Decree No. 003-82-PCM to allow federations and confederations of public servants to establish or join organizations of their own choosing. In this regard, the Committee notes that the Government points out that, under Supreme Decree No. 003-2004-TR (which created the Register of Trade Union Organizations of Public Servants (ROSSP)) and Directive No. 001-2004-DNRT (on guidelines for the registration of trade union organizations with the Register of Trade Union Organizations of Public Servants of the Ministry of Labour and Employment Promotion), federations of State workers who are covered by different labour regimes (private or public sector) are allowed to join and form confederations. ***In this regard, the Committee requests the Government to indicate whether, in accordance with these provisions, federations of State workers are allowed to join confederations which include organizations of private sector workers.***

Furthermore, the Committee addresses a direct request to the Government on other matters.

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

The Committee notes the Government's reply to the comments from the General Confederation of Workers of Peru (CGTP) dated 23 January and 16 May 2007.

The Committee also notes the comments from the National Coordinating Committee of Subcontracted Workers of the Ministry of Health dated 3 October 2008. ***The Committee requests the Government to send its comments in this respect.***

The Committee also notes the various cases before the Committee on Freedom of Association which refer to the matters set out below.

Articles 1 and 2 of the Convention. The Committee recalls that it has been referring for a number of years to: (1) the lack of penalties for acts of interference by employers with regard to trade union organizations; and (2) the slowness of judicial procedures for dealing with complaints of anti-union discrimination or interference. The Committee notes that the International Trade Union Confederation (ITUC) refers in its comments to anti-union dismissals in various sectors.

The Committee notes with interest that, according to the Government's report, section 25 of the Regulations relating to the General Labour Inspection Act, approved by Supreme Decree No. 019-2006-TR, as amended by Supreme Decree No. 019-2007-TR, classifies interference by the employer in the freedom of association of the worker or trade union and anti-union discrimination as serious offences. If these offences are proven during an inspection procedure, the applicable penalty varies between 5 per cent of 11 tax units (UITs) (1,925 nuevos soles, equivalent to US\$630) and 100 per cent of 20 tax units (70,000 nuevos soles, equivalent to US\$22,500), depending on the number of workers affected.

The Government adds that the draft General Labour Act prohibits interference (section 332) and anti-union discrimination (sections 355 and 358). With regard to the need to expedite proceedings, the draft Act also provides that any worker or trade union organization that considers that its rights with regard to freedom of association have been violated or are under immediate threat shall have the right of action via summary proceedings (section 353). In the event of the dismissal of workers who have trade union immunity, the judge may order the suspension of the effects of the dismissal at the worker's request; within three days the employer must demonstrate that the dismissal did not take place on anti-union grounds, and within the following two days, the judge must rule on the matter (section 356). ***The Committee requests the Government to indicate whether the penalties laid down in the Regulations relating to the General Labour Inspection Act will continue to apply once the General Labour Act has been adopted.***

Finally, with regard to the question of the level at which collective bargaining should take place in the construction sector, the Committee observes that the Government has not sent its comments in this respect. The Committee observes that this matter was dealt with by the Committee on Freedom of Association (Case No. 2375) on the basis of a decision by the Supreme Court of Justice determining that such collective bargaining should take place at the level of the branch of activity. The Committee recalls that the level at which bargaining takes place must be the subject of negotiation between the parties.

Philippines

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)

The Committee notes that the Government's report has not been received. It also notes the lengthy comments communicated by the International Trade Union Confederation (ITUC) in communications dated 29 August and 1 September 2008, the Kilosang Mayo Uno in a communication dated 15 September 2008, and the Public Services Labor Independent Confederation (PSLINK) in a communication dated 15 September 2008. ***The Committee requests the Government to provide its observations on these comments.***

Civil liberties. In its previous comments, the Committee took note of information provided by the ITUC in 2006 and 2007 with regard to numerous reported violations of trade union rights, including killings, attempted murders, death threats, abductions, disappearances, assaults, torture, military interference in trade union activities, violent police dispersion of marches and pickets, arrests of trade union leaders in connection with their activities and widespread impunity for the perpetration of such acts. The Committee also takes note in this context of the interim conclusions and recommendations reached in November 2008 by the Committee on Freedom of Association in Case No. 2528 (351st Report, paragraphs 1180–1240) which concerns similar allegations. The Committee finally takes note of the recommendations made by the Independent Commission to address media and activist killings created under Administrative Order No. 157 of 2006 by the President of the Philippines (Melo Commission: report issued on 27 January 2007); the UN Special Rapporteur on Extrajudicial Summary or Arbitrary Executions on his mission to the Philippines of 12–21 February 2007 (Special Rapporteur: document A/HRC/8/3/Add.2, issued on 16 April 2008); and the National Consultative Summit on Extrajudicial Killings and Enforced Disappearances: Searching for Solutions (National Consultative Summit), which was hosted by the Supreme Court on 16–17 July 2007 in Manila.

The Committee recalls the information previously communicated by the Government emphasizing the steps taken to address this serious situation, i.e. the establishment of the Melo Commission and the subsequent creation of special regional tribunals, the ongoing review of the rules of court, the establishment of the task force USIG of the Philippine National Police and the hosting by the Supreme Court of the National Consultative Summit. It further notes from information provided by the ITUC in 2008, the introduction by the Supreme Court of the new writ of protection of constitutional rights (*amparo*) procedure since September 2007; this habeas corpus-like procedure compels state agencies to reveal to the court the whereabouts of named persons, disclose documentary evidence, or allow court-authorized searches of premises.

The Committee notes that in its latest communications of 29 August and 1 September 2008, the ITUC provides additional detailed information, accompanied by hundreds of pages of human rights reports and newspaper articles, on the human rights situation more generally and systematic violations of the fundamental human rights and civil liberties of trade unionists. In particular, the Committee notes that, according to the ITUC, despite measures previously announced by the Government to address the issues, few improvements have been observed in practice and there is an “abysmal failure” to investigate or prosecute the perpetrators of such acts, leading to an ongoing climate of impunity and impassivity in the face of continuing violence against trade unionists. The ITUC refers to continuing extrajudicial killings in 2007 and 2008 with a total of 87 unionists killed since 2001. Five trade union leaders and members had been murdered and three trade unionists abducted between July 2007 and August 2008. The ITUC also refers to violent dispersal of workers’ protests, intimidation, threats and blacklisting of trade unionists. It also refers to the militarization of workplaces especially in export processing zones (EPZs) and special economic zones, and constant surveillance and harassment of trade unions opposing the economic development model and their leaders, some of whom have been reportedly forced to constantly move houses to avoid persecution. The Committee further notes that the ITUC cites the findings and detailed recommendations of the UN Special Rapporteur (see document cited above) and expresses concern that the ineffectiveness of the measures taken so far by the Government to address the situation as, out of hundreds of killings and “disappearances” over the past five years, there have been only two successfully prosecuted cases resulting in the conviction of four persons (for acts not directed against trade unionists).

The Committee recalls that the Conference Committee in 2007 requested the Government to accept a high-level ILO mission so as to obtain a greater understanding of all aspects of this case. The Committee notes with regret that the Government has not yet accepted such a mission.

The Committee observes with deep regret that there has been no information on any conviction pronounced against the perpetrators and instigators of acts of extreme gravity against trade unionists and that killings, abductions, enforced disappearances and other violations of fundamental rights of trade unionists continue to take place. The Committee recalls that the absence of judgements against the guilty parties creates, in practice, a situation of impunity which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights. The Committee emphasizes that the rights of workers’ organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. The Committee stresses the importance of ensuring that all instances of violence against trade union members and leaders are properly investigated and that any evidence of impunity is firmly combated to ensure the full and free exercise of trade union rights and their accompanying civil liberties. It emphasizes that the Government has the duty to defend a social climate where respect for the law reigns as the only way for guaranteeing respect for and protection of individuals. All appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind.

The Committee requests the Government to indicate the measures taken or contemplated with a view to putting an immediate end to the climate of violence and impunity which is extremely damaging to the exercise of trade union rights and ensuring the prompt investigation, prosecution, trial and conviction of those found guilty of murders, enforced disappearances and other violations of fundamental human rights against trade unionists.

Legislative issues. Human Security Act. The Committee notes the comments made by the ITUC on the Act to Secure the State and Protect Our People from Terrorism (No. 9371) otherwise known as the Human Security Act. According to the ITUC, the vague definition of terrorism in this Act as a criminal act that “causes widespread and extraordinary fear and panic among the populace” can serve as a legal umbrella for extrajudicial killings and can lead to categorizing peaceful demonstrations like strikes and protests on social issues as “terrorism”.

The Committee notes that, despite a request by the Conference Committee on the Application of Standards in 2007, the Government has not provided any information on the impact of the Human Security Act upon the application of the provisions of the Convention, apart from the text of the Act itself. ***The Committee requests the Government to provide such information and, in particular, to indicate the safeguards which ensure that the Human Security Act cannot be used under any circumstances as a basis for suppressing legitimate trade union activities or result in any extrajudicial killing for the exercise of trade union rights.***

Other legislative issues. In the absence of new information by the Government, the Committee reiterates the requests that it has been making for a number of years on certain discrepancies between the provisions of the national laws and the Convention:

- The need to amend section 234(c) of the Labor Code, which requires, for registration of a trade union organization, the names of all its members comprising at least 20 per cent of all employees in a bargaining unit where it seeks to operate; the Committee recalls that, according to the statement of the Government representative before the Conference Committee in June 2007, an Act had been adopted in May 2007 which sought to lift the 20 per cent requirement and the requirement to reveal the names of the officers and members, for legitimate federations and national unions; however, the 20 per cent membership requirement was still relevant in the case of unions seeking independent registration. ***The Committee once again requests the Government to communicate the text of the***

relevant Act and to indicate in its next report measures taken or contemplated with a view to lowering the minimum membership requirement for registration of independent trade unions.

- The need to amend sections 269 and 272(b) of the Labor Code, so as to grant the right to organize to all nationals lawfully residing within the Philippines (and not just those with valid permits if the same rights are guaranteed to Filipino workers in the country of the alien workers, or if the country in question has ratified either ILO Convention No. 87 or No. 98). *The Committee once again requests the Government to provide information in its next report on measures taken or contemplated so as to amend the above-noted sections in a manner which enables anyone legally residing in the country to benefit from the trade union rights provided by the Convention.*
- The need to amend section 263(g) of the Labor Code so as to limit governmental intervention resulting in compulsory arbitration to the essential services in the strict sense of the term only; amend sections 264(a) and 272(a) of the Labor Code, which provide for dismissal of trade union officers and penal liability to a maximum prison sentence of three years for participation in illegal strikes, so as to ensure that workers may effectively exercise their right to strike without the risk of being sanctioned in a disproportionate manner; lower the excessively high requirement of ten union members for federations or national unions set out in section 237(a) of the Labor Code; and amend section 270, which subjects the receipt of foreign assistance to trade unions by the prior permission of the Secretary of Labor. *The Committee once again requests the Government to indicate in its next report the measures taken or contemplated with a view to amending the aforementioned legislative provisions so as to bring them into full conformity with the Convention.*

Furthermore, the Committee reiterates its previous request to the Government to continue to provide information on unionization levels in the EPZs. The Committee takes note of the comments made by the ITUC on this issue, which are examined under Convention No. 98.

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1953)

The Committee notes that the Government's report has not been received. It also notes the lengthy comments communicated by the International Trade Union Confederation (ITUC) in communications dated 29 August and 1 September 2008; the Kilosang Mayo Uno in a communication dated 15 September 2008; and the Public Services Labor Independent Confederation (PSLINK) in a communication dated 15 September 2008. *The Committee requests the Government to provide its observations on these comments.*

1. *Articles 1, 2 and 3 of the Convention. Protection against acts of anti-union discrimination and interference.* The Committee notes that for several years it has been requesting the Government to respond to comments made by the ITUC with regard to numerous acts of anti-union discrimination and interference. The Committee notes the latest detailed comments made by the ITUC, reporting extensive anti-union discrimination and employer interference, cases of replacement of trade unions by non-independent company unions, dismissals and blacklisting of activists in export processing zones (EPZs) and other special economic zones. The ITUC also referred in its 2006–07 comments to an order promulgated in 2004 (the labour standards enforcement framework) which essentially abandons the principle of government labour inspection for workplaces with more than 200 workers; self-regulation will be conducted in large companies at least once a year by an employer–worker committee based on a government-issued checklist and in companies where there is a registered collective bargaining agreement.

The Committee notes the conclusions and recommendations reached by the Committee on Freedom of Association in several cases concerning acts of anti-union discrimination and interference, the most recent being Case No. 2488 which illustrates the considerable difficulties faced by workers in their efforts to have their grievances examined through protracted litigation and long and complex judicial proceedings which give rise to a situation of prolonged legal uncertainty (350th Report, paragraph 202).

The Committee emphasizes that *Article 3* of the Convention requires effective machinery for the purpose of ensuring respect for the right to organize as defined in *Articles 1 and 2*. Acts of anti-union discrimination and interference are serious violations of the right to organize as they may jeopardize the very existence or independence of trade unions. Thus, the Committee stresses that national procedures against such acts should be prompt and accompanied by appropriate remedies and sufficiently dissuasive sanctions.

Noting that certain of the reported acts of anti-union discrimination and interference relate to certification procedures and elections, the Committee notes that according to information provided by the Government to the Committee on Freedom of Association in the context of Case No. 2252, House Bill No. 1351, which has been approved by the House of Representatives and is currently being considered by the Senate, seeks, among other things to: (1) eliminate employer interference, which is, according to the Government, an incessant cause of delay in certification proceedings; (2) restrict the grounds for cancellation of union registration; and (3) clarify that the filing of a petition for cancellation of registration does not suspend a petition for certification election (346th Report, paragraph 176).

The Committee requests the Government to provide in its next report a copy of House Bill No. 1351 and to indicate any developments as well as any additional legislative or other measures taken or contemplated to accelerate the procedures and strengthen in practice the protection available against acts of anti-union discrimination and interference, with special emphasis on EPZs and special economic zones. The Committee also requests the Government to provide statistical information on the number of complaints of unfair practices and inspections carried out on these matters in EPZs and special economic zones.

Article 4. Development of collective bargaining in the public sector. In its previous comments, the Committee took note of the Government's indication that, under section 13 of Executive Order No. 180, only terms and conditions not otherwise fixed by law may be negotiated between public sector employees' organizations and the Government authorities. The Government had further stated that such matters as the scheduling of vacation leave, the work assignment of pregnant women and recreational, social, athletic and cultural activities are negotiable; however, matters relating, inter alia, to wages and all other forms of pecuniary remuneration, retirement benefits, appointment, promotion, and disciplinary action are not negotiable. The Committee recalls in this connection that article 276 of the Labour Code provides that the terms and conditions of employment of all Government employees, including employees of government-owned and controlled corporations, shall be governed by the civil service law, rules and regulations, and that their salaries shall be standardized by the National Assembly as provided for in the new Constitution. The Committee notes, moreover, that the ITUC confirms these restrictions on bargaining rights in the public sector. ***In these circumstances, while recalling that the Convention is compatible with systems requiring parliamentary approval of certain labour conditions or financial clauses of collective agreements, as long as the authorities respect the agreement adopted, the Committee once again recalls the importance of the development of collective bargaining in the public sector and repeats its firm hope that the amendments to the Labour Code or other legislation would be adopted in the near future and that it will fully grant to public sector employees not engaged in the administration of the State the right to negotiate their terms and conditions of employment in accordance with Articles 4 and 6 of the Convention. It once again requests the Government to indicate the developments in this regard and provide copies of any legislation once adopted.***

Poland

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

The Committee notes the Government's reply to the 2006 comments submitted by the International Confederation of Free Trade Unions (ICFTU). Regarding the Road Traffic Law (1997), which the ICFTU considered made it almost impossible for trade unions to organize legal demonstrations and rallies, the Committee notes the Government's indication that it no longer applies to assemblies and strikes, following the 2006 decision of the Polish Constitutional Tribunal. Furthermore, the Committee notes the comments submitted by the International Trade Union Confederation (ITUC, previously ICFTU) in a communication dated 29 August 2008 concerning violent dispersion of a sit-in organized by the healthcare workers affiliated to the All-Poland Trade Union Alliance (OPZZ). ***The Committee requests the Government to submit its observations thereon, as well as on the 2006 ICFTU comments alleging that workers in state-owned enterprises in health sector, water and forestry industries had their employment contracts terminated and replaced by individual contracts so that they could no longer be trade union members.***

Article 3 of the Convention. Right of organizations to elect their representatives in full freedom. The Committee recalls that it had previously requested the Government to amend section 49(6) so as to ensure that public servants may exercise their trade union functions at all levels. The Committee notes from the Government's report that the Council of Ministers directed to the Sejm (the lower chamber of the Parliament) a draft Act on amending the Law on Civil Service. The Committee further notes the Government's statement that the draft provides an amendment of article 49(6) of the Civil Service Act of 24 August 2006, which shall read as follows: "civil service member occupying a higher civil service post cannot perform any trade union function". The Committee considers that some categories mentioned by the Government, as included in section 49(6) of the draft (deputies of voivodship veterinary offices, persons in charge and deputies of organizational units in the Central Inspectorate of Trade Inspection, Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, and Office for Forest Seed Production) are covered by the Convention and therefore should be able to exercise trade union functions. ***The Committee hopes that the draft Act will take into account its comments and requests the Government to provide information in this respect.***

Right of organizations freely to organize their activities and to formulate their programmes. The Committee recalls that it had previously requested the Government to amend section 49(3) of the Law on Civil Service (2006) so as to ensure that prohibition of the right to strike is limited to public servants exercising authority in the name of the State. The Committee notes that the Government indicates that the draft Act does not propose to amend section 49(3) of the abovementioned Law. According to the Government, the civil service concerns government administration exclusively, thus it should be assumed that civil service members participate in exercising authority on behalf of the State. Civil service members may, however, undertake protest actions which do not disturb normal functioning of offices. The Committee notes that the Government indicates that all employees employed in the state authorities, government and self-government administrations, courts and prosecutor's office are not entitled to the right to strike. ***The Committee requests the***

Government to specify categories of employees whose right to strike is restricted under section 49(3) of the Law on Civil Service.

Trade union assets. With regard to its previous request to provide information on the proceedings before the Social Revendication Commission and the administrative courts concerning trade union assets, the Committee notes with interest the Government's indication that the Commission ruled in favour of the NSZZ Solidarnosc and obliged the State Treasury to pay the trade union organization concerned the amount it claimed along with the statutory interest due on the date of the decision.

The Committee notes that the Labour Code of 1974 was amended in 2008. ***It therefore requests the Government to provide a copy of the amended Code.***

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

The Committee notes the Government's detailed report in reply to the previous comments of the International Trade Union Confederation (ITUC) alleging several cases of anti-union discrimination, interference in trade union affairs and infringement of collective bargaining rights.

Article 1 of the Convention. Insufficient protection against anti-union discrimination. The Committee had requested the Government to give consideration, in full consultation with the social partners concerned, to the establishment of prompt and impartial procedures, in order to ensure that trade union officials and members have the right to an effective remedy by the competent national tribunals for acts of anti-union discrimination. The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos 2395 and 2474 (see 349th Report) concerning excessive delay in processing cases of anti union discrimination. In this regard, the Committee notes from the Government's report that this issue has been discussed in the Tripartite Commission. According to the Government, a draft amendment of the Code of Civil Procedure contains rules aiming to facilitate access for parties to proceedings. Moreover, the Labour Code has been amended through an Act of 9 May 2008.

In this regard, the Committee notes that the Government recalls that a number of acts of anti union discrimination constitute offences which involve penal sanctions and proceedings which could be referred, if necessary, to a simplified procedure; moreover, cases of undue delay allow the authorities to take appropriate legal measures, including the granting of an appropriate sum of money. The Committee notes that the 2008 ITUC comments concerning the excessive delays of the proceedings and stating that often the judicial orders for reinstatement of trade unionists are ignored by employers.

The Committee concludes that in practice the proceedings need to be more prompt and efficient. ***Thus, the Committee requests the Government to evaluate the results of the amendments to the Labour Code, in 2008, and the draft Code of civil procedure in consultation with the social partners and to indicate in its next report any measures taken or contemplated to ensure that trade union officials and members have in practice the right to prompt and effective remedy by the competent national tribunals against acts of anti-union discrimination. The Committee requests the Government to continue providing information on the number of complaints for anti-union discrimination, the average duration of the proceedings and the outcomes of these proceedings. The Committee will examine the amended Labour Code and the draft of the Code of civil procedure, once a translation becomes available.***

Article 4. Infringement of collective bargaining rights. ***The Committee requests the Government to provide information on the 2008 ITUC comments regarding alleged instances of employers' refusal to negotiate collective agreements or to comply with them.*** In this regard, the Committee takes note of the Government's statement according to which the duty of the parties to conduct negotiations is not accompanied by sanctions; the Minister of Labour has urged the social partners to take measures that would activate an autonomous dialogue, in view of the Act on the Tripartite Commission, and encouraged them to use collective agreements more openly.

The Committee notes the statistics provided by the Government on the collective agreements and protocols registered, as well as the 12 cases of complaints concerning employers' refusal to negotiate in 2006 and 2007 (most of them were solved due to the interventions of the labour inspectors). ***The Committee invites the Government and the social partners to indicate the measures taken or contemplated to resolve cases of refusal to bargain so as to promote collective bargaining.***

Portugal

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

The Committee notes the comments made by the Confederation of Portuguese Industry (CIP) on 17 July 2008, and by the General Union of Workers (UGT) on 11 August 2008, on the application of the Convention. The Committee also notes the comments made by the General Confederation of Portuguese Workers (CGTP) on matters which have already been dealt with.

Article 4 of the Convention. Compulsory arbitration. The Committee recalls that in its previous observation it referred to the new Labour Code which, in section 567, provides that, in disputes arising from the conclusion or revision

of a collective agreement, recourse to arbitration may be compulsory where, after protracted and fruitless negotiations and after conciliation and mediation procedures have been exhausted, the parties do not agree, within two further months after such procedures, to refer the dispute to voluntary arbitration. The Committee notes that the CIP criticises this provision and considers it to be contrary to the principle of voluntary and free negotiation enshrined in the Convention. The Committee duly notes the Government's indication that, since the introduction of compulsory arbitration in Portuguese legislation in 1992, there have been no cases of compulsory arbitration. The Committee recalls that compulsory arbitration is an acceptable means of ending a collective labour dispute when it is at the request of the two parties or when the dispute involves public servants exercising authority in the name of the State or employed in essential services in the strict sense of the term, namely services the interruption of which might endanger the life, health or safety of all or part of the population. ***The Committee therefore requests the Government to take the necessary measures to align the legislation and the existing practice in the country with the above principle.***

Representativity of organizations. The Committee had asked the Government, in consultation with the most representative organizations of employers and workers, to determine and establish objective, precise and predetermined criteria to evaluate the representativity and independence of employers' and workers' organizations and to amend the legislation (Act No. 108/91 of the Economic and Social Council (CES), section 9, concerning the Permanent Commission for Social Partnership (CPCS)), so that it does not refer by name to the workers' organizations which are to be members of the CES and the CPCS. The Committee notes the information from the Government that it suggested to the social partners within the CPCS to agree on permanent criteria for determining representativity, in April 2008, but, in the absence of any such agreement, they decided to postpone dealing with this matter. ***The Committee considers that the legislation should be amended so that it does not refer by name to the workers' organizations which are to be members of the CES and the CPCS, in order to avoid the exclusion of certain representative organizations from these bodies in the future. Furthermore, the Committee considers that legislative measures should be taken to determine and establish objective, precise and predetermined criteria to evaluate the representativity and independence of employers' and workers' organizations.***

The Committee hopes that the CPCS will examine these questions with a view to legislative reform and requests the Government to indicate any developments in this regard.

Romania

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

The Committee takes note of the communication by the International Trade Union Confederation (ITUC), dated 29 August 2008, referring to the need for specialized labour courts to improve the enforcement of labour legislation and the Government's reply.

The Committee also takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2509 (344th Report, paragraphs 1216–1248).

The Committee takes note of the report of the technical assistance mission to Romania which took place in May 2008 in the context of the follow-up to the conclusions reached by the Conference Committee on the Application of Standards in 2007.

The Committee notes with interest from the Government's report that pursuant to the ILO mission, the social partners that are representative at the national level in Romania, as well as representatives of the Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue and to request specialized ILO technical assistance on the legislative texts concerning: the right to freedom of association for trade unions and employers' organizations (Act No. 54/2003 which according to the Government, is currently under discussion before Parliament); collective agreements (Act No. 130/1996); and settlement of industrial disputes (Act No. 168/1999). These issues have been included in the 2008-09 Decent Work Agenda concerning Romania as a result of extensive consultations carried out between the Ministry of Labour, Family and Equal Opportunities and the representative social partners, as well as the ILO, on 8 and 17 July 2008. A tripartite working group has been set up in order to examine amendments to the abovementioned Acts. In this framework, all the issues previously raised by the Committee will be examined with a view to their resolution. During the International Labour Conference of 2008, a timetable has been adopted for the work of this working group. At present, the working group focuses on a draft bill to amend Act No. 130/1996 on trade unions.

The Committee recalls that the issues raised in its previous comments are the following:

- the need to amend section 62 of Act No. 168/1999 on the settlement of labour disputes (according to which the management of a production unit may submit a dispute to an arbitration commission in the event that a strike has lasted for 20 days without any agreement being reached between the parties and its continuation would affect humanitarian interests) so that compulsory arbitration may only be imposed in essential services in the strict sense of the term and for public servants exercising authority in the name of the State;

- the need for detailed information on the application of sections 55 and 56 of Act No. 168/1999 on the settlement of labour disputes (according to which the management of a production unit may demand the suspension of a strike, for a maximum period of 30 days, if it endangers the life or health of individuals, and an irrevocable decision may be taken in this respect by the Court of Appeal) and 58–60 of the same law (under which, the management can request the Court to pronounce itself on the illegality of a strike and its ending by issuing an urgent ruling within three days), and to provide copies of decisions handed down under these provisions;
- the need to continue to provide information on the application in practice of section 12(e) of Act No. 168/1999 on the settlement of labour disputes (according to which a conflict of interest can be declared in case the parties fail to reach agreement in the framework of the compulsory annual negotiations concerning wages, working hours, the work programme and work conditions), in the light of previous comments made by workers' organizations on the distinction between conflicts of interests and conflicts of rights which is reportedly applied in practice in a selective manner and on a case by case basis, leading to uncertainty on whether trade unions will be able to exercise the right to strike in each case.

The Committee requests the Government to indicate in its next report the measures taken or contemplated to address the above issues and to provide the information requested by the Committee.

The Committee notes that in Case No. 2509 the Committee on Freedom of Association requested the Government to amend section 66(1) of Act No. 168/1999 on the Settlement of Labour Disputes – which requires that in case of strike in units of public transport one-third of the unit's normal activity must be ensured – so as to allow for the minimum services in this sector to be negotiated by the social partners concerned rather than set by the legislation; in the absence of agreement between the parties, minimum services should be determined by an independent body. ***The Committee requests the Government to indicate measures taken or contemplated in this regard.***

The Committee trusts that the Government will be in a position to report progress soon on all the issues raised above in the framework of the law reform currently under way, and encourages the Government to continue to avail itself of the technical assistance of the Office if it so wishes.

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1958)

The Committee takes note of the report of the technical assistance mission to Romania which took place in May 2008 in the context of the follow-up to the conclusions reached by the Conference Committee on the Application of Standards in 2007. It notes from the Government's report that pursuant to the ILO mission, the social partners that are representative at the national level in Romania, as well as representatives of the Romanian Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue and to request specialized ILO technical assistance on the legislative texts concerning: the right to freedom of association for trade unions and employers' organizations (Act No. 54/2003 which according to the Government, is currently under discussion before Parliament); collective agreements (Act No. 130/1996); and settlement of industrial disputes (Act No. 168/1999). A tripartite working group has been set up in order to examine amendments to the abovementioned Acts and focuses at present on a draft bill to amend Act No. 130/1996.

The Committee takes note of the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 referring to acts of anti-union discrimination and employer refusal to bargain, as well as the Government's reply which focuses on the legislative framework for addressing these issues. ***The Committee requests the Government to indicate in its next report statistical information on the number of cases of anti-union discrimination brought to the competent authorities, the average duration of proceedings and their outcome, as well as information on the activities of the mediation and conciliation services of the Ministry of Labour, Family and Equal Opportunities.***

The Committee also notes the communications by the National Education Federation (FEN) dated 12 September 2007 and 27 May 2008, as well as the Government's reply of 4 December 2007 and 21 October and 11 November 2008 concerning collective bargaining in the public sector with regard to the wages of teachers. The Committee addresses this issue below.

Finally, the Committee notes the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2611 and 2632 submitted, inter alia, by FEN, with regard to various aspects of collective bargaining in the public sector (351st Report, paragraphs 1241–1283).

Articles 2 and 3 of the Convention. In its previous comments, the Committee requested information on the penalties against acts of interference which is prohibited under sections 221(2) and 235(3) of Act No. 53/2003 and Act No. 54/2003. The Committee notes from the Government's report that under Act No. 54/2003, the restriction of the exercise of the activities of trade union officials or the obstruction of the exercise of the right of freedom of association are punished with imprisonment from six months to two years or a fine between 2,000 Romanian New Lei (RON) and RON5,000. ***Noting that these remedies are provided under Act No. 54/2003, the Committee requests the Government to clarify whether they apply also to violations of Act No. 53/2003, and if not, requests the Government to indicate in its next report the***

measures taken or contemplated so as to adopt dissuasive sanctions and rapid appeal procedures against acts of interference under Act No. 53/2003.

Articles 4 and 6. Collective bargaining with public servants not engaged in the administration of the State. In its previous comments, the Committee requested information on the process and scope of collective bargaining for public servants not engaged in the administration of the State under Act No. 188/1999 as amended by Act No. 251/2004. The Committee notes from the Government's report that under section 72 of Act No. 188/1999 the public authorities and institutions have the right to conclude agreements every year with the representative trade unions of public employees (or the representative of public employees where there are no unions) on the following subjects: the constitution and functioning of funds for the improvement of working conditions; safety and health at work; the daily work programme; vocational training; other measures concerning the protection of trade union officers. The Government adds that at present, the representatives of Government, and workers' and employers' organizations are holding tripartite negotiations for the establishment of a set of principles which will constitute the basis of a new law on the salaries of personnel in the public budget sector.

The Committee notes from the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2611 and 2632 that in the public budget sector which covers all public employees, including those who are not engaged in the administration of the State (e.g. teachers), the following subjects are excluded from the scope of collective bargaining: base salaries, pay increases, allowances, bonuses and other staff entitlements which are fixed by law. The Committee emphasizes that all public servants who are not engaged in the administration of the State should enjoy the guarantees provided for in *Article 4 of the Convention* with regard to the promotion of collective bargaining. ***The Committee therefore requests the Government to indicate in its next report the measures taken or contemplated in the framework of the current labour law reform to amend section 12(1) of Act No. 130/1996 so that it no longer excludes from the scope of collective bargaining base salaries, pay increases, allowances, bonuses and other entitlements of public employees who are not engaged in the administration of the State.*** The Committee, in recognition of the fact that the special characteristics of the public service require some flexibility in the application of the principle of the autonomy of the partners to collective bargaining, recalls that the Government could adopt legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall "budgetary package" within which the parties may negotiate monetary or standards-setting clauses (for example: reduction of working hours or other arrangements, varying wage increases according to levels of remuneration, fixing a timetable for readjustment provisions). Such measures should leave a significant role to collective bargaining and meet with the agreement of the parties concerned.

The Committee trusts that the Government will be in a position to report progress soon on the issues raised above in the framework of the law reform currently under way, and encourages the Government to continue to avail itself of the technical assistance of the Office if it so wishes.

Russian Federation

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 alleging assault on a trade union activist and numerous violations of the right to strike. ***It requests the Government to provide its observations thereon, as well as on the 2006 comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC), also concerning restrictions imposed on the right to strike and the alleged violation of trade union rights in practice.***

The Committee recalls that it had previously requested the Government to:

- amend section 410 of the Labour Code, so as to repeal the obligation to indicate the duration of a strike, so as to allow trade unions to declare strikes of unlimited duration;
- amend section 412 of the Labour Code, so as to ensure that any disagreement concerning minimum services in organizations responsible for safety, health and life of people and vital interests of society, where the minimum services must be ensured during a strike, is settled by an independent body having the confidence of all parties to the dispute and not the executive body;
- amend section 413 of the Labour Code, so as to ensure that, when a strike is prohibited, any disagreement concerning a collective dispute is settled by an independent body and not by the Government;
- to ensure that workers of postal services, municipal services and railways can exercise the right to strike and, to that effect, amend section 9 of the 1994 Federal Postal Service Act, section 11(1(10)) of the 1998 Federal Municipal Services Act and section 26 of the 2003 Federal Rail Transport Act;
- to indicate whether there are any legislative restrictions imposed on the right to strike of civil servants other than civil servants exercising authority in the name of the State; and
- to specify the categories of workers employed in the internal affairs agencies prohibited from striking.

The Committee recalls that it had previously noted the Government's indication that the Ministry of Health and Social Development, together with the federal government authorities concerned and the social partners, had engaged in work to amend specific legislative acts so as to bring them into conformity with the recommendations of the ILO. The Committee notes from the Government's report that a working group involving most representative social partners was created to that effect in 2008.

The Committee hopes that the work of the abovementioned working group will result in the near future in a legislative reform that will take into account its previous comments and requests the Government to provide information on any further developments in this respect. The Committee reminds the Government that it can avail itself of the technical cooperation of the Office if it so wishes.

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

Comments of the ITUC. The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 alleging acts of interference by employers in trade union internal affairs and their refusal to bargain collectively. *It requests the Government to provide its observations thereon, as well as on the 2006 comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC) raising the same issues.*

Articles 1, 2, 3 and 4 of the Convention. The Committee notes the Government's report and regrets that it does not provide a reply either to the previous comments of the ICFTU or to the Committee's previous observation. *The Committee requests the Government to provide its observations on all outstanding comments.*

The Committee recalls that it had requested the Government to:

- specify the concrete sanctions imposed on employers found guilty of anti-union discrimination and to mention the relevant provisions;
- specify the sanctions imposed for acts of interference by workers' or employers' organizations or their agents in each other's affairs, particularly in the establishing, functioning and administration of the organizations, and to indicate the relevant legislative provisions;
- amend section 31 of the Labour Code so as to ensure that it is clear that it is only in the event where there are no trade unions at the workplace that an authorization to bargain collectively can be conferred to other representative bodies;
- take the necessary measures so as to ensure that the legislation provides for a possibility to conclude an agreement at the occupational or professional level;
- provide further information on the practical application of sections 402 and 403 of the Labour Code and 6(7) of the Law on collective labour disputes, which seem to impose compulsory arbitration in services which are neither essential in the strict sense of the term, nor involve civil servants exercising authority in the name of the State;
- provide examples of collective agreements applicable to civil servants and civil employees of the military service and the system of execution of penal sentences.

The Committee notes that the Government reiterates that the Ministry of Health and Social Development, together with the social partners, had engaged in work to amend specific legislative acts so as to bring them into conformity with the recommendations of the ILO and that a working group involving most representative social partners was created to that effect in 2008.

The Committee hopes that the Government's next report will contain precise information on the above issues. It also hopes that the work of the abovementioned working group will result in the near future in legislative reform that will take into account its previous comments and requests the Government to indicate any further developments in this respect. The Committee reminds the Government that it can avail itself of the technical assistance of the Office if it so wishes.

Rwanda

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1988)

The Committee notes that the Government's report has not been received. The Committee also notes the comments of 29 August 2008 by the International Trade Union Confederation (ITUC), referring to matters already raised by the Committee concerning the status of public servants and the exercise of the right to strike.

The Committee recalls that, for many years, its comments have referred to the following points.

Article 2 of the Convention. *Right of workers, without distinction whatsoever, to establish organizations of their own choosing.* In its previous comments, the Committee noted that: (1) articles 11, 33, 35, 36, 38 and 39 of the Constitution of 4 June 2003 guarantee freedom of expression and association for state employees as for all other citizens;

(2) Act No. 22/2002 of 9 July 2002 issuing the general conditions of service of the public service in Rwanda says nothing about the right of public servants to organize and to collective bargaining, but section 73 of the Act provides that public servants and the staff of public enterprises enjoy rights and freedoms on the same basis as other citizens; (3) the procedures for the implementation of section 73 of Act No. 22/2002 are still to be determined and that application of the provisions of Title VIII of the Labour Code governing occupational organizations should be extended to state officials; and (4) although the Government indicated that there are unions of public servants in Rwanda, the Committee held the view that the legal void as regards the right to organize of this category of workers could cause problems in practice. The Committee also noted the Government's indication that it was considering amending the Labour Code so as to provide in section 2(2) that "any person covered by the status of a public administration is not covered by the present Code, with the exception of matters decided upon by a decree from the Prime Minister", and that it was therefore anticipated that the Prime Minister's decree could extend the procedures concerning unionization, claims and collective bargaining to public servants. ***The Committee requests the Government to indicate without delay any progress made to ensure due recognition in the legislation of the guarantees provided for by the Convention in respect of public servants, in accordance with the requirements of the Convention.***

Article 3. Right to strike. The Committee previously noted that, in accordance with section 191 of the Labour Code, the right to strike of workers in jobs that are essential to the security of persons and property, and workers in services the interruption of which would jeopardize human safety and life, is exercised in accordance with the specific procedures laid down by Order of the Minister of Labour. The Committee therefore asked the Government to provide a copy of the Order in question. ***The Committee requests the Government to indicate any developments concerning the adoption of the implementing decree for section 191 of the Labour Code or any other measures taken concerning this matter within the context of the revision of the Labour Code under way.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1988)

The Committee notes that the Government's report has not been received. It takes note of the observations of 29 August 2008 by the International Trade Union Confederation (ITUC) on the application of the Convention. The Committee recalls that in its previous comments it noted that the draft Labour Code, dated September 2006, omitted some of the comments it has been making for many years on the legislation of Rwanda.

Articles 1, 2 and 3 of the Convention. The Committee recalls that the national legislation does not make express provision for rapid appeal procedures, coupled with effective and sufficiently dissuasive sanctions against acts of interference and anti-union discrimination. ***The Committee requests the Government to take the necessary steps to prohibit, in the draft Labour Code or some other legislative text, all acts of interference by employers' and workers' organizations in each other's affairs, and all acts of anti-union discrimination, and to make provision for sufficiently dissuasive sanctions to this end, not only in the case of staff delegates.***

Article 4. In its previous comments, the Committee took note of a draft Ministerial Order on the establishment and running of the Conciliation Council issued pursuant to section 183 of the Labour Code. It reminded the Government that apart from the case of public officials exercising authority in the name of the State and essential services in the strict sense of the term, arbitration imposed by the authorities or at the request of only one party is as a rule contrary to the principle of voluntary negotiation of collective agreements established by the Convention, and hence to the autonomy of the bargaining partners (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 257). ***The Committee again asks the Government to amend section 183 of the Labour Code (section 222 of the draft Labour Code) so that, other than in the circumstances referred to above, a collective labour dispute in the context of collective bargaining may be submitted to the competent legal authority only with the agreement of both parties.***

The Committee's earlier comments also referred to section 136 of the draft Labour Code, which provides that, at the request of one of the representative workers' or employers' organizations, the collective agreement shall be negotiated in a joint committee convened by the Minister of Labour. The Committee pointed out that such a provision was liable to restrict the principle of free and voluntary bargaining within the meaning of the Convention. ***The Committee asks the Government to amend section 136 of the draft Labour Code so as to require the agreement of both parties for negotiation of the collective agreement in a joint committee.***

The Committee also asks the Government to indicate whether the draft Ministerial Order issued pursuant to section 116 of the Labour Code to establish requirements for the deposit, registry and publication of collective agreements has been adopted. If so, please provide a copy of the text.

The Committee trusts that the Government will take all necessary steps to amend the draft Labour Code taking due account of the principles referred to above.

Article 6. The Committee notes that according to a communication of November 2006, the Government was planning to amend the Labour Code so as to provide, in section 2(2), that "anyone employed under regulations in a public department of Rwanda is not subject to the present law other than for matters determined by an order of the Prime Minister", and that it was planning thereafter for an order to be issued to extend to public servants the arrangements for

establishing and joining unions, filing claims and collective bargaining. The Committee also notes that, according to the ITUC, the national legislation contains no specific provisions on the trade union rights of public servants. **The Committee requests the Government to indicate any measures taken or envisaged to establish by law (Labour Code or otherwise) the right to collective bargaining of public servants, covered by the Convention.**

The Committee once again reminds the Government that it may call upon the Office for technical assistance with any or all of the issues raised in this observation.

Lastly, the Committee requests the Government to provide information in its next report on the work of the National Labour Council in the area of collective bargaining, and on the number of collective agreements concluded and the sectors and number of workers covered.

Sao Tome and Principe

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

The Committee notes that no report has been received from the Government.

Article 2 of the Convention. Right of workers and employers without distinction to establish and join organizations of their own choosing. The Committee previously asked the Government to indicate whether public employees have the right to organize and to indicate the applicable provisions. In this respect, the Committee observes that section 9 of the Civil Service Regulations (Act No. 5/97) states that public officials and employees have the right to establish trade unions.

Article 3. Right of organizations to organize their activities and formulate their programmes. The Committee recalls that it has been commenting for a number of years on the need for the Government to take steps to amend the provisions of Act No. 4/92, which refer to the following issues:

- the majority required for calling a strike is too high (section 4 of Act No. 4/92);
- with regard to minimum services, it is important, in the event of disagreement in determining such services, that the matter be settled by an independent body and not by the employer (section 10(4) of Act No. 4/92);
- the hiring of workers without consultation with the trade unions concerned to perform services essential to maintain the economic and financial viability of the enterprise should it be seriously threatened by a strike (section 9 of Act No. 4/92);
- compulsory arbitration for services which are not essential in the strict sense (services whose interruption might endanger the life, personal safety or health of the whole or part of the population) (postal, banking and loan services; section 11 of Act No. 4/92).

The Committee asks the Government to take steps to amend the abovementioned legislative provisions so as to bring the legislation into line with the Convention and to indicate, in its next report, any measures adopted in this respect.

Finally, the Committee also asks the Government to indicate whether federations and confederations are able to exercise the right to strike.

[The Government is asked to report in detail in 2009.]

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

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

Articles 1 and 2 of the Convention. The Committee had asked the Government to indicate what sanctions may be imposed against acts of discrimination which undermine freedom of association and acts of interference by employers and their organizations in workers' organizations and vice versa. The Committee notes the Government's indication that there is no appropriate legislation providing for sanctions against acts of anti-union discrimination. **The Committee therefore asks the Government, once again, to take the necessary steps to adopt appropriate legislation which imposes sufficiently effective and dissuasive sanctions against acts of anti-union discrimination and acts of interference committed by employers against trade union organizations, in conformity with the provisions of the Convention. The Committee reminds the Government that it may seek technical assistance from the Office in this respect.**

The Committee is addressing a request on other points directly to the Government.

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

Senegal

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

The Committee previously requested the Government to send its reply to observations made by the International Confederation of Free Trade Unions (ICFTU), which indicated that workers in the agricultural and informal sectors are not covered by the Labour Code, including in terms of trade union rights, and that striking workers in the mining and cement industries had been subject to reprisals. The Committee notes that the Government indicates in its report that the Labour Code applies to all workers in the private sector, including workers in agriculture and the informal sector. It also states that striking workers in the mining and cement industries were dismissed upon the authorization of the labour inspectorate, which conducted a thorough inquiry and concluded that the individuals concerned had taken part in an unlawful strike, sabotaged the main electrical substation and issued insults and threats with regard to their hierarchical superiors.

The Committee also notes the observations received from the International Trade Union Confederation (ITUC) in August 2008, the National Confederation of Workers of Senegal (CNTS) in September 2008 and the Free Workers Union of Senegal (UTLS) in September 2007, which refer to legislative matters already raised by the Committee. The comments also deal with intervention by the security forces during authorized protest marches and with discriminatory practices in the recognition of trade unions. ***The Committee requests the Government to send in its next report its observations on the comments above.***

Article 2 of the Convention. Trade union rights of minors. The Committee has been emphasizing for a number of years that section L.11 of the Labour Code (as amended in 1997), which provides that minors over 16 years of age may join trade unions unless their membership is opposed by their father, mother or guardian, is not in conformity with *Article 2* of the Convention. The Committee notes that the Government merely indicates in its report that the question of amending section L.11 is still under examination. ***The Committee trusts that the Government will take all necessary measures without delay to guarantee the right to organize of minors who have reached the legal minimum age for admission to employment (15 years, according to section L.145 of the Labour Code) as workers or apprentices, without the need for authorization from a parent or guardian being necessary.***

Articles 2, 5 and 6. Right of workers to establish organizations of their own choosing without previous authorization. The Committee reminds the Government that it has been commenting for a number of years on the need to repeal Act No. 76-28 of 6 April 1976 and amend section L.8 of the Labour Code (as amended in 1997) in order to guarantee workers and workers' organizations the right to establish organizations of their own choosing without prior authorization. After indicating in its report of 2006 that it was examining ways of amending the Labour Code and repealing any legislative or regulatory provisions contrary to the Convention as soon as possible, the Government merely indicates in its last report that the question is still under examination. Moreover, the Committee notes that, according to the CNTS, in practice some trade unions are recognized without having held a general assembly or congress while other trade unions constituted according to the regulations have been waiting years for their receipt to be issued. ***The Committee once again expresses the firm hope that the Government will adopt measures without delay to repeal legislative provisions which restrict workers' freedom to form their own organizations, especially provisions directed at the morality and capacity of trade union leaders, or which grant the authorities a de facto discretionary power of prior approval, which is contrary to the Convention. The Committee trusts that the Government will provide information in its next report on any measures taken in this regard.***

Article 3. Requisitioning in the event of a strike. The Committee recalls that its comments have been emphasizing for several years that section L.276 grants the administrative authorities, in the event of a strike, broad powers to requisition workers in private enterprises, as well as in public services and establishments who occupy posts considered to be essential for the security of persons and property, the maintenance of public order, the continuity of public services or the satisfaction of the country's essential needs. This provision states that the list of posts defined in this way shall be drawn up by decree. The Committee has recalled on many occasions that recourse to this type of measure should be limited exclusively to the maintenance of essential services in the strict sense of the term (those the interruption of which would endanger the life, safety or health of the whole or part of the population), to public servants exercising authority in the name of the State or to acute national crises. The Committee also asked the Government to send a copy of the decree implementing section L.276 so that it can ensure that it is consistent with the provisions of the Convention. In its last report, the Government repeats that since the decree implementing section L.276 has not yet been adopted, it is Decree No. 72-017 of 11 January 1972 determining the list of posts, jobs and functions in which the occupants may be requisitioned which continues to be applied under section L.288 of the Labour Code. ***The Committee expresses the firm hope that the Government will take the necessary steps without delay to adopt the decree implementing section L.276 of the Labour Code and that the list of jobs determined by that decree will only authorize the requisitioning of workers in the event of a strike to ensure the operation of essential services in the strict sense of the term.***

Occupation of workplaces in the event of a strike. The Committee noted in its previous comments that, under the terms of section L.276 *in fine*, workplaces or their immediate surroundings may not be occupied during a strike, otherwise the penalties established in sections L.275 and L.279 will apply. The Committee considered it preferable to include an

explicit provision, in a law or regulation, establishing that the restrictions envisaged in section L.276 *in fine* only apply in the event that strikes are no longer peaceful. **Noting the statement by the Government that it takes note of the comments above, the Committee trusts that the Government's next report will describe the steps taken to include a provision stating that the restrictions envisaged in section L.276 in fine only apply in the event that strikes are no longer peaceful or in cases where the freedom to work of non-strikers and the right of the enterprise management to enter the workplace are not respected.**

Article 4. Dissolution by administrative authority. The Committee has been reminding the Government for several years of the need to amend the national legislation to protect trade union organizations against dissolution by administrative authority (Act No. 65-40 of 22 May 1965), in accordance with *Article 4* of the Convention. The Committee noted that section L.287 of the Labour Code did not explicitly repeal the 1965 provisions on administrative dissolution. The Committee notes the indication by the Government in its last report that Act No. 65-40 does not apply to trade unions, which can only be dissolved by statutory, voluntary or judicial means, but that the Government is continuing to examine ways of amending or supplementing the Labour Code to include an explicit provision in the national legislation stating that the dissolution of seditious associations provided for by Act No. 65-40 may on no account be applied to occupational trade union organizations. **The Committee trusts that the Government will indicate in its next report the steps taken to amend the legislation in this respect.**

The Committee once again expresses the firm hope that the necessary steps will be taken without delay to give full effect to the provisions of the Convention and that the Government's next report will provide information on the progress made. It reminds the Government that it may request technical assistance from the Office in this regard.

Serbia

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

In its previous comments, the Committee had taken note of comments made by the International Trade Union Confederation (ITUC) in 2006 concerning alleged physical assaults against union delegates. The Committee notes that, according to the comments of the Confederation of Autonomous Trade Unions of Serbia (CATU) forwarded with the Government's report, this problem applies to educational as well as health care personnel. The CATU proposes, as a way to address this problem, to increase sanctions against possible attacks on workers employed in the education and health sectors. The Committee regrets that the Government has not communicated any observation with regard to these comments. The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations and it is for governments to ensure that this principle is respected. **The Committee requests the Government to communicate its observations on the comments concerning physical assault against union officials and members.**

Article 2 of the Convention. Right of employers to establish and join organizations of their own choosing. The Committee recalls that, for a number of years, it has been commenting on section 216 of the Labour Act which provides that employers' associations may be established by employers that employ no less than 5 per cent of the total number of employees in a certain branch, group, subgroup, line of business or territory of a certain territorial unit. The Committee notes with interest that the Government indicates in its report that it will take into consideration the Committee's comments on section 216 of the Labour Act in the course of amendment of the Labour Act. **Considering that the 5 per cent requirement at all levels may hinder the establishment of employers' organizations, the Committee requests the Government to indicate in its next report the measures taken or contemplated to amend section 216 of the Labour Act so as to retain a reasonable minimum membership requirement for the establishment of employers' organizations.**

The Committee is addressing a request on certain other points directly to the Government.

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

The Committee takes note of the Law on the Peaceful Settlement of Labour Disputes of 2004.

Article 1 of the Convention. Protection against anti-union discrimination in law. The Committee takes note of the comments made by the International Trade Union Confederation (ITUC) in 2008, to the effect that although the Labour Law of 2005 prohibits discrimination on the basis of trade union membership, it does not expressly prohibit discrimination for trade union activities and establishes no specific sanctions for anti-union harassment. The Committee also notes that, according to the Confederation of Autonomous Trade Unions of Serbia (CATU), the right to organize is not protected in practice. The Committee notes, however, that the Labour Law prohibits all acts of anti-union discrimination and establishes dissuasive sanctions and remedies. **The Committee requests the Government to provide information on the application of the Convention in practice, including through statistical data on the number of complaints of anti-union discrimination brought to the competent authorities (labour inspectorate and judicial bodies), the outcome of any investigations and judicial proceedings and their average duration.**

Article 4. Promotion of collective bargaining. The Committee notes that, according to section 263 of the Labour Law, “[c]ollective agreements shall be concluded for a three-year term”. The Committee considers that the parties should be in a position to shorten this duration by mutual agreement, if they consider it appropriate. ***The Committee requests the Government to indicate the measures taken or contemplated to amend section 263 of the Labour Law in accordance with the above.***

Representativeness of workers’ and employers’ organizations. In its previous observation, the Committee had raised the need to amend section 233 of the Labour Law – which imposes a time period of three years before an organization which previously failed to obtain recognition as most representative, or a new organization, may seek a new decision on the issue of representativeness. The Committee had emphasized the need to ensure that a new request may be made after a reasonable period has elapsed, sufficiently in advance of the expiration of the applicable collective agreement. The Committee recalls that the Serbian Association of Employers (SAE) had criticized this provision in its communication of 7 April 2005 as imposing an excessively long period of time. The Committee notes that the Government indicates that this provision is aimed at protecting unions and employers’ associations whose representativeness have been established by providing that their status may not be reviewed prior to the expiry of a three-year term. Nevertheless, according to the Government, this provision does not prevent trade unions and employers’ organizations, that previously failed to establish their representativeness, from asking for a new decision on this issue at any moment, without having to wait for three years. ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to amend section 233 of the Labour Law in a manner which reduces the three-year time span to a more reasonable period or to allow explicitly the procedures for the determination of most representative status to take place in advance of the expiration of the applicable collective agreement.***

The Committee takes note of the comments made by the CATU, forwarded with the Government’s report, according to which there is a lack of a mechanism for identification of the number of members of representative workers’ and employers’ organizations, as well as for verification of such data at the enterprise level. The Committee notes that, according to section 227, paragraphs 4 and 5, of the Labour Law, “[t]he total number of employees and employers on a territory of a certain territorial unit, in a branch, group, subgroup or a line of business shall be determined on the basis of information supplied by the competent statistical body, or other body keeping the pertinent records” and “[t]he total number of employees with an employer shall be determined according to the certificate issued by the employer”. The bodies in charge of assessing representativeness are the employer, in the first place, and the tripartite panel for establishing representativeness, in the second place. ***The Committee requests the Government to provide additional information on the mechanism for assessing representativeness of trade unions and associations of employers.***

The Committee recalls that, in its previous observations, it had requested the Government to lift the 10 per cent requirement for employers’ organizations to be able to engage in collective bargaining which is particularly high, especially in the context of negotiations in large enterprises, at the sector or national level. The Committee notes that section 222 of the Labour Law of 2005 still requires employers’ associations to represent 10 per cent of the total number of employers and employ 15 per cent of the total number of employees in order to exercise collective bargaining rights. The Committee recalls that the SAE had criticized these provisions. The Committee notes that, according to the Government, the issue will be considered when making changes and amendments to the Labour Act, with the participation of the representative workers’ and employers’ organizations. ***The Committee once again requests the Government to indicate in its next report the measures taken or envisaged to amend section 222 of the Labour Law of 2005 so as to lower the percentage requirements which must be fulfilled by employers’ organizations in order to engage in collective bargaining.***

The Committee expresses the hope that the Government will take the necessary measures without delay in order to bring the legislation into conformity with the requirements of the Convention and requests the Government to indicate the progress made in this respect.

Seychelles

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

The Committee recalls that for several years, it has been commenting upon several provisions of the Industrial Relations Act (IRA) concerning the issues of trade union registration and the exercise of the right to strike. The Committee notes that, according to the information provided in the Government’s report, there have been no changes in the legislation and that the IRA has not yet been revised. ***The Committee therefore once again requests the government to amend the following sections of the IRA:***

- ***section 9(1)(b) and (f), which confers to the registrar discretionary power to refuse registration;***
- ***section 52(1)(a)(iv), which provides that a strike has to be approved by two-thirds of union members present and voting at the meeting called for the purpose of considering the issue;***
- ***section 52(4), which allows the Minister to declare a strike to be unlawful if he is of the opinion that its continuance would endanger, amongst other things, “public order or the national economy”;***

- section 52(1)(b), which provides for a cooling-off period of 60 days before a strike may begin; and
- section 56(1), which imposes penalties of up to six months of imprisonment for organizing or participating in a strike declared unlawful on the basis of the IRA provisions, some of which, as mentioned above, are not in conformity with the principles of freedom of association.

In its previous observation, the Committee had noted that the Employment Department in the Ministry of Economic Planning and Employment had started to undertake consultations with social partners and other stakeholders on the issues raised by the Committee. The Committee had also noted the Government's desire to avail itself of the technical assistance of the Office in this process. *The Committee expresses the hope that the Industrial Relations Act will soon be amended, taking into account previous comments by the Committee and requests the Government to indicate any progress in this respect. The Committee trusts that the necessary technical assistance of the Office, requested by the Government, will be provided in the near future.*

Sierra Leone

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

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

Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference. The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body had been received and that the document had just been forwarded to the Law Officers' Department. The Committee had asked the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it had been adopted. Noting that according to the information previously sent by the Government, the revision of the labour laws was submitted to the Law Officers' Department in 1995, the Committee requests the Government once again to make every effort to take the necessary action for the adoption of the new legislation in the very near future and to indicate the progress made in this regard.

Article 4. The Committee requests the Government to provide detailed information on the collective agreements in force in the education sector and in other sectors.

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

Slovakia

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

In its previous comments, the Committee requested information on the system of extension of collective agreements pursuant to comments by the International Trade Union Confederation (ITUC), alleging that bargaining rights were weakened by provisions which state that higher level collective agreements (covering a whole industry, sector or region) only apply to those employers who specifically agree to them in writing.

The Committee takes note of the Government's reply to these comments according to which section 7 of Act No. 2/1991 was amended so that employer consent is no longer required in order to be bound by the extension of a higher level collective agreement. The Committee takes note of the text of section 7 of Act No. 2/1991, as amended, communicated by the Government. The Committee notes that according to the Government, the employers' organizations lodged a request for review of section 7, as amended, by the Constitutional Court. *The Committee requests the Government to indicate the decision of the Constitutional Court.*

Spain

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1977)

The Committee recalls that for a number of years it has been commenting on the Act respecting foreign nationals (Basic Act No. 8/2000 on the rights of foreign nationals in Spain and their social integration), which prohibits "irregular" foreign workers (those without proper work papers) from exercising the right to organize.

The Committee notes *with satisfaction* the Government's statement that, in Ruling No. 236/2007, the Constitutional Court declared unconstitutional section 11 of the Act respecting foreign nationals, which make the right of foreign nationals to organize or to join an occupational organization freely, under the same conditions as Spanish workers, subject to obtaining a permit to stay or reside in Spain.

Sri Lanka

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)

The Committee notes the comments of the Ceylon Workers Congress in a communication of 8 July 2008, the comments submitted by Lanka Jathika Estate Workers' Union (LJEWU) in a communication of 11 July 2008, and the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 29 August 2008, concerning issues previously raised by the Committee. Furthermore, the ITUC refers to the arrest of strikers in the education sector and also indicates that several trade unionists were abducted and interrogated by the Government on suspicion of collaborating with insurgent groups. ***The Committee requests the Government to provide its observations on the ITUC's comments.***

Article 2 of the Convention. Exclusion of certain workers. In its previous comments, the Committee had trusted that the Government would take the necessary measures to ensure that judicial officers are guaranteed the right to establish and join organizations of their own choosing, both under the law and in practice. The Committee notes the Government's indication that judicial officers have their own associations and are satisfied with this arrangement, which grants them the right to deal with the Government, their ministries and their departments to resolve issues relating to conditions of employment. In respect of salaries, the Government further states that judicial officers and public service trade unions may make representations and submit claims for salary increases to the Salaries and Cadre Commission, which was established in 2005 to determine the salaries of public officers at all levels. The Committee notes this information.

Minimum age. The Committee recalls that in its previous comments, it had noted the discrepancy between the minimum age for admission to employment and the minimum age for trade union membership and had pointed out that the minimum age for trade union membership should be the same as the minimum age for admission to employment. The Committee notes the Government's statement that a proposal initiated by the ILO-IPEC Sri Lanka programme to increase the minimum age for employment to 16 years – the same minimum age as for trade union membership – is being pursued. ***The Committee requests the Government to indicate any developments in this regard.***

Organizing in export processing zones (EPZs). In its previous comments, the Committee had requested the Government to take the necessary measures to guarantee that trade union rights can be exercised in normal conditions in this sector. The Committee notes that according to the Government, organizations are not banned in EPZs and workers therein enjoy the right to organize and bargain collectively. The Committee further notes the Government's indication that 11 trade unions are currently operating in EPZs, and that 10 per cent of the workforce in that sector are union members.

Articles 2 and 5. Public servants. Previously, the Committee had requested to be informed of the progress made on the amendments to the Trade Unions Ordinance mentioned by the Government to ensure that organizations of Government staff officers may join confederations of their own choosing, including organizations of workers in the private sector, and that first-level organizations of public employees may cover more than one ministry or department in the public service. The Committee notes that, the Government reiterates that: (1) the matter has been given priority under the overall labour law reforms by the subcommittee appointed by the National Labour Advisory Council (NLAC); and (2) the National Plan of Action for Decent Work in Sri Lanka, which has already been presented to the Cabinet of Ministers, gives priority to the amendments to the Trade Union Ordinance. The Government further states that the Labour Law Reform Committee has since examined the proposed amendment and made recommendations to the NLAC; the matter is now under serious consideration by the Ministry of Public Administration and Home Affairs, and follow-up action is being taken by the Ministry of Labour Relations and Manpower. ***The Committee expresses the hope that the amendments to the Trade Unions Ordinance mentioned by the Government will be adopted in the near future and requests the Government to indicate the progress made in this respect.***

Article 3. Dispute settlement machinery in the public sector. In its previous comments the Committee had noted that the Industrial Disputes Act, which provides for conciliation, arbitration, industrial court and labour tribunal procedures, did not apply to the public service. The Committee notes the Government's indication that a mechanism for dispute prevention and settlement in the public sector was being developed by the Ministry of Labour Relations and Manpower and the Ministry of Public Administration and Home Affairs, and that technical assistance from the ILO had been sought in this regard. A draft document concerning the dispute settlement mechanism had also been drafted, but an English version of the said document was not yet available. ***Recalling that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State, the Committee trusts that the public service dispute settlement mechanism referred to by the Government will be developed in conformity with this principle. It requests the Government to indicate the progress made in this respect, and to transmit a copy of the draft mechanism document once an English version is available.***

Compulsory arbitration. In its previous comments, the Committee recalled that it had expressed concern at the broad authority of the minister to refer disputes to compulsory arbitration and had requested the Government to indicate the measures taken to ensure that workers' organizations can organize their programmes and activities without interference by the public authorities. Furthermore, it had noted that under section 4(1) of the Industrial Disputes Act, the minister may, if he or she is of the opinion that an industrial dispute is a minor dispute, refer it by an order in writing for

settlement by arbitration to an arbitrator appointed by the minister or to a labour tribunal, notwithstanding that the parties to such dispute or their representatives do not consent to such reference, and under section 4(2), the minister may, by an order in writing, refer any industrial dispute to an industrial court for settlement. The Committee notes that the Government indicates, in this regard, that sections 4(1) and 4(2) were intended to provide safeguards against strikes that are likely to seriously affect the operation of the industry concerned, and hence production and productivity and, in consequence, the national economy. The Government adds that in practice, however, compulsory arbitration is seldom imposed without the consent of the trade union. While noting the Government's indications, the Committee recalls that provisions under which, at the request of one of the parties or at the discretion of the public authorities, disputes must be referred to a compulsory arbitration procedure, make it possible to prohibit virtually all strikes, or to end them quickly; such a prohibition seriously limits the means available to trade unions to further and defend the interests of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with *Article 3* of Convention No. 87 (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 153). ***In these circumstances, the Committee once again requests the Government to amend sections 4(1) and 4(2) of the Industrial Disputes Act, so as to ensure that any reference of labour disputes to compulsory arbitration may only occur: (1) at the request of both parties to the dispute; (2) in the case of essential services in the strict sense of the term; and (3) in the case of public servants exercising authority in the name of the State. The Committee requests the Government to indicate all developments in this regard.***

Article 4. Dissolution of organizations. The Committee had previously requested the Government to take the necessary measures to ensure that, in all cases where an administrative decision of dissolution of a trade union is appealed to the courts, the administrative decision will not take effect until the final decision is handed down. The Committee notes the Government's indication that this matter has been referred to the Labour Law Reform Committee for review. The Committee trusts that the Trade Unions Ordinance will soon be amended so as to ensure that administrative decisions of dissolution are suspended pending their appeal in court. ***It requests the Government to indicate any progress made in this respect.***

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

The Committee notes the comments submitted by the Ceylon Bank Employees' Union and the Lanka Jathika Estate Workers' Union (LJEWU), in communications of 18 August 2008, and the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 29 August 2008.

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee had previously noted that under section 43(1A) of the Industrial Disputes (Amendment) Act of 1999, any contravention of the provisions concerning anti-union discrimination shall be punished by a fine not exceeding 20,000 rupees (LKR) and requested the Government to provide information on the dissuasive character of this provision, in particular by indicating the relationship of the amount of the fine to the average wage or other objective indicators. The Committee notes the Government's indication that the penalty amount of 20,000 rupees protects workers from unfair labour practices, and that there is no relationship of the amount of the fine to the average wage. The Government further states that a proposal has been initiated to revise and update penalties, surcharges and stamp duties under existing labour legislation. This matter has been referred to the National Labour Advisory Council (NLAC) in order to obtain the views of the social partners; although trade unions are free to express their opinions on the existing penalties to the NLAC, thus far none have yet to do so. The Committee notes this information. ***Further noting that the ITUC reiterates that the existing penalties are too low to provide sufficient deterrence, and that the LJEWU alleges the same, the Committee requests the Government to ensure that the views of the social partners are fully taken into consideration in the process of updating penalties under the existing labour laws. It requests the Government to indicate the progress made in this regard.***

The Committee had previously noted the ITUC's indication that adequate protection against anti-union discrimination was not provided in practice, as only the Department of Labour could bring cases before the Magistrate's Court and there were no mandatory time limits within which complaints should be made to the Court. Subsequently, the Committee, recalling the importance of efficient and rapid proceedings to redress anti-union discrimination acts, had requested the Government to take measures in consultation with the social partners to guarantee a more expeditious and adequate procedure which, in particular, establishes short time periods for the examination of cases by the authorities. It also requested the Government to indicate whether trade unions had the capacity to bring their grievances concerning anti-union discrimination directly before the courts. The Committee notes with regret that the Government has provided no information concerning this matter. ***It once again requests the Government: (1) to take measures, in consultation with the social partners, to guarantee a more expeditious and adequate procedure which, in particular, establishes short time periods for the examination of cases by the authorities; and (2) to indicate whether trade unions had the capacity to bring anti-union discrimination claims directly before the courts.***

Article 4. Measures to promote collective bargaining. The Committee had previously requested the Government to indicate the measures taken by the Social Dialogue and Workplace Cooperation Unit, as well as the measures taken under the auspices of the National Policy for Decent Work, to promote collective bargaining. The Committee notes that according to the Government, 29 Provincial Labour Advisory Councils (PLACs) were established in order to promote

collective bargaining and tripartite consultations in a decentralized manner; their activities are coordinated by the Social Dialogue and Workplace Unit. As of July 2008, a total of 1,057 participants from 23 organizations had participated in awareness-raising programmes organized by the PLACs. ***The Committee requests the Government to provide information on the progress achieved by the measures taken by the Social Dialogue and Workplace Cooperation Unit and those taken in furtherance of the National Policy for Decent Work to promote collective bargaining, including information on the number of collective agreements concluded.***

EPZs. The Committee recalls that it had previously commented upon the need to promote collective bargaining specifically within the export processing zone (EPZ) sector. From the information provided by the Government, it further notes that six new collective agreements had been concluded since the last reporting period. The Government also indicates that 11 trade unions are currently operating in EPZs, that 10 per cent of the total workforce in that sector belong to trade unions, and that 40 per cent of EPZ enterprises have employees' councils; the employees' councils have bargaining rights and a few of them are in the process of concluding collective agreements. While taking due note of this information, the Committee nevertheless notes that according to the ITUC, employees' councils are bodies funded by the employer without workers' contributions, thus giving them an advantage over trade unions, which require membership dues. The ITUC further alleges that employees' councils have been promoted by the Board of Investment (BOI) as a substitute for trade unions in EPZs. ***Recalling that Article 2 of the Convention establishes the total independence of workers' organizations from employers in organizing their activities, the Committee requests the Government to provide its observations with respect to the ITUC's comments concerning this matter. It further requests the Government to indicate the developments concerning the promotion of collective bargaining in the EPZ sector, including the number of collective agreements concluded by trade unions.***

Provisions on trade union recognition. Previously, the Committee had requested the Government to indicate the measures taken so as to ensure that the recognition provisions for collective bargaining purposes were effectively implemented in practice. The Committee regrets that the Government provides no information in this regard. ***Noting the ITUC's comment that the recognition of unions for collective bargaining purposes is hampered by excessive delays, and that employers tend to delay the holding of union certification polls to identify, victimize and on occasion dismiss the union activists concerned, the Committee once again requests the Government to indicate the measures taken to ensure that recognition provisions are effectively implemented in practice and to indicate any developments in this regard.***

Representativeness requirements for collective bargaining. The Committee had previously noted that under section 32A(g) of the Industrial Disputes (Amendment) Act of 1999, no employer shall refuse to bargain with a trade union which has in its membership not less than 40 per cent of the workmen on whose behalf the trade union seeks to bargain. It subsequently requested the Government to ensure that if no trade union covers more than 40 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members, and to indicate the measures taken in this regard. The Committee notes the Government's indication that this matter was placed before the Labour Law Reform Committee appointed by the NLAC, and that in the ensuing deliberations the employer organizations did not favour a reduction in the 40 per cent requirement while the trade unions were not unanimous in their opinions. The Ministry, for its part, was of the view that reducing the percentage requirement might lead to inter-union rivalry. The Government further states that the matter had been raised by the trade union members at the NLAC meeting held in August 2008, and that no consensus had been reached with respect to the issue. The Committee further notes that the ITUC reiterates that, in practice, it has been difficult for trade unions to meet the 40 per cent requirement, partially as a result of tactics initiated by employers to frustrate such efforts. ***In these circumstances the Committee, once again recalling that if no union covers more than 40 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, requests the Government to take the necessary measures to give effect to this principle and to indicate the progress made in this regard.***

Article 6. Denial of the right to collective bargaining in the public service. Previously, the Committee had requested the Government to send its observations to the ITUC comment indicating that the right to collective bargaining is denied to public sector workers. In this respect, the Government indicates that in 2005 a National Salaries and Cadre Commission – comprising 15 members, of which 13 are independent persons and two are from national trade union centres – was appointed to restructure and determine salaries of public officers at all levels. Collective bargaining is provided for under the Commission's auspices, in so far as unions may make representations and submit claims to the Commission, and arbitration is also provided for by the Commission in areas where there are disagreements. The Government further indicates that the Commission, following the receipt of representations and claims from unions, then issues salary recommendations that are implemented subject to the approval of the Cabinet of Ministers. The recommendations made by the Commission in 2006 were approved by the Cabinet of Ministers and adopted and implemented; the trade unions had also accepted the recommendations of the Commission. While noting this information, the Committee considers that the procedures indicated by the Government do not provide for genuine collective bargaining, but rather establish a consultative mechanism – with perhaps some elements of arbitration – under which the demands of public service trade unions are considered, while the final decision on salary determination rests with the Cabinet of Ministers. In this regard, the Committee once again recalls that all public servants, with the sole possible exception of those engaged in the administration of the State, should possess the right to collective bargaining with respect

to salaries and other conditions of employment. *The Committee requests the Government to take the necessary measures to ensure the right of collective bargaining for public service workers, in accordance with this principle, and to indicate any developments in this regard.*

Sudan

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 29 August 2008. The ITUC underscores that the legislation establishes a trade union monopoly controlled by the Government. The Committee recalls in this respect that such a trade union monopoly obstructs the exercise of the rights enshrined in the Convention. The ITUC also indicates that the export processing zone (EPZ) is exempt from the labour laws. *The Committee requests the Government to provide its observations regarding the ITUC's comments.*

Violence against trade unionists and repression of trade union rights. In its previous comments, the Committee had noted that the Committee on Freedom of Association, in Case No. 1843, examined in March 1998, had referred to numerous arrests and detentions frequently followed by acts of torture against trade unionists, as well as acts of interference by the Government in trade union activities. In this respect, the Committee notes that the comments of the ITUC indicate that trade unionists have been the subject of harassment, intimidation, arbitrary arrest, detention and torture. The Committee deplors that, once again, the Government's report does not contain any information on these serious issues and recalls that trade union rights cannot be exercised in the absence of respect for human rights. The Committee further considers that the Government's silence represents a form of admission, in view of the observations made by the Committee on Freedom of Association in 1998. The Committee expresses its deep concern over the gravity of these allegations, particularly in view of the observations made by the Committee on Freedom of Association. *The Committee urges the Government to take the necessary measures to guarantee the personal safety of trade unionists and ensure respect for the rights enshrined in the Convention and to answer to the comments made by the ITUC.*

Article 4 of the Convention. The Committee recalls that it had observed on many occasions that section 16 of the Industrial Relations Act of 1976, and also section 112 of the Labour Code, allowed referral of a collective dispute or a collective labour dispute to compulsory arbitration and had requested the Government to take measures to amend the legislation so that arbitration may only be compulsory with the agreement of both parties, or in the case of essential services. In this respect, the Committee notes the Government's indication that the Industrial Relations Act has been annulled, and that a new Labour Code was being prepared that would take into account the Committee's comments on section 112 of the present Labour Code. The Government further states that it has sent a draft of the proposed code to the ILO Subregional Office in Cairo for its assistance in identifying the provisions that are in conflict with international labour standards. *The Committee expresses the hope that the new Labour Code will ensure that compulsory arbitration may only be permitted with the agreement of both parties or in the case of essential services; it requests the Government to indicate the progress made with respect to the preparation of the new labour code, and to provide a copy of the said law upon its adoption. The Committee further requests the Government to transmit a copy of the instrument annulling the Industrial Relations Act of 1976.*

Collective bargaining in practice. The Committee notes that the latest comments of the ITUC reiterate that collective bargaining is nearly non-existent in Sudan and that salaries are set by a government-appointed and controlled tripartite body. *Regretting that, once again, the Government has not provided its observations thereon, the Committee again requests the Government to provide its observations respecting this matter. It also requests the Government to promote collective bargaining in the country and to send information on the application of the right of collective bargaining in practice, including the number of existing collective agreements as well as the sectors and workers covered thereunder.*

The Committee once again stresses the gravity of these matters and expresses the hope that the Government will address all its attention to their resolution.

[The Government is requested to report in detail in 2009.]

Swaziland

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

The Committee notes the comments of 13 June and 14 August 2008 by the Swaziland Federation of Trade Unions (SFTU) and the comments of 29 August 2008 by the International Trade Union Confederation (ITUC) which referred to issues under examination, as well as to dismissals of workers who engaged in lawful strike actions, to serious acts of violence and brutality from the security forces against trade union activities and union leaders in general, and in particular during a strike in the textile sector, to the imprisonment of an union leader and threats to him and his family, and to the

refusal from the public authorities to recognize trade unions. *The Committee trusts that the Government will provide a detailed reply to these comments.*

The Committee recalls that for many years it has been referring to certain provisions of the law that are inconsistent with those of the Convention, or has requested information on the effect given to some provisions in practice. It asked the Government:

- to repeal the 1973 Decree/State of Emergency Proclamation and its implementing regulations, concerning trade union rights;
- to amend the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes;
- to amend the legislation or enact other laws to ensure that prison staff and domestic workers (section 2 of the Industrial Relations Act (IRA)) have the right to organize in defence of their economic and social interests;
- to amend section 29(1)(i) of the IRA placing statutory restrictions on the nomination of candidates and eligibility for union office, to enable such matters to be dealt with in the statutes of the organizations concerned;
- to amend IRA section 86(4) to ensure that the Conciliation, Mediation and Arbitration Commission (CMAC) does not supervise strike ballots unless the organizations so request in accordance with their own statutes;
- to recognize the right to strike in sanitary services (at present banned by IRA section 93(9)), and establish only a minimum service with the participation of workers and employers in the definition of such a service;
- to amend the legislation in order to shorten the compulsory dispute settlement procedures laid down in IRA sections 85 and 86, read in conjunction with sections 70 and 82;
- with regard to the civil liability of trade union leaders, to continue to provide information on any practical application of section 40 and, in particular, the charges that may be brought under IRA section 40(13); and
- to provide information on the effect given in practice to IRA section 97(1) (criminal liability of trade union leaders) and to ensure that penalties applying to strikers under section 88 are proportionate to the seriousness of the offence and that enforcement of section 87 does not impair the right to strike.

In its previous comments, the Committee noted that the Government and the social partners signed an agreement undertaking to set up a Special Consultative Tripartite Subcommittee within the framework of the High-level Steering Committee on Social Dialogue. The terms of reference of the Subcommittee are: (1) to review the impact of the Constitution on the rights embodied in Convention No. 87; and (2) to make recommendations to the competent authorities to eliminate the discrepancies between the existing legislative provisions and the Convention. The Committee noted that the High-level Social Dialogue Committee decided, in respect of the constitutional issues, that the ongoing engagement between the Government and the National Constitutional Assembly, which extended beyond those groups in the Tripartite Subcommittee to involve other interest groups, should not be disturbed. Furthermore, the Committee noted, as regards legislative issues, that the Labour Advisory Board drafted an Industrial Relations (Amendment) Bill proposing amendments to the IRA in relation to sections 2, 29(1)(i), 85 and 86, taking into account comments made by the Committee (see above). The Committee nevertheless observed that some issues mentioned by the Committee were still not included in the draft or were pending consultation with the ILO (for example, the right to strike in sanitary services). The Committee notes from the Government's report that the special committee appointed by the Labour Advisory Board to draft a proposed amendment to the Industrial Relations Act of 2000 with a view to bringing it into conformity with the Convention has submitted its report to the Labour Advisory Board whereby it proposed amendments to the IRA and made recommendations with regard to the Decree/State of Emergency Proclamation of 1973 and the Public Order Act of 1963.

The Committee trusts that all its comments will be taken into account in amending the Industrial Relations (Amendment) Bill and that it will be adopted without delay. It requests the Government to indicate any development in this regard. The Committee recalls that the Government may continue to benefit from the technical assistance of the Office in this regard.

Furthermore, the Committee urges the Government to take the necessary steps: (1) to abrogate the 1973 Decree/State of Emergency Proclamation and its implementing regulations concerning union rights; (2) to amend the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes; and (3) to guarantee that prison staff have the right to organize in defence of their economic and social interests.

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

The Committee notes the comments of the International Confederation of Trade Union (ITUC), the Swaziland Federation of Trade Unions (SFTU) and the International Confederation of Free Trade Unions (ICFTU, now ITUC) which refer to issues already under examination, as well as to a number of acts of anti-union discrimination in the textile sector and in export processing zones, and to the denial of collective bargaining to prison staff. The Committee notes from the reply of the Government that the issue of anti-union discrimination in the textile sector is being addressed and a report will be submitted in due course. *The Committee trusts that the Government will take all necessary steps to submit promptly a report in respect of all the comments from the ITUC and the SFTU.*

The Committee recalls that in its previous comments it referred to the following points:

- the need to adopt specific provisions accompanied by sufficiently dissuasive sanctions for the protection of workers' organizations against acts of interference by employers or their organizations (*Article 2 of the Convention*); and
- the need to adopt a specific legislative provision so as to ensure that, if no union covers more than 50 per cent of the workers, this does not prevent the exercise of the collective bargaining rights of the unions in the unit at least on behalf of their own members (*Article 4 of the Convention*).

In its previous comments, the Committee noted that the Labour Advisory Board (LAB), of a tripartite nature, reviewed the legislative issues raised by the Committee and drafted an Industrial Relations (Amendment) Bill which included a number of amendments to the Industrial Relations Act. The Bill referred to the need to tackle the issue of adopting a specific legislative provision so as to ensure that, if no union covers more than 50 per cent of the workers, this does not prevent the exercise of collective bargaining rights by the unions in the unit, at least on behalf of their own members.

The Committee notes from the Government's report that the issue of the adoption of specific provisions, accompanied by sufficiently dissuasive sanctions, for the protection of workers' organizations against acts of interference by employers or their organizations, as required by *Article 2* of the Convention, is being addressed. The Committee also notes the Government's intention to keep it informed of any developments in this regard.

While noting that the Government reiterates that the LAB has commissioned a special committee to draft amendments in line with the recommendations made by the ILO high-level mission and the independent judiciary inquiry after their visit, the Committee trusts that the Government will provide information in its next report on concrete legislative measures taken to address the issues at stake.

The Committee recalls the availability of the technical assistance of the Office in the framework of the legislative amendment process, and trusts that the legislation will be brought shortly into full conformity with the requirements of the Convention. It requests the Government to provide information on any developments in this regard.

Switzerland

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

The Committee notes the information provided by the Government in reply to its previous observation. It also notes the comments of the Union of Swiss Employers (UPS) and the Swiss Federation of Trade Unions (USS/SGB), communicated by the Government. *The Committee further notes the comments made by the International Trade Union Confederation (ITUC) on 29 August 2008 which largely refer to matters already raised and it requests the Government to provide its comments in reply.*

Articles 1 and 3 of the Convention. Protection against anti-union dismissals. In its previous comments, the Committee noted the comments of the USS according to which protection against anti-union dismissals was not adequate based on a number of court decisions on this matter. The Committee also noted the Government's reply, provided during the discussion in the Committee on the Application of Standards at the 95th Session of the International Labour Conference (June 2006) and in its report, which on the contrary emphasized the adequacy of protection against anti-union acts, including recourse to the courts. According to the Government, Swiss law provides adequate protection for trade union delegates and representatives, thereby fully complying with the Convention; the current system relating to unjustified termination of employment takes into account the fact that compensation, which may attain six months' wages, constitutes a sufficiently dissuasive measure in view of the fact that the great majority of Swiss enterprises are small and medium-sized enterprises; the Parliament did not wish to introduce into Swiss law respecting contracts of employment the principle of the reinstatement of dismissed workers, which is not required by the Convention; the principles referred to were established democratically and confirmed by recent parliamentary interventions, and the question does not arise of proposing a legislative amendment establishing additional protection against acts of anti-union discrimination, as it would be doomed in advance to failure; the courts take into account all objective, and even subjective circumstances in granting compensation to workers, the amount of which is determined equitably; cases are the subject of regular legal action before the courts and the rights of the parties are respected, even in cases in which the parties have agreed upon arrangements on the basis of legal texts; and only five of the 11 cases raised by the USS in its complaint of 2003 may be considered as valid. The Committee also noted the indication that the Federal Council provided detailed explanations of the tripartite negotiations held following the adoption in November 2004 of the interim conclusions of the Committee on Freedom of Association in Case No. 2265. The Tripartite Federal Commission for ILO Affairs examined the case. However, in the absence of agreement, it was not considered necessary for measures to be adopted to strengthen protection against unjustified dismissals on anti-trade union grounds or to make it more effective in practice. Nevertheless, according to the Government, the discussion on strengthening protection against unjustified dismissals may be pursued in a broader political and democratic context at the national level and parliamentary and democratic channels exist to ensure a serene political debate at the national level. The Committee noted that, according to the USS, proposals concerning protection against anti-union dismissals were discussed in November 2005, but were not retained. Moreover, according to the USS,

anti-union practices and dismissals still occurred and judicial practice did not correspond to the criteria for protection against acts of anti-union discrimination set out by the Committee in its 1994 General Survey.

The Committee referred to the recommendations made by the Committee on Freedom of Association during its examination of Case No. 2265 in November 2006 (see the 343rd Report of the Committee on Freedom of Association, paragraph 1148) and requested the Government to keep it informed of any development towards greater protection against anti-union dismissals, and any development in case law respecting the compensation granted for unjustified dismissal for anti-union reasons, including by cantonal courts.

The Committee notes the Government's brief response in which it confines itself to expressing once again its deep concern at the fact that the Committee is applying to the Convention the principles drawn from interim conclusions of a case that is under examination by the Committee on Freedom of Association and which is more restricted in scope. The Committee notes that the UPS in its communication indicates its approval of the Government's observation. The Committee recalls that the methods of application of the Convention are very varied, but are only acceptable in so far as they are effective, and that its previous comments, rather than proposing a specific means of protection against acts of anti-union discrimination, pursued the objective of the effective application of *Article 1* of the Convention. The Committee notes the Government's statement concerning the very limited number of cases of discrimination presented in 2003 by the USS. However, the Committee is of the view that, while the compensation applicable for unjustified dismissal (up to six months' wages) may have a dissuasive effect for small and medium-sized enterprises, this is less likely for high productivity and large enterprises. ***The Committee therefore requests the Government to relaunch tripartite dialogue in the light of its comments on the issue of adequate protection against anti-union dismissals. The Committee also requests the Government to indicate, where appropriate, any developments in case law concerning the compensation granted, and all other forms of reparation, in cases of unjustified dismissal for anti-union reasons, including by cantonal courts. The Committee hopes that the judicial authorities will take its comments into consideration.***

Article 2. Protection against acts of interference. In its previous comments, the Committee noted the observations of the USS concerning the establishment of staff associations partially financed by employers and the replacement of unions by staff committees. It also noted the Government's reply in which it recalled that legal procedures allowed the social partners to assert their rights and its indication that the courts could refer to a decision of December 2005 of the Collective Labour Relations Chamber of the Canton of Geneva concerning convictions for acts of interference and to order the holding of collective negotiations. The Committee requested the Government to indicate any development in case law, including at the cantonal level, on this matter. The Committee notes the Government's indication in its report that the ruling of December 2005 by the Collective Labour Relations Chamber of the Canton of Geneva referred to well-established federal case law that is followed by the majority of jurisprudence. Accordingly, the scope of divergencies between cantonal courts is being reduced. According to this case law, which places limits on contractual freedom based on abuse of the rights and protection of the personality of trade unions, the employer may not refuse without a valid reason to negotiate with a trade union for the sole purpose of weakening the position of the workers. The Government adds that a union has the right to adhere to a collective labour agreement that has already been concluded, subject to its representative status. The Committee notes this information.

Article 4. Promotion of collective bargaining. In its previous comments, the Committee noted the observations of the USS concerning the inadequacy of the scope of collective bargaining in Switzerland and the absence of initiatives by the public authorities to encourage voluntary collective bargaining machinery within the meaning of the Convention. Noting the Government's reply, including the statistical data for 2003 concerning the collective agreements concluded in the country, the Committee requested the Government to indicate the manner in which the law and case law address abusive practices in relation to collective bargaining (substantiated acts of bad faith, unjustified delay in the holding of negotiations, failure to comply with agreements, etc.), and any measures adopted to promote the broader development and utilization of machinery for the voluntary negotiation of collective agreements. In its reply, the Government refers to the case law described above concerning the obligation to engage in collective bargaining, to which is added the principle set out in case law of the obligation to bargain in good faith. The Government adds that the lawful nature of strikes targeting the conclusion of a collective labour agreement is an additional means of pressure available to trade unions. The Government also refers to the existing procedures for the settlement of disputes at the cantonal and federal levels. Finally, the Government provides the official statistic that 611 collective labour agreements were in force covering 1,520,200 employed persons as of 1 May 2005, and it indicates that the coverage rate of collective agreements, according to a study, is 48 per cent and should tend to increase in future years. ***The Committee notes these indications and requests the Government to provide copies of the court rulings to which it refers, and any other relevant ruling relating to abusive practices in respect of collective bargaining.***

Syrian Arab Republic

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 29 August 2008, on issues previously raised by the Committee.

Article 2 of the Convention. Trade union monopoly. In its previous comments, the Committee had requested the Government to take the necessary measures to repeal or amend the legislative provisions which establish 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 takes note of the Government's reply indicating that the current law on the unity of trade union organizations has not been imposed on workers in any manner but rather reflects their choice, expressed through trade union congresses at various levels, in line with the Convention. Furthermore, the Trade Union Organization Act, like all the relevant laws and regulations, are being discussed within a tripartite structure before its adoption. Workers consider this issue as a red line which cannot be crossed and they are adamant on the clear expression of that choice, as provided for in the Convention. The Committee notes that the above is corroborated by the comments of the General Federation of Trade Unions (GFTU) forwarded by the ITUC, according to which the reason for the existence of a single trade union system is that workers themselves reject union diversity because it harms their interests.

While taking due note of the above information, the Committee must once again note that although it is generally to the advantage of workers and employers to avoid proliferation of competing organizations, trade union unity, directly or indirectly, imposed by law runs counter to the standards expressly laid down in the Convention. Although it was clearly not the purpose of the Convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 91). **The Committee therefore once again requests the Government to indicate in its next report the measures taken or contemplated so as to repeal or amend the legislative provisions which establish a regime of trade union monopoly in a manner which allows trade union diversity to remain possible in all cases (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).**

Article 3. Financial administration of organizations. The Committee's previous comments concerned legislative provisions which authorize the Minister to set the conditions and procedures for the investment of trade union funds in the financial services and industrial sectors (section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982). The Committee recalls that according to the text of Legislative Decree No. 84, as amended, a trade union can invest its funds in financial services and industrial sectors under conditions specified by Ministerial Decree after their approval by the Bureau of the GFTU. The Committee recalls that, in previous reports, the Government had indicated that the signature of the Minister is required merely as an administrative formality. It notes that according to the Government's latest report, the text of the law is not enforced in practice; the investment projects of trade unions are managed by the unions themselves through tenders and procedures carried out without any interference by any body including the Ministry; the Government attaches as examples documents showing that the investment of trade union funds in a hotel was carried out through private agreements and tenders. While taking due note of the information provided by the Government, the Committee considers that national law should be brought into line with the Convention and with what appears to be national practice. It also recalls that despite several legislative amendments introduced in 2000 to guarantee the freedom of trade unions to organize their administration and activities without interference, the provision in question was not amended. **The Committee, therefore, requests the Government to indicate in its next report the steps taken or contemplated 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.**

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 GFTU Congress and its presiding officers (section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84). The Committee notes from the Government's report that Legislative Decree No. 84 and the amendments made thereto have not been imposed on the workers and are the result of the struggle of the working class in the Syrian Arab Republic. The Committee recalls 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; any legislative provisions going beyond such formal requirements constitute interference contrary to *Article 3* of the Convention (see General Survey, op. cit., paragraphs 109 and 111). **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, which determines the composition of the GFTU Congress and its presiding officers.**

In its previous comments, the Committee had requested the Government to indicate the provisions which explicitly amend section 44(B)(3) of Legislative Decree No. 84 so as to allow a certain percentage of trade union officers to be non-Arab. The Committee notes that, according to the Government, Legislative Decree No. 25 of 2000 amending Legislative Decree No. 84 of 1968 explicitly provides for the right of non-Syrian workers to join occupational trade unions; the law does not set down any discriminatory restrictions or provisions on the possibility of election of workers as trade union officers, regardless of their nationality. In this regard, the Committee once again observes that there are no provisions unequivocally amending section 44(B)(3) of Legislative Decree No. 84, which explicitly sets Arab nationality as a condition of eligibility for trade union office. **The Committee requests the Government to indicate in its next report the**

measures taken to explicitly and unequivocally amend section 44(B)(3) of Legislative Decree No. 84 so as to allow a certain percentage of trade union officers to be non-Arab.

Right to strike. In its previous comments, the Committee had requested the Government to take the necessary measures to amend legislative 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 Government indicates in this respect that the draft amendment of the General Penal Code contains provisions on this issue but has not yet been promulgated; a copy will be sent as soon as it is promulgated. ***The Committee requests the Government to indicate in its next report 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) and to communicate the relevant text as soon as it is adopted.***

The Committee finally notes that the Government does not provide any information in reply to the Committee's previous request for measures to amend legislative provisions which impose forced labour on anyone causing prejudice to the general production plan decreed by the authorities, by acting in a manner contrary to the plan (section 19 of Legislative Decree No. 37 of 1966, concerning the Code on economic penalties). The Committee notes that, in previous reports, the Government had indicated that the penalty of forced labour had been repealed by virtue of Act No. 34 of 2000. However, the Committee had noted that Act No. 34 of 2000 concerned amendments to the Agricultural Relations Act of 1958 and did not appear to repeal any penalty of forced labour. ***The Committee once again requests the Government to indicate in its next report the provisions which have been adopted or are being contemplated in order to repeal section 19 of Legislative Decree No. 37 of 1966, concerning the Code on economic penalties which imposes forced labour on anyone causing prejudice to the general production plan.***

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

The Committee notes that, for the second consecutive year, the Government indicates in its report that no collective agreement has been concluded in the last three years since none of the social partners has expressed the need for it. The Committee wishes to draw the Government's attention to the terms of *Article 4 of the Convention*, which states that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. ***The Committee urges the Government to indicate in its next report the measures to promote collective bargaining adopted by the national authorities in both the public and private sectors. The Committee reminds the Government of the possibility of requesting technical assistance from the Office in this respect.***

The former Yugoslav Republic of Macedonia

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

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

The Committee had requested the Government to take the necessary steps to amend sections 212, 213 and 219 of the Labour Relations Law (2005) so as to:

- lower the 33 per cent representation requirement imposed on trade unions and employers (or their organizations) for collective bargaining purposes at all levels;
- adopt legislative provisions regulating the procedure for determining the most representative organization, based on objective and pre-established criteria; and
- adopt legislative provisions regulating the procedure for establishing the negotiation board (the members of which are appointed by trade unions) when no trade union organization represents 33 per cent of employees or no employers' organization meets the same requirement.

The Government indicated that it intends to begin a "Twinning project" in October 2007 to review the existing labour legislation in order to harmonize it with the EU legislation. In the framework of this project, the issue of representativeness will be examined. The duration of the project will be 15 months; therefore, the Government expected that the necessary changes will be introduced into the legislation by the end of 2008. ***The Committee trusts that all its comments will be taken into account in the process of legislative revision and requests the Government to provide information in this respect.***

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

Togo

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

The Committee notes with regret that the Government's report has not been received. The Committee takes note of observations made on 29 August 2008 by the International Trade Union Confederation (ITUC), which refer to matters already raised by the Committee, as well as to the intervention of law enforcement services to prevent a trade union demonstration. *The Committee requests the Government to provide its observations thereon.*

Furthermore, the Committee notes the adoption of Act No. 2006-010 of 13 December 2006 issuing the Labour Code.

Article 2 of the Convention. Export processing zones (EPZs). The Committee recalls that it has been asking the Government for several years to recognize the trade union rights of workers in EPZs. *It requests the Government to indicate whether this category of worker benefits from the guarantees provided by the Convention under the new Labour Code. Furthermore, it requests the Government once again to provide information on any trade union organization that has requested the legal capacity to defend workers in EPZs.*

Article 3. Right of organizations to elect their representatives in full freedom. The Committee recalls that its previous comments concerned the right of foreign workers to hold trade union offices. The Committee notes with interest that under section 11 of the new Labour Code, migrant workers regularly established in the country and enjoying their civic rights, may be entrusted with the administration and management of a trade union.

The Committee raises other questions in a direct request to the Government.

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 for the third consecutive year.

The Committee notes the observations made by the International Trade Union Confederation (ITUC) in 2006 and 2008, according to which the right to collective bargaining is confined to a single agreement that has to be negotiated at the national level and needs to obtain the approval of Government representatives, as well as of trade unions and employers. The ITUC further indicates that workers in export processing zones do not benefit from the same protection against anti-union discrimination as other workers. *The Committee requests the Government to reply to the ITUC's observations in its next report.*

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

Trinidad and Tobago

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1963)

The Committee notes the comments from the Employers' Consultative Association of Trinidad and Tobago (ECA). It further notes the comments of the International Trade Union Confederation (ITUC) dated 29 August 2008, which are currently being translated.

The Committee has been referring for a number of years to the need to amend various sections of the Industrial Relations Act, as amended, so as to: (1) enable a simple majority of the workers in a bargaining unit (excluding those workers not taking part in the vote) to call a strike (section 59(4)(a)); (2) ensure that any recourse to the courts by the Ministry of Labour, or by one party only, to end a strike is limited to cases of strikes in essential services in the strict sense of the term (sections 61 and 65); (3) ensure that prohibition of industrial action in essential services is limited to cases of strikes in essential services in the strict sense of the term (section 67); and (4) repeal the prohibition of industrial action, under penalty of 18 months' imprisonment, for the teaching service and employees of the Central Bank (section 69).

The Committee notes that the Government indicates in its report that the Ministry of Labour and Small and Micro Enterprise Development has engaged in an exercise of strategic planning to achieve the goals of the country's "developmental plan, vision 2020" which recognizes that decent work is central for the social and economic development of the country. In this regard, matters related to freedom of association and the right of workers to organize are accorded high priority. Diverse mechanisms and measures to promote and protect the freedom of association and the right to organize have been adopted, in particular: (1) integration of labour issues in policies and programmes at national, sectoral, enterprise and industry levels; (2) review of labour legislation and (3) effective social dialogue with social partners. With respect to the amendment of the Industrial Relations Act, the Government further indicates that the Standing Tripartite Committee on Labour Matters, which consults and advises on proposed labour legislation, has not been reconstituted since its term expired in December 2006.

The Committee expresses the hope that concrete measures will be taken in the near future to amend the legislation so as to bring it into conformity with the Convention. The Committee expects the Government to

communicate progress on these issues in its next report and recalls that it can avail itself of the technical assistance of the Office.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)

The Committee takes note of the comments from the Employers Consultative Association of Trinidad and Tobago, pointing out that the Committee's comments should be balanced in order to avoid problematic interpretation. The Committee also takes note of the comments from the International Trade Union Confederation (ITUC) dated 29 August 2008, which are currently being translated.

Article 4 of the Convention. The Committee has been referring for a number of years to the need to amend section 24(3) of the Civil Service Act that affords a privileged position to already registered associations, without providing objective and pre-established criteria for determining the most representative association in the civil service. The Committee notes that the Government indicates in its report that the Civil Service Act review has been in progress but is not yet complete. However, after consultation with the employers' and workers' representative organizations, the Government considers that the amendment of section 24(3) is not possible at this time because the presence of more than one association representing the seven existing classes in the civil service for the purposes of consultations and negotiation could place the employer in a difficult position. The Committee recalls, however, that where there exists a trade union which enjoys preferential or exclusive bargaining rights, as in the current system, decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria instead of simply giving priority to the one which was registered earlier in time, so as to avoid any opportunities for partiality or abuse. ***The Committee expresses the firm hope that the legislation will be modified in the near future, including section 24(3), so as to bring it into conformity with the principles of the Convention, and requests the Government to indicate any developments thereon.***

Promotion of collective bargaining. In its previous comments, the Committee referred to the need to amend section 34 of the Industrial Relations Act in order to ensure that, in cases in which no trade union represents the majority of workers, the minority unions can negotiate jointly a collective agreement applicable in the negotiating unit, or at least conclude a collective agreement on behalf of their own members. The Committee notes that the Government reiterates that the Standing Tripartite Committee on Labour Matters (a consultative body) has not been reconstituted after the expiration of its term in December 2006. ***The Committee expresses the hope that concrete measures will be taken in the near future to amend the legislation so as to allow minority unions in the unit to bargain collectively, at least on behalf of their own members when there is no union that represents the majority of the workers. The Committee trusts that the Government will communicate progress on these issues in its next report and recalls that it can avail itself of the technical assistance of the Office.***

Tunisia

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

In its previous observation, the Committee noted the comments made by the International Confederation of Free Trade Unions (ICFTU), dated 10 August 2006, which referred, inter alia, to the risk of prejudice to the right to strike, which had already been raised by the Committee, as well as cases of assault and violence against strikers, harassment and intimidation of members of the Tunisian Magistrates' Association (AMT) and the Union of Tunisian Journalists (SJT). The Committee further notes the comments, dated 29 August 2008, of the International Trade Union Confederation (ITUC) relating to legislative matters already raised by the Committee and violations of the Convention in practice, including interference by the authorities to prevent trade union organizations from communicating concerning their activities, the closure of premises of Tunisian General Labour Union (UGTT) and the refusal to recognize a new trade union confederation. The Committee notes the Government's replies received in November 2006 and November 2008.

With regard to the observations concerning harassment and intimidation of members of the AMT and the SJT, the Government indicates that the founders of the SJT did not discharge the depository formalities required by the Labour Code for the establishment of the union and cannot therefore claim the legal existence of the union. In its reply of November 2008, the Government adds that the SJT has been reconstituted since September 2007 under the name of the National Union of Tunisian Journalists (SNJT), and that the latter now organizes its activities fully and freely, that it is finally autonomous and independent of the UGTT. The Committee notes that the Government has not provided information concerning the situation of the AMT. It recalls that the standards set out in the Convention apply to magistrates, who should be able to establish organizations of their own choosing to further and defend the interests of their members. ***The Committee requests the Government to provide information on the manner in which it ensures that magistrates enjoy the guarantees afforded by the Convention.***

With regard to the observations concerning the recognition of a union of university teaching staff, the Government indicates that it has always given priority to dialogue and adds that certain unions covering higher education personnel have encountered internal organizational problems, and refers in this respect to the establishment of a General Federation

of Higher Education and Scientific Research (FGESRS), which was challenged in the courts by first-level unions, which in turn founded an independent union. The Committee further notes that, in its reply in November 2008, the Government denies any discrimination against teaching personnel on grounds of their trade union membership and activities. Finally, the Government indicates that the FGESRS has been constantly present in the delegation of the UGTT for the negotiation of its claims with the Government in 2007 and 2008. The Committee further notes the conclusions and recommendations of the Committee of Freedom of Association concerning a complaint presented by the above Federation (see Case No. 2592, 350th Report). **The Committee requests the Government to indicate in its next report any development relating to the determination of the representativeness of trade union organizations in the higher education sector.**

With regard to the refusal to recognize a new trade union confederation, namely the Tunisian General Confederation of Labour (CGTT), the Committee notes the Government's reply, in which it confines itself to recalling that the formalities of depositing the statutes of a trade union organization are carried out without the intervention of the Ministry of the Interior and accordingly rebuts the ITUC's comments. **The Committee trusts that, insofar as the formalities required by the law are fulfilled, there will be a favourable and expeditious response to the request for the registration of the CGTT.**

The Committee regrets to note that the Government has not provided any information concerning the observations made by the ICFTU in 2006 concerning cases of aggression against trade unionists and violence against strikers, or the ITUC's observations of 2008 concerning the closure of premises of the CGTT. In this respect, the Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected.

Legislative changes. The Committee recalls that for many years it has been making comments concerning provisions of the Labour Code that are not in conformity with the Convention. The Committee notes in this respect that, in its brief report, the Government indicates that the possibility is being examined of bringing the provisions upon which the Committee has commented into conformity. The Committee recalls that these provisions relate to the following points.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing. Section 242 of the Labour Code. The Committee recalls that the minimum age for joining a trade union should be the same as the age for admission to employment as determined in the Labour Code (16 years in accordance with section 53 of the Labour Code) and that there should be no requirement for authorization by parents or guardians. **It requests the Government to amend section 242 of the Labour Code to that effect.**

Article 3. Right of organizations to elect their representatives in full freedom. Section 251 of the Labour Code. With regard to this provision, under which foreign nationals may have access to administrative or executive posts in a trade union provided that they have obtained the approval of the Secretary of State for Youth, Sport and Social Affairs, the Committee recalls that the imposition of such conditions on foreign nationals amounts to interference by the public authorities in the internal affairs of a trade union, which is inconsistent with Article 3 of the Convention. **The Committee requests the Government to amend section 251 of the Labour Code so as to ensure that workers' organizations have the right to elect their representatives in full freedom, including from among foreign workers, at least after a reasonable period of residence in the country.**

Article 3. Right of workers' organizations to organize their activities and formulate their programmes in full freedom. (a) Section 376bis(2) of the Labour Code. The Committee has been recalling for many years that the requirement for a first-level union to obtain the approval of the central workers' confederation before declaring a strike, under the terms of section 376bis(2) of the Labour Code, is inconsistent with the Convention. The Committee emphasizes that a legislative provision which requires the prior approval of the trade union confederation for a strike is an impediment to the freedom of choice of first-level organizations to exercise the right to strike. Such a restriction could only be envisaged if it is included voluntarily in the statutes of the trade unions concerned, and not imposed by law. **The Committee requests the Government to repeal subsection 2 of section 376bis of the Labour Code so as to guarantee that worker's organizations, irrespective of their level, can organize their activities in full freedom with a view to furthering and defending the interests of their members, in accordance with Article 3 of the Convention.**

(b) Section 376ter of the Labour Code. **With regard to this provision, which requires the strike notification to provide an indication of the duration of the strike, the Committee requests the Government to amend section 376ter of the Labour Code so as to remove any legal requirement to specify the duration of a strike and to guarantee that workers' organizations can call a strike of unlimited duration if they so wish.**

(c) Section 381ter of the Labour Code. **With regard to essential services, the list of which is determined by decree under the terms of section 381ter of the Labour Code, the Committee requests the Government to indicate whether the decree in question has been adopted and, if so, to provide the list of essential services as determined.**

(d) Sections 387 and 388 of the Labour Code. In its previous observations, the Committee noted that: (a) the imposition of the penalties established by section 388 of the Labour Code, under which any person who has participated in an unlawful strike is liable to a sentence of imprisonment of from three to eight months and a fine of from 100 to 500 dinars, depends on the assessment by the criminal court of the gravity of the offences concerned; (b) under the terms of section 387 of the Labour Code, any strike called in breach of the provisions on conciliation and mediation, notice and

mandatory approval by the central organization (this point relating to section 376bis of the Labour Code is also the subject of comments by the Committee) shall be deemed unlawful; and (c) section 53 of the Penal Code, under which the courts can impose a lesser penalty than the minimum established in section 388, or commute a prison sentence to a fine, fails to secure the proportionality of penalties. *The Committee requests the Government to amend sections 387 and 388 of the Labour Code so as to ensure that the penalties envisaged for participation in an unlawful strike are proportional to the gravity of the offence.*

Recalling that its comments have been made for many years, the Committee trusts that the Government's next report will indicate significant progress in bringing the Labour Code into conformity with the requirements of the Convention. It also recalls that the Government can request the Office's technical assistance on these matters.

Turkey

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

The Committee takes note of the report of the High Level ILO Mission which visited the country on 28–30 April 2008, pursuant to a request by the Conference Committee on the Application of Standards in June 2007.

The Committee notes the Government's report which contains, inter alia, a reply to the comments made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2008 (forwarding a communication by TURK-IS dated 12 August 2008). It also notes the Government's reply to the ITUC communication dated 28 August 2007 (Government communications dated 9 January, 28 March and 17 June 2008) and the communication of the Confederation of Public Employees Trade Unions (KESK) dated 31 August 2007 (Government communication dated 9 January 2008).

The Committee also notes the comments made by the ITUC in a communication dated 29 August 2008, the KESK in a communication dated 1 September 2008 and the Confederation of Progressive Trade Unions of Turkey (DISK) dated 2 September 2008. *The Committee requests the Government to provide full observations on these comments.*

Civil liberties. In its previous comments, the Committee, taking note of several communications by workers' organizations referring to violent repression of peaceful demonstrations, raised the issue of measures to give the police adequate instructions so as to ensure that police intervention is limited to cases where there is a genuine threat to public order and to avoid the danger of excessive violence in trying to control demonstrations. The Committee had noted in this context that according to Circular No. 2005/14 published on 2 June 2005 (*Official Journal* No. 25883), the representatives of public service trade unions and confederations at the province or district level, as well as the officers of trade union and confederation branches, will not face disciplinary proceedings by reason of press statements made in the exercise of their trade union activities outside the scope of their functions as public servants. Moreover, their activities (meetings and demonstrations) organized under the provisions of the Act on Meetings and Demonstrations No. 2911 will be facilitated. In addition, various other circulars of the Prime Minister order the administration to observe the relevant provisions of the legislation and not to obstruct union activities (circulars dated 6.6.2002, 12.6.2003 and 2.6.2005).

The Committee notes that TURK-IS, in a communication forwarded through ITUC, refers to the decision to prohibit workers from entering Taksim Square in Istanbul on May Day 2008, due to security reasons and to a violent repression of a peaceful demonstration by the TURK-IS affiliated Food, Beverage, Tobacco, Alcohol and Allied Workers' Union (TEKGIDA-IS) on 19 February 2008. The Committee also notes that KESK refers to disproportionate force used by police on May Day 2008 against the workers who had gathered in front of the DISK offices in order to take part in the abovementioned demonstration organized by the three major confederations, TURK-IS, DISK and KESK. The Committee notes moreover that the ITUC and KESK refer to several instances of restrictions of trade union activities, especially demonstrations and publications, including through prison sentences, judicial inquiries opened and proceedings instituted against trade union members and officials. With regard to the public sector in particular, the ITUC refers in its 2007 comments to interference in the activities of public sector trade unions by the Government as employer. In particular, according to the ITUC, in the course of 2006, 15 public employees were transferred, 402 were subjected to "disciplinary inquiries", four were given prison sentences, 131 were prosecuted in court and nine were fined; in 14 different workplaces, the unions were prevented from using their offices, and in three other cases, union offices were emptied by force during legitimate trade union activities. ITUC adds that unions must obtain official permission to organize meetings or rallies and must allow the police to attend their events and record the proceedings.

The Committee notes from the Government's report that trade unions are not above the law and should respect the provisions of the national legislation, in particular, the Act on Meetings and Demonstrations No. 2911 as every other natural or legal person. Unlawful activities of the trade unions totally disrespecting the provisions of the applicable legislation cannot claim protection against police interference. Furthermore, judicial means of recourse are available to the trade unions and their members to contest both the actions of the police and the constitutionality or compliance of the provisions of the national legislation with international human rights instruments to which Turkey is party and which prevail over the national legislation (article 90 of the Constitution). The Government also provides data according to which trade unions conducted 1,247 activities in the first five months of 2008 and all these activities, except two, were

conducted lawfully and ended in general without any incident. In reply to the comments made by the ITUC in 2007, the Government indicates that out of 1,149 activities organized by KESK in 2006, 66 persons had been taken into custody as a result of five meetings; out of 722 activities in the course of 2007 and until October of that year, 12 persons had been taken into custody as a result of one meeting. The Government adds that all the cases of violent suppression of demonstrations and strikes by the police reported by the ITUC (including a protest organized by KESK on 30 May 2006 referred to in the Committee's previous comments) did not concern peaceful demonstrations and that the trade union leaders and members resisted and attacked the police, causing injuries; the police used force partly and gradually exercising the authority vested in it by the law. The Government finally indicates that unions do not have to obtain prior permission to organize meetings or rallies but rather, as provided in section 10 of Act No. 2911, should submit a notification signed by all the members of the organization committee to the provincial or district governor's office 48 hours before the meeting. ***The Committee requests the Government to respond to the comment by ITUC that trade unions must allow the police to attend their events.***

The Committee recalls that trade union rights include the right to organize public demonstrations, especially to celebrate May Day, provided that the trade unions respect the measures taken by the authorities to ensure public order. At the same time, the authorities should strive to reach agreement with the organizers of a demonstration to enable it to be held without disturbances and should resort to the use of force only in situations where law and order is seriously threatened; the intervention of the forces of order should be in due proportion to the danger to law and order that they are attempting to control.

The Committee requests the Government to indicate in its next report any proceedings instituted and decisions rendered in relation to the exercise of trade union activities, as well as any additional measures taken or contemplated with a view to ensuring that police intervention in demonstrations is limited to cases where there is a genuine threat to public order and avoiding the danger of excessive violence in trying to control demonstrations.

Draft bills. The Committee has been commenting for a number of years on draft bills to amend Act No. 2821 on trade unions and Act No. 2822 on collective labour agreements, strike and lockout. In its previous observation, while taking note of the improvements made to the draft bills amending Acts Nos 2821 and 2822, the Committee had requested the Government to indicate in its next report a specific timetable for the adoption and enactment of the draft bills amending these Acts in respect of the following issues: (i) the criteria for determining the branch of activity covering a worksite (unions must be constituted exclusively on a branch of activity basis); (ii) several detailed provisions in respect of the internal functioning of unions and their activities; (iii) severe restrictions of the right to strike (limitations on picketing; prohibitions and compulsory arbitration going beyond essential services in the strict sense of the term; excessively long waiting period before a strike can be called; heavy sanctions including imprisonment for participating in "unlawful strikes" the definition of which goes beyond what is acceptable under the Convention; prohibition of political strikes, general strikes and sympathy strikes).

The Committee notes from the Government's report that pursuant to the 2008 High-Level ILO Mission and as a result of several meetings held within the framework of the Tripartite Consultation Board and its Working Group, two draft bills amending Acts Nos 2821 and 2822 were amalgamated into one draft bill and submitted to the Parliament (Turkish Grand National Assembly) on 20 May 2008 by a group of Members of Parliament belonging to the Government Party. The Parliamentary Committee on Health, Family, Labour and Social Affairs reviewed and amended the draft text from 23 to 24 May 2008 with the active participation of the social partners and submitted the draft bill to the Turkish Grand National Assembly on 27 May 2008. The text of the bill will be duly communicated to the ILO when enacted into law.

The Government adds that legislative provisions that were reported on previous occasions as requiring prior constitutional changes – i.e., section 25 of Act No. 2822 prohibiting strikes for political purposes, general strikes and sympathy strikes as well as the prohibition of occupation of work premises, go-slow strikes and other forms of obstruction provided for in article 54 of the Constitution – were not included for amendment in the draft bill.

The Committee notes with interest from the report of the High-Level ILO Mission, that there was consensus among the social partners and the Government on some amendments to be made to Acts Nos 2821 and 2822 so as to respond to the comments of the ILO supervisory bodies. The Committee notes with interest that a Bill amending Acts Nos 2821 and 2822 was introduced in Parliament on 27 May 2008. The Committee also recalls that the Conference Committee emphasized in 2007 the need for rapid steps to bring the law and practice into harmony with the Convention. ***The Committee requests the Government to indicate progress made in relation to the enactment of the Bill amending Acts Nos 2821 and 2822 and to communicate the relevant text so that the Committee may examine its conformity with the Convention. The Committee expresses the firm hope that the bill in question will fully take into account the consensus noted by the High-Level ILO Mission, as well as the comments previously made by the Committee with a view to bringing national law and practice into conformity with the Convention.***

With regard to the prohibition of political strikes, general strikes and sympathy strikes which according to the Government, are not included in the reform as they require a constitutional revision, the Committee once again recalls that trade unions should be able to stage action in support of social and economic matters affecting their members' interests, as well as sympathy strikes provided the initial strike they are supporting is itself lawful, and requests the Government to continue to indicate steps taken or contemplated to enable trade unions to take such action.

The Committee has been commenting for a number of years on a draft bill to amend Act No. 4688 on Public Employees' Trade Unions (as amended by Act No. 5198). The Committee notes that according to the Government, consultations were held with the social partners but no information is provided on a timetable for the adoption of this Bill. ***The Committee requests once again the Government to transmit a copy of the current text of the draft bill to amend Act No. 4688.***

Furthermore, the Committee recalls that for a number of years it has been referring to the following.

The exclusion from the right to organize of a number of public employees including public employees under probation (section 3(a) of Act No. 4688), prison guards, civilian personnel in military installations, senior public employees, magistrates, etc. (section 15 of Act No. 4688) amounting, according to the previous and latest communication by KESK, to 500,000 public employees; furthermore, under section 6 of Act No. 4688, a public official must have been in employment for two years to become a founding member of a union. The Committee notes that according to the Government, it is envisaged to lift the prohibition of trade union membership for the civilian personnel of the Ministry of Defence and the police as well as the prison guards. ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated so that, in the framework of the legislative reform under way, all workers, without distinction whatsoever, with the only possible exception contained in Article 9 of the Convention, are guaranteed the right to establish and join organizations of their own choosing.***

The criteria under which the Ministry of Labour determines the branch of activity in the public sector and the implications of such determination on the workers' right to form and join organizations of their own choosing. The Committee notes that according to the Government, the branches of activity determined in section 5 of Act No. 4688 are only 11 and therefore, they are not "narrow" and "leading to excessive fragmentation of trade unions in the public sector", as previously indicated by the Committee. This criticism, which is based on the complaint of Yapi Yol Sen [see the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2537 (347th Report, paragraphs 1–26)], stems from the closure of an administrative unit (General Directorate of Village Affairs) which belonged to the branch of "Public works, construction and village services" and transfer of its personnel to the local administration and therefore, the branch of "Local governments". Public servants exercise their right to organize according to the branch of service to which the public institution in which they work belongs and have the right to form or join organizations of their choice established in the relevant branch of service. Closure of an administrative unit within the framework of an administrative restructuring and transfer of its personnel to other units because of their status under public law rather than making them redundant, should not and cannot be considered as unilateral interference by the Government in trade union activities. Many trade unions have been established in the branches of services; for example 16 trade unions exist in the branch of education and the smallest number of trade unions in a branch is five.

The Committee takes due note of the Government's comments concerning the number of branches of activity and the reasons for the particular change in branch as a result of an administrative restructuring. It regrets, however, the consequences of this transfer for the free exercise of the right to organize of the public servants in question who automatically lost their membership in Yapi Yol Sen, leading the union to face financial difficulties, as well as the fact that trade union officers automatically lost their office. It notes that the difficulties in this case arise from the fact that one branch in particular concerns an administrative authority, i.e. "Local governments", while the other branches are thematic e.g. "Public works, construction and village services", "Education", etc.). Thus, the trade union membership was automatically lost, although the members continued to perform the same tasks under a different administrative authority. ***The Committee therefore once again requests the Government to provide in its next report information on steps taken or contemplated so as to:***

- (i) ***amend section 5 of Act No. 4688, as well as the Regulation on the Determination of Branch of Activity of Organizations and Agencies, which determine the branches of activity according to which public employees' trade unions may be established, so as to ensure that these branches are not restricted to any particular ministry, department or service, including local governments;***
- (ii) ***amend the Regulation of 2 August 2005 (which amends the Regulation on the Determination of Branch of Activity of Organizations and Agencies) so as to maintain Yapi Yol Sen members within the branch of activity entitled "Public works, construction and village services" in conformity with the nature of their functions and their willingness to remain affiliated to Yapi Yol Sen; more generally, the Committee requests the Government to take the necessary measures so that members of a union which may be affected by the modification of the list of branches of activity will have the right to be represented by the union of their choice in accordance with Article 2 of the Convention,***
- (iii) ***amend section 16 of Act No. 4688 so as to ensure that trade union office is not terminated by reason of the transfer of a trade union leader to another branch of activity, or his/her dismissal or simply the fact that a trade union leader leaves the work.***

Detailed provisions of Act No 4688 in respect of the internal functioning of unions and their activities. The Committee notes the comments made by the KESK and ITUC in their 2007 and 2008 communications with regard to repeated interference by the authorities into the statutes of the KESK and five of its affiliates (Egitim Sen, Kültür-Sanat Sen, ESM, Haber-Sen and SES) so as to make these trade unions amend their aims as stated in their statutes, with regard

to terms such as “collective bargaining”, “collective agreement”, “job security”, “collective dispute” which are being considered as contrary to Act No. 4688; in 2006, Egitim Sen had to amend its statutes by eliminating reference to “the right to receive education in one’s mother tongue”, in order to avoid being dissolved.

The Committee notes that, according to the Government, internal rules of trade unions and confederations are a source of legal obligations and therefore, all the members are expected to abide by them. Thus, they are examined on the basis of the provisions of the Constitution, the Civil Code, the Associations Act, Acts Nos 2821 and 4688. The control is carried out after each general assembly and this makes it possible to observe the contradictions even if they had not been previously noticed. In case of divergences from the legal provisions, the workers’ organizations are requested to harmonize the provisions. Consequently, it would not be appropriate to interpret this type of control as pressure exercised on unions. Terms like “collective bargaining”, “strike” etc., are not criticized as long as these activities do not take place in practice. With regard to Egitim Sen in particular, the Government indicates that by reason of the statement in the statute of this union demanding education in one’s mother tongue, a criminal complaint was filed by the Chief Public Prosecutor’s Office claiming breach of articles 3 and 42 of the Constitution and a case for dissolution was filed in the Ankara Labour Court. In the decision of the said court dated 27 October 2005, it was found that this provision of the statute is contrary to the Constitution which provides that the Republic of Turkey is a unitary State and an indivisible entity with Turkish as its language and that no language other than Turkish shall be taught as the mother tongue to Turkish citizens at any institutions of training or education. Egitim-Sen amended its statute and the case against it was dropped. Trade unions should carry out their activities in loyalty to the Constitution.

The Committee recalls once again, that trade unions should have the right to include in their statutes the peaceful objectives that they consider necessary for the defence of the rights and interests of their members and that legislative provisions which go beyond formal requirements may hinder the establishment and development of organizations and constitute interference contrary to *Article 3 of the Convention* (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 110 and 111). The legislation may oblige unions to adopt provisions on various issues but should not dictate the contents of these provisions. Details could always be provided in guidelines attached to the Acts that the unions would nonetheless remain free to follow. With regard to the inclusion of terms like “collective bargaining” and “strike” in the statutes of public sector trade unions, which according to the Government are allowed as long as these activities do not take place in practice, the Committee recalls that the prohibition of strikes is only acceptable in the case of public servants exercising authority in the name of the State and essential services in the strict sense of the term and that trade unions representing public servants who are not engaged in the administration of the State should be able to engage in collective bargaining on behalf of their members, as one of the fundamental activities in which trade unions are involved. The Committee recalls that under *Article 8* of the Convention, while trade unions are expected to respect the law of the land, this law should not be such as to impair the guarantees provided for in the Convention. With regard to the statute of Egitim Sen, the Committee recalls that in the conclusions and recommendations reached in Case No. 2366 (342nd Report, paragraphs 906–917) the Committee on Freedom of Association noted that on the one hand, limits may be placed on the right of trade unions to draw up their constitutions and rules in full freedom where the manner in which they are expressed may imminently jeopardize national security or the democratic order, and on the other hand, expressed serious concerns that references in a union’s by-laws to the right to education in a mother tongue had given and could give rise to the call for dissolution of a trade union.

The Committee requests the Government to indicate in its next report the measures taken or contemplated, including amending the detailed provisions of Act No. 4688, so as to allow trade unions in the public service to draft their rules without undue interference.

The removal of union executive bodies in case of non-respect of requirements set out in the law which should be left to the free determination of the organizations (section 10 of Act No. 4688). The Committee once again requests the Government to indicate in its next report the measures taken or contemplated to amend section 10 of Act No. 4688 to enable workers’ organizations to determine freely whether union officials may remain in their post during their candidacy or election in local or general elections.

The right to strike in the public service. The Committee recalls that section 35 of Act No. 4688 makes no mention of the circumstances in which strike action may be exercised in the public service. It recalls that in the past, the Government indicated that a constitutional amendment is required for the review of restrictions on the right to strike of public servants; however, the Government is planning to launch a personnel reform in the public sector whereby “public servants” in the narrow sense of the term, i.e. those exercising authority in the name of the State, would be defined first and then carefully distinguished from other public employees. The Committee once again underlines that restrictions on the right to strike in the public service should be limited to public servants who are exercising authority in the name of the State and those working in essential services in the strict sense of the term and that in such cases, compensatory guarantees should be afforded to public servants, such as mediation and conciliation procedures or, in the event of deadlock, arbitration with sufficient guarantees of impartiality and rapidity (see General Survey, op. cit., paragraphs 158, 159 and 164). ***The Committee requests the Government to indicate in its next report the measures taken, including the possible personnel reform in the public sector, so as to bring section 35 of Act No. 4688 into conformity with the above.***

Associations Act. In its previous comments, the Committee noted that, as provided in section 35 of the Associations Act No. 5253 of 4 November 2004, certain specific sections of this Act apply to trade unions, employers’ organizations as

well as federations and confederations if there are no specific provisions in special laws concerning these organizations. Section 19 (which is applicable to workers' and employers' organizations), enables the Minister of Internal Affairs or the civil administration authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time, with 24 hours notice.

The Committee notes that according to the Government, section 19 of the Associations Act applies only if there are no provisions in the relevant special law, i.e., Act No. 2821 on Trade Unions sections 47–51 of which concern the auditing of trade unions. Noting that section 19 of the Associations Act only applies in a subsidiary manner, the Committee recalls nevertheless, that the supervision of accounts should be limited to the obligation of submitting periodic financial reports or to cases where serious grounds exist for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention), or if there is a need to investigate a complaint by a certain percentage of the members of the employers' or workers' organizations; both the substance and the procedure of such verifications should be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey, op. cit., paragraph 125).

The Committee recalls, moreover, that section 26 of the abovementioned Act (which is applicable to workers' and employers' organizations) establishes a requirement of permission by the civil administration authority in order for an organization to open student dormitories and boarding houses linked to education and teaching activities. The Committee notes that according to *Article 3* of the Convention, workers' and employers' organizations have the right to organize their activities, such as, for instance, training, without interference which would restrict this right or impede its lawful exercise. ***The Committee requests the Government to indicate in its next report the measures taken or contemplated to amend sections 19, 26 and 35 of Act No. 5253 of 2004 so as to exclude workers' and employers' organizations from the scope of application of these provisions or ensure that: (i) verification of trade union accounts beyond the submission of periodic financial reports takes place only where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention) or in order to investigate a complaint by a certain percentage of members; and (ii) activities of workers' and employers' organizations, such as the opening of training centres, is not subject to permission from the authorities.***

The Committee invites the Government to avail itself of the technical assistance of the Office if it so wishes.

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

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

The Committee notes that an ILO high-level mission visited the country from 28 to 30 April 2008 pursuant to a request by the Conference Committee on the Application of Standards in 2007.

The Committee notes the Government's reports which contain, inter alia, replies to the comments made by the International Trade Union Confederation (ITUC) in communications dated 10 August 2006 (government communication dated 2 January 2007) and 28 August 2007 (government communications dated 9 January, 28 March and 17 June 2008). It also notes the Government's reply to the communications by the Confederation of Public Employees Trade Unions (KESK) dated 2 September 2006 and 31 August 2007 (government communication dated 16 February 2007 and 9 January 2008); and by the Confederation of Progressive Trade Unions of Turkey (DISK) in communications dated 9 and 24 April 2007 (government communication of 16 October 2007).

The Committee also notes the comments made by the ITUC in a communication dated 29 August 2008, by KESK in a communication dated 1 September 2008 and by DISK in a communication dated 2 September 2008. ***The Committee requests the Government to provide its observations on these comments.***

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. In its previous comments, the Committee had noted, in reply to information communicated by workers' organizations with regard to acts of anti-union discrimination against public employees who were trade union members or officials, various measures adopted in order to introduce dissuasive sanctions against acts of anti-union discrimination. Specifically, the new Turkish Penal Code No. 5237, which came into effect in June 2005, stipulates in section 118 that acts of force or threats to compel someone to join or not join a trade union or union activities, or to resign from a trade union or union office, shall be punished by imprisonment from six to 12 months and that obstruction of trade union activity through force, threats or other unlawful acts, shall be punished by imprisonment from one to three years. Section 135 stipulates that any person found guilty of unlawfully recording personal data, including trade union affiliates, shall be punished by imprisonment from six months to three years.

The Committee also recalls that with regard to the public sector, the Government had indicated that violations of section 18 of Act No. 4688 which prohibit acts of anti-union discrimination by any administrative officer will be punished with disciplinary measures in accordance with the legislation applicable to public personnel (Act No. 657). In its latest report, the Government adds that according to section 18(2) of Act No. 4688 a public employer cannot transfer a union representative or official without a valid reason and without indicating the reasons for the change clearly and precisely. Complaints regarding transfers communicated to the Ministry by trade unions are sent to the related institutions in order to evaluate the issue in accordance with section 18 of the Act and the Prime Ministerial circulars. Furthermore, according to

section 18(3), a public employer cannot discriminate on the grounds of membership or non-membership of a trade union. In addition to this, section 18(a) of the Labour Act No. 4857 provides protection against unfair dismissals for trade union membership or participation in trade union activities outside working hours or, with the consent of the employer, within working hours.

While taking due note of these measures, the Committee also notes that the ITUC refers in its 2007 and 2008 comments to this widespread incidence of acts of anti-union discrimination in the public and private sectors, especially transfers of public employees who are trade union members or officers, interference in the activities of public sector trade unions by the Government as employer, and blacklisting and pressure to quit the union in the private sector.

The Committee requests the Government to indicate in its next report the procedure that applies for the examination of complaints of anti-union discrimination in the public sector and to provide statistical data showing progress made in addressing effectively allegations of acts of anti-union discrimination and interference both in the public and private sectors (number of cases brought to the competent bodies, average duration of proceedings and remedies imposed). The Committee trusts that the Government will take all necessary measures to ensure that the provisions of the Convention in this regard are applied both in law and in practice.

Article 4. Free and voluntary collective bargaining. The Committee recalls that for a number of years it has been referring to the dual criteria applied in order to determine the representative status of a union for the purposes of collective bargaining. Under section 12 of Act No. 2822, in order to be allowed to negotiate a collective agreement, a trade union must represent 10 per cent of the workers in a branch and more than half of the employees in a workplace. The Committee had previously taken note of a draft Bill amending Act No. 2822 in order to address this point. The Committee notes from the Government's report that a Bill to amend Act No. 2822 includes amendments to abolish the 10 per cent threshold required at the sector level for a union to be recognized as a bargaining agent at the enterprise level. The said amendment, which is pending enactment in the Turkish Grand National Assembly, reads as follows:

A trade union affiliated to one of the confederations represented in the Economic and Social Council, active throughout the country in its branch of activity and organized in more than one workplace or establishment, or a trade union which is a member of a workers' confederation with at least 80,000 members, shall have the power to conclude a collective labour agreement covering the establishment(s) in question if its members account for more than half of the workers employed in the establishment, or each of the establishments, to be covered by the collective labour agreement.

If the trade unions meeting the abovementioned conditions represent more than half of the workers employed in a workplace or establishment in which they are organized, they shall have the power to conclude a collective labour agreement covering the workplace or establishment in question. In the case of enterprise collective labour agreements, the establishments shall be considered as one single unit in the calculation of the absolute majority.

The Committee notes that according to the Government, the social partners in Turkey are in general agreement on the basic parameters of the industrial relations system such as branch-level organizations and enterprise and workplace-level collective bargaining, which has been in place for two-and-a-half decades; the Government expresses the view that after the proposed amendments to the legislation, this system will continue functioning smoothly and in line with ILO standards.

The Committee notes that according to the 2007 comments by the DISK, the draft bill maintains the status quo and does not produce any solution to the problems relative to collective labour relations or make any contribution to the free exercise of trade union rights.

The Committee observes that the text communicated by the Government replaces the 10 per cent requirement found in section 12 of Act No. 2822, with a requirement of affiliation to a major confederation in order for a union to be able to engage in collective bargaining at the workplace level. The Committee notes, however, that this system appears to continue to restrict the level of representation and collective bargaining which should be determined through free and voluntary negotiations. Furthermore, the Committee also observes that the amendment maintains the requirement that unions should represent the majority of workers in a workplace (50 per cent plus one) in order to enter into negotiations with the employer with a view to the conclusion of a collective agreement. The Committee recalls that in such systems, if no single union covers more than 50 per cent of the workers, collective bargaining rights should be granted to the existing unions in the workplace, at least on behalf of their own members; however, this is prevented in this case by the requirement of affiliation to a major confederation. In particular, a representative enterprise union should be able to negotiate even if not affiliated to a confederation.

The Committee expresses the hope that the Government will take the necessary measures to review the draft bill and amend section 12 of Act No. 2822 so that where no union meets the 50 per cent membership criterion, the existing unions at the workplace or enterprise may bargain at least on behalf of their own members regardless of whether they are affiliated to a confederation or not. The Committee requests the Government to indicate in its next report the progress made in this regard, and so as to encourage and promote the full development and utilization of machinery for voluntary collective bargaining, in accordance with Article 4.

Collective bargaining in the public service. In its previous comments the Committee took note of information provided by the Government on the structure of collective negotiations in the public sector and raised certain issues concerning: (i) the need for additional information on the manner in which the direct employer participates in the negotiations alongside the financial authorities as part of the Public Employers Board which is the negotiating agent for

the Government under section 3(h) of Act No. 4688; (ii) the need to amend section 28 of Act No. 4688 which limits the scope of negotiations to financial questions; (iii) the need for additional information on the manner in which section 34 of Act No. 4688 is applied in practice and the need to confirm that it is not applied in any way that gives the authorities, in particular the Council of Ministers, power to modify or reject collective agreements (section 34 of Act No. 4688 stipulates that, if an agreement is reached during the negotiation process, the agreed-upon text shall be submitted to the Council of Ministers for the appropriate administrative, executive and legal arrangements to be taken within three months, and the draft bills shall be submitted to the Turkish Grand National Assembly for enactment).

The Committee notes from the Government's report that: (i) the Public Employers' Board is composed of representatives of the Prime Minister, the Ministry of Finance, the Treasury, the State Personnel Presidency, as well as the public employers' organization; (ii) although section 28 of Act No. 4688 limits the collective negotiations to the financial rights of public employees, the subjects other than financial rights have been put on the agenda in four collective negotiations carried out since 2004 and Memoranda of Understanding (MoU) were signed on subjects other than financial rights in 2004, 2006 and 2007; in 2005, a MoU was signed on all the collective negotiation issues including financial rights; (iii) following the signature of MoUs, commissions composed of representatives of trade unions and public employers in equal numbers work for the realization of the subjects agreed upon; the union claims are reflected in the MoU either as claims accepted by the Public Employer Board or as claims to be taken into consideration or evaluated by the Public Employer Board; although the union claims are favourably received by the Public Employer Board, it has been considered that these claims should be dealt with through a draft bill concerning restructuring of the personnel regime in the public service which has been on the agenda for nearly five years and which will apply to around 2.5 million public employees; (iv) the State Personnel Presidency carries out preparatory work for draft bills on the implementation of the issues agreed upon, in contact with the authority concerned if the issue is under the scope of another authority; draft bills prepared as a result of the above are submitted to the Prime Minister's office; (v) the Tripartite Working Group in a meeting held on 28 December 2006 decided to amend Act No. 4688 in line with the observations of the Committee and work has been launched on this issue. The Ministry of Labour and Social Security has been working on this amendment and a draft bill to amend the preamble and sections 3(a) and 15 of Act No. 4688 have been communicated to the relevant institutions in order to receive their opinions. As a result of collective negotiations in 2007 between the Public Employers' Board and two of the negotiating agents, the parties reached an agreement on the continuation of work on several subjects, four of which are related to the amendments to be made to Act No. 4688. The Confederation of Public Employees of Turkey (Turkiye Kamu Sen) and the All Municipal and Public Services Workers' Trade Union (HAK-IS) attended the negotiations. Despite being a negotiating agent, the KESK did not attend.

Furthermore, in a direct request, the Committee had raised the need to amend section 34 of Act No. 4688 so that collective negotiations do not have to be concluded within a short time period of 15 days after which any disagreement is brought to the Reconciliation Committee. The Government indicates that although the time limit of 15 days is sufficient (as in general, five or six sessions have been held in the collective negotiations carried out so far and, if need be, the number of sessions can be increased), an amendment to extend this time limit to one month is under consideration in line with the demands of the social partners.

The Committee appreciates these developments.

The Committee notes the extensive comments made by the KESK and the ITUC on negotiations in the public sector. According to these comments, Act No. 4688 does not refer to the concept of collective bargaining but rather "collective consultative talks" restricted to financial issues; as a result, KESK has not attended the talks since 2007 in protest over the Government's refusal to hold negotiations instead of consultations, enabling it to decide matters unilaterally. The KESK adds that section 30 of Act No. 4688 (which limits the possibility to engage in negotiations to the unions affiliated to the confederation which has the most members in each sector of activity), violates the Convention because it restricts the freedom to determine the parties to collective bargaining. Finally, the KESK indicates that pressure has been exerted since 2005 on local authorities by the Ministry of the Interior not to implement the 130 or so collective agreements that the KESK affiliated All Municipalities' and Local Services' Employees' Union (TUM BEL SEN) had signed with municipal authorities during the previous 12 years; notwithstanding the fact that the European Court of Human Rights ruled in favour of the union on 21 November 2006, the Ministry has not changed this policy. More generally, it is reported that trade unions are not considered as social partners and the Government fails to consult them on major laws which affect workers' interests.

In this regard, the Committee takes note of the Government's reply according to which the "collective consultative talks" provided for in Act No. 4688 allow for negotiations on economic, social and individual rights and in case of disagreement, the Reconciliation Committee undertakes to resolve the disagreement. Representation on the basis of affiliation to a confederation with the most members in the sector of activity is in line with the principle of justice. With regard to the collective agreements signed by municipalities, the Government indicates that according to amended section 146(1) and (2) of Act No. 657, no wage can be paid to public employees and no benefit can be conferred on them other than those provided under the said Act. Collective agreements in the public sector are regulated by sections 3(h) and 29 Act No. 4688 and articles 28 and 53 of the Constitution. As public employees are not entitled to sign collective agreements, the agreements in question have been regarded as unlawful. In notification No. 158 of 6 January 2005, the Ministry of Finance indicated that the status of public employees depended on Acts Nos 657 and 4688, and it was

impossible to act outside the scope of these Acts so as to enjoy rights which have not been accorded in line with these Acts. Consequently, the TUM BEL SEN trade union does not have the right to engage in collective bargaining.

The Committee takes note in this regard of the recently rendered final Judgement of the Grand Chamber of the European Court of Human Rights on the issue of collective agreements signed between TUM BEL SEN and municipalities (12 November 2008), in which it was found that:

“The right to bargain collectively with an employer had, in principle, become one of the essential elements of “the right to form and to join trade unions for the protection of [one’s] interests” set forth in Article 11 of the [European Convention on Human Rights]. ... Like other workers, civil servants, except in very specific cases, should enjoy such rights, but without prejudice to the effects of any “lawful restrictions” that may have to be imposed on “members of the administration of the State”, a category to which the applicants in the present case did not, however, belong.”

In light of the above, the Committee once again emphasizes that all public employees who are not engaged in the administration of the State should have the right to engage in free and voluntary collective bargaining, within time limits appropriate to allow for meaningful negotiations. Legislative provisions which give the financial authorities the right to participate in collective bargaining alongside the direct employer are compatible with the Convention, provided they leave a significant role to collective bargaining; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining could be taken into account as a particularly appropriate method to resolve the existing difficulties. The Committee also recalls that the right to join the organization of one’s own choosing includes the free determination of the level of representation (at the sector or institution level even in the absence of affiliation to a confederation). An additional issue to be overcome in order to allow for free and voluntary collective bargaining in the public sector is the recognition of the right to organize to a large number of categories of public employee not engaged in the administration of the State who are excluded from this right and, therefore, from the right to be represented in negotiations (this issue is addressed in a request sent directly to the Government under Convention No. 87).

The Committee once again requests the Government to indicate in its next report the measures taken or contemplated, including the public service reform, with a view to bringing Act No. 4688 and its application in line with the Convention on the following points: (i) the need for the direct employer to participate in genuine negotiations with trade unions representing public servants not engaged in the administration of the State and for a significant role to be left to collective bargaining between the parties; (ii) the need to guarantee clearly within the legislation that negotiations cover not only financial questions but also other conditions of employment; (iii) the need to clearly guarantee that the legislation does not give the authorities, in particular the Council of Ministers, the power to modify or reject collective agreements in the public sector; (iv) the need for the parties to be able to hold full and meaningful negotiations over a period of time longer than that currently provided for.

The Committee takes note of the Government’s indication concerning the forthcoming legislative amendment of Act No. 4688 and trusts that all the issues raised above will be taken into account within this framework. The Committee once again requests the Government to transmit the current text amending Act No. 4688 and to indicate in its next report the progress made and a specific timetable for the adoption of the amendments to Act No. 4688.

The Committee invites the Government to avail itself of further technical assistance by the Office, if it so wishes.

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

Uganda

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)

The Committee notes with regret that, for the second consecutive time, the Government’s report has not been received. The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008. The Committee had previously taken note of the Government’s efforts to encourage collective bargaining in various sectors, and had requested the Government to continue to pursue these measures and inform it of developments in this regard.

In this connection, the Committee notes with interest the ITUC’s indication that the recently amended legislation and efforts undertaken by the authorities have contributed to a significant improvement in respect of trade union rights, and that in most sectors employers that had traditionally been hostile towards trade unions have agreed to recognize and negotiate with them. The ITUC also reports positive developments in the textile industry, in particular, where, following an agreement between the Uganda Textile, Garment, Leather and Allied Workers Union (UTGLAWU) and a new textile employers’ association, three employers recently agreed to recognize and negotiate with the unions concerned. **Further noting that the ITUC refers to the absence of collective bargaining in the public service sector, the Committee requests the Government to provide its observations thereon and to reply to the other matters raised in its previous observation, which read as follows:**

Article 4. Promotion of collective bargaining. The Committee notes that section 7 of the LUA sets forth the lawful purposes for which trade union federations may be established. The said purposes include, inter alia: the formulation of policy relating to the proper management of labour unions and the general welfare of employees; the planning and administration of workers’ education programmes; and consulting on all matters relating to labour union affairs. Noting that the lawful purposes

delineated under section 7 of the LUA does not include collective bargaining, the Committee recalls that the right to collective bargaining should also be granted to federations and confederations of trade unions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 249). ***In this connection, the Committee requests the Government to confirm whether the right of trade union federations to engage in collective bargaining is assured, in the LUA or in other legislation.***

Compulsory arbitration. The Committee notes that, under section 5(3) of the Labour Disputes (Arbitration and Settlement) Act of 2006, in cases where a labour dispute reported to a labour officer is not referred to the Industrial Court within eight weeks from the time the report is made, any of the parties or both the parties to the dispute may refer the dispute to the Industrial Court. Section 27 of the Act, the Committee further notes, empowers the minister to refer disputes to the Industrial Court where one or both parties to a dispute refuse to comply with the recommendations of the report issued by a board of inquiry. In this connection, the Committee recalls that recourse to compulsory arbitration is acceptable only for (1) workers in essential services, in the strict sense of the term; and (2) public employees engaged in the administration of the State. Otherwise, provisions that permit the authorities to impose compulsory arbitration, or allow one party unilaterally to submit a dispute to the authorities for arbitration, run counter to the principle of the voluntary negotiation of collective agreements enshrined in *Article 4* of the Convention. ***The Committee requests the Government to amend the above legislation so as to bring it into conformity with the Convention.***

Ukraine

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

The Committee notes the Government's reply to the comments made in 2006 by the International Confederation of Free Trade Unions (ICFTU) on the issue of trade union registration, restrictions on the right to strike, interference in trade union activities and harassment of trade unionists. The Committee recalls that most of the ICFTU concerns were dealt with in Case No. 2388 before the Committee on Freedom of Association and notes that the Committee on Freedom of Association noted with interest the information provided by the Government on the outcome of investigations into the cases of alleged violations of trade union rights and considered that Case No. 2388 did not call for further examination (see 350th Report).

The Committee notes the communication dated 4 June 2008 received from the Confederation of Free Trade Unions of Ukraine (KSPU) submitting comments on the new draft Labour Code, which, in its opinion, would have a negative impact on the trade union activities and the comments of the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008 on instances of State interference in trade union affairs. ***The Committee requests the Government to provide its observations thereon.***

Article 2 of the Convention. Right of workers and employers to establish organizations without previous authorization. The Committee recalls that, in its previous comments, it had noted the contradiction between section 87 of the Civil Code (2003), according to which, an organization acquires its rights of legal personality from the moment of its registration, on the one hand, and section 16 of the Trade Unions Act, as amended in June 2003, providing that a trade union acquires the rights of a legal person from the moment of the approval of its statute and that a legalizing authority confirms the status of a trade union and no longer has a discretionary power to refuse to legalize a trade union, on the other. The Committee had therefore requested the Government to amend section 87 of the Civil Code so as to eliminate the contradiction within the national legislation and so as to fully guarantee the right of workers to establish their organizations without previous authorization. ***Regretting that no information has been provided by the Government in this respect, the Committee reiterates its previous request and asks the Government to indicate the measures taken or envisaged in this respect.***

Article 3. Right of workers' and employers' organizations to organize their administration and activities. The Committee recalls that, for a number of years, it had been requesting the Government to repeal section 31 of the Law on employers' organizations, which provided that the bodies of the State authority shall exercise control over economic activities of employers' organizations and their associations. In this respect, it had noted that the draft amendments to the Law were being prepared and expressed the hope that the new amendments would take into account the Committee's request. The Committee regrets that no information has been provided by the Government, neither in respect of the measures taken to repeal section 31, nor in respect of the progress made in amending the Law. ***Recalling once again that the right of workers' and employers' organizations to organize their administration without interference by the public authorities includes, in particular, autonomy and financial independence and the protection of the assets and property of these organizations (see 1994 General Survey on freedom of association and collective bargaining, paragraph 124), the Committee reiterates its request and asks the Government to indicate the measures taken or envisaged to repeal section 31.***

The Committee had previously requested the Government to amend section 19 of the Act on the procedure for the settlement of collective labour disputes, which provided that a decision to call a strike had to be supported by a majority of the workers or two-thirds of the delegates of a conference. The Committee regrets that the Government limits itself to providing the information it had provided previously (to the effect that the provision concerning the adoption of the decision by the majority of workers applies to enterprises where the number of workers is such as to allow for the

possibility, in practice, of holding a workers' assembly; if, however, the enterprise employs a large number of workers, they shall elect delegates to a conference, in this case, the decision to declare a strike shall be taken by two-thirds of the delegates). The Committee once again recalls that if the national legislation requires a vote before a strike can be held, it should ensure that account is taken only of the votes cast and the majority is fixed at a reasonable level (see General Survey, op. cit., paragraph 170). ***It therefore once again requests the Government to take the necessary measures to amend section 19 of the Act on the procedure for the settlement of collective labour disputes accordingly and to indicate the progress achieved in this respect.***

In its previous observations, the Committee had requested the Government to provide information on the practical application of article 293 of the Penal Code, according to which, organized group actions that seriously disturb public order, or significantly disrupt operations of public transport, any enterprise, institution or organization and active participation therein, are punishable by a fine of up to 50 minimum wages or imprisonment for a term of up to six months and, in particular, in respect of an industrial action. ***In view of the absence of the Government's reply, the Committee reiterates its request.***

A request on another point is being addressed directly to the Government.

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

Articles 1 and 2 of the Convention. The Committee had previously noted the comments submitted by the International Confederation of Free Trade Unions (ICFTU) in its communication dated 10 August 2006 alleging cases of anti-union discrimination and interference in trade union internal affairs and insufficient protection against such acts, as well as the refusal of employers to bargain collectively with independent trade unions. The Committee notes that some of these matters were dealt with in Case No. 2388 by the Committee on Freedom of Association, which concluded that this case did not call for further examination (see 350th Report). The Committee notes the comments submitted by the Independent Trade Union of Miners (ITUM) of the coalmine named after MP Barakov, Kzasnodon on the application of the Convention in communications dated 24 March and 19 April 2008 and the Government's reply thereon. The Committee notes the comments submitted by the Confederation of Free Trade Unions of Ukraine (KSPU) in a communication dated 28 August 2008 and by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, referring to the new cases of anti-union discrimination and interference, as well as violation of the right to bargain collectively in the public and private sectors. ***While noting the ITUC's statement that some of the incidents of trade union discrimination have been effectively addressed by the courts and that the Government has been making efforts to resolve the complaints reported to the Committee on Freedom of Association, the Committee requests the Government to provide its observations on the comments submitted by the KSPU and the ITUC.***

Article 4. The Committee had previously noted the Government's indication that the work on drafting the new Labour Code was still ongoing and the draft chapter on collective agreements had been sent for consideration to the Committee on social and labour issues of the Supreme Council of Ukraine. It requested the Government to indicate the developments regarding the adoption of the new Labour Code. The Committee notes from the Government's report that on 20 May 2008, the Supreme Council of Ukraine adopted in the first reading, the draft Labour Code submitted by the people's deputies. The Committee notes, in this respect, the KSPU's communication dated 4 June 2008 submitting comments on the draft Labour Code (the version adopted in the first reading), which, in its opinion, would have a negative impact on trade union activities. ***The Committee notes that the Office is providing technical assistance to the Government and trusts that the new Labour Code will be in full conformity with the Convention. It requests the Government to indicate any developments in this respect.***

United Kingdom

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

Article 3 of the Convention. Right of workers' organizations to draw up their constitutions and rules without interference by the public authorities. The Committee's previous comments concerned the need to ensure more fully the right of trade unions to draw up their rules and formulate their programmes without interference from the authorities, and in particular when they intend to exclude or expel individuals on account of membership in an extremist political party with principles and policies wholly repugnant to the trade union. The Committee welcomes the Judgement of the European Court of Human Rights (ECHR) reached in the case of *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* (27 May 2007) which refers to Articles 3 and 5 of the Convention and which found that section 174 of the Trade Unions and Labour Relations (Consolidation) Act, 1992 (TULRA) violated Article 11 of the European Convention on Human Rights on freedom of association in that it did not strike a proper balance between the rights of individual members and those of the trade union.

The Committee notes from the Government's report that pursuant to this decision, it acted with the necessary degree of urgency to amend the relevant provisions of the TULRA in consultation with the social partners. The Government made legislative proposals to the United Kingdom Parliament to amend section 174 and the related provisions concerning

remedies in section 176; these proposals are currently contained in clause 19 of the Employment Bill, introduced in the House of Lords on 6 December 2007. The Bill completed its passage in the House of Lords and on 3 June 2008 was introduced into the House of Commons. The Government expects the Bill to gain Royal Assent in the autumn of 2008.

On the substance of the amendments, the Committee notes that according to the Government, clause 18 of the Employment Bill provides wider scope for trade unions to expel or exclude a person on grounds of political party membership, as well as safeguards aimed to ensure that exclusion or expulsion on these grounds is lawful only in cases where membership of the political party concerned is contrary to a rule or objective of the union and where the union has followed fair procedures when taking its decision to exclude or expel. With regard to Northern Ireland in particular, the Government indicates that public consultations were launched in June 2008 on proposals to amend similar provisions to TULRA (article 38 of the Trade Union and Labour Relations (Northern Ireland) Order, 1995). The consultation will run until 30 September 2008 and any legislative amendments will be taken forward in an Employment Bill through the Northern Ireland Assembly in 2009.

The Committee takes note of the detailed comments on the Government's report made by the Trades Union Congress (TUC) in a communication dated 1 September 2008, as well as the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008. The Committee notes that while the TUC welcomes the introduction of the Employment Bill into Parliament, it has reservations about the detail introduced in clause 18 which was heavily amended in the House of Lords. The TUC considers that if clause 18 is enacted in its present form, a trade union would be able lawfully to expel someone because of membership of a political party, only if this is in accordance with the rules or objectives of the union, but in the latter case, only if the objective is accessible to the individual in question; even if the decision is taken in accordance with the rules or objectives of the union, it would still be unlawful if certain procedural obligations were not complied with first, and if representations made by the individual were not considered fairly; the TUC believes that these provisions are unnecessary and disproportionate given that there is already protection at common law for those expelled from a trade union without authority under the rules, to which these amendments add another layer of regulation; the TUC adds that even if these substantive/procedural obligations were met, it would also be unlawful to exclude or expel if to do so would cause the individual to lose his or her livelihood or suffer "exceptional hardship"; this term is not defined and it is difficult to anticipate its meaning given that there is already statutory protection from discrimination or dismissal because of non-membership of a trade union. If the union does not comply with these rules it will be liable to pay a minimum award of compensation to the individual concerned (currently £6,900). Finally, the TUC contends that the new legislation's complexity is likely to lead to unjustified and vexatious litigation. It adds that section 174 of the TULRA should be repealed as a whole to reinstate unions' rights to freedom of association.

The Committee requests the Government to reply to the concerns expressed by the TUC, and to indicate in its next report the measures taken or envisaged to ensure that the amendments to section 174 of the TULRA fully guarantee the right of unions to draw up their constitutions and rules without interference by the public authorities.

Immunities in respect of civil liability for strikes and other industrial action (sections 223 and 224 of the TULRA). The Committee's previous comments concerned the need to protect the right of workers to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute, and to participate in sympathy strikes provided the initial strike they are supporting is itself lawful. The Committee takes note of the Government's indication that it has no plans to change the law in this area as it considers it essential under its system of decentralized industrial relations that it should remain unlawful for a trade union to organize any form of secondary industrial action. The Committee notes that according to the TUC, the decentralized nature of the industrial relations system makes it more important for workers to be able to take action against employers who are easily able to undermine union action by complex corporate structures, by transferring work, or by hiving off companies. ***In this connection the Committee recalls once again that workers should be able to participate in sympathy strikes, provided the initial strike they are supporting is lawful, and to take industrial action in relation to social and economic matters which affect them, even though the direct employer may not be a party to the dispute, and requests the Government to indicate in its next report any measures contemplated to amend sections 223 and 224 of the TULRA in keeping with this principle.***

Reinstatement of workers having participated in lawful industrial action. In its previous comments, the Committee took note of the TUC's indication that the Employment Relations Act of 2004 (ERA) amends the TULRA (by adding subsection 7B to section 283A) so as to make it unlawful for an employer to dismiss an employee for taking part in a lawful strike for the first 12 weeks of the strike. The Committee notes from the Government's report that protection against dismissal for employees who break their contracts of employment in the framework of official and lawfully organized industrial action, is now greater than at any other time in the country's history pursuant to new protections introduced in the Employment Relations Acts 1999 and 2004 and the Employment Relations (Northern Ireland) Orders of 1999 and 2004. The new protections take two forms: first, it is unlawful to dismiss on the grounds of a person's participation in industrial action, where the action took place within a period of 12 weeks (covering the vast majority of official industrial action); second, a dismissal is unfair if the employer has failed to follow all reasonable procedural steps to resolve the dispute with the union; this condition applies to official and lawfully organized industrial action beyond the 12-week period. The Government adds that it does not support the view that the employer must never dismiss employees under any circumstances when they take industrial action.

The Committee notes, however, that in its latest comments, the TUC lists a number of defects in the protection for striking workers in the United Kingdom: (i) it remains a breach of contract at common law for workers to take part in strike action, and recent legislation simply gives some protection from the consequences of the common law position in certain circumstances instead of changing this position; (ii) trade union members are protected from the common law consequences (dismissal) only when the trade union has immunity from liability, i.e. when the strikes are in contemplation or furtherance of a “trade dispute” which, as previously indicated by the Committee of Experts, allows for industrial action in narrow circumstances (see above); (iii) even where the protection against dismissal does arise, it is not unlimited but applies only for the first 12 weeks of the dispute and any extension is conditional and not guaranteed; (iv) even where the protection applies and someone is unfairly dismissed, the unfairly dismissed employees have no right to return to work if the employer objects.

The Committee is of the view that for the right to strike to be effectively guaranteed, the workers who stage a lawful strike should be able to return to their posts after the end of the industrial action. Making the return to work conditional on time limits and on the employer’s consent constitute, in the Committee’s view, obstacles to the effective exercise of this right, which constitutes an essential means for workers to promote and defend the interests of their members. ***The Committee therefore requests the Government to indicate any measures taken or contemplated so as to amend the TULRA with a view to strengthening the protection available to workers who stage official and lawfully organized industrial action.***

Notice requirements for industrial action. In its previous comments, the Committee had taken note of comments made by the TUC to the effect that the notice requirements for an industrial action to be protected by immunity were unjustifiably burdensome. The Committee notes that according to the Government, a number of measures have already been taken to simplify sections 226–235 of the TULRA and 104–109 of the 1995 Order; moreover, as part of a plan published in December 2006 to simplify aspects of employment law, the Government explicitly invited trade unions to come forward with their ideas to simplify trade union law further. Since then, the Government has held discussions with the TUC to examine their ideas to simplify aspects of the law on industrial action ballots and notices. These discussions are ongoing. The Committee notes that in its latest comments, the TUC notes that there has been no progress in this reform. ***The Committee requests the Government to indicate in its next report progress made in this regard.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1950)

Articles 1, 2 and 3 of the Convention. Protection against anti-union discrimination and interference especially in the context of the statutory recognition procedure. In its previous comments, the Committee noted the Trades Union Congress’s (TUC) indication that protection against anti-union discrimination (unfair practices) only applies in the framework of the organization of a recognition ballot, whereas a lot of the misconduct by an employer may take place at a much earlier stage, where the union is trying to organize, recruit and build up some kind of structure. The TUC had expressed concern at the lack of protection in practice against unfair practices by employers taking place long before the balloting period, in order to discourage any organizing campaign by a union (including threats of closure of the plant and individual job loss, actual dismissals, pay and promotion inducements, holding a company ballot in advance of an independently conducted ballot, denial of any access to a union including preventing leaflets being given to the employees, holding anti-union meetings at the workplace, one-on-one meetings, changes to the bargaining unit – either splitting it or combining it with others). The TUC had also indicated that the statutory procedure for recognition allows an employer to prevent an application for recognition to be made by an independent trade union by setting up an in-house company union and voluntarily extending to it recognition rights; the TUC referred to the case of POA and Securicor Custodial Services Ltd., where the union was denied the right to recognition – even though it had the support of a majority of members in the unit – as the employer had concluded a recognition agreement with a staff association.

The Committee notes that according to the Government, individuals are protected from dismissal or other detriment in relation to their right to belong to a trade union, participate in the activities of the union at an appropriate time and make use of a union’s services (sections 146 and 152 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA), and articles 73 and 136 of the Employment Rights (Northern Ireland) Order 1996). These provisions were strengthened by the Employment Relations Act 2004 and the Employment Relations (Northern Ireland) Order 2004, which made it unlawful for an employer to offer inducements to workers not to belong to a trade union, not to participate in a union’s activities at an appropriate time and not to use a union’s services at an appropriate time (section 145A of TULRA and article 77A of the 1996 Order inserted by the 2004 Act/Order). The rights apply equally to situations where a union is recognized and where it is not recognized for collective bargaining purposes. The Government emphasizes that these rights provide adequate protection for trade unions in advance of making requests to employers for recognition. In addition to this, protection applies during the statutory recognition procedure (paragraphs 156 to 162 of Schedule A1 of TULRA/paragraphs 156–162 of Schedule 1A of the 1996 Order). However, according to the Government, given the existence of many trade unions in the United Kingdom, the statutory procedure has been designed to ensure that it is not used as a vehicle for counter-productive tendencies to rivalry. Thus, a union cannot have its application for recognition accepted and processed if its proposed bargaining unit overlaps in any way with the bargaining unit of a trade union which

is already recognized. In situations where the incumbent trade union is non-independent, it may be derecognized through an application by the workers covered by the recognition arrangement. It is permissible for a non-incumbent trade union to assist the workers involved in making an application to derecognize the trade union.

The Committee notes that according to the latest communication by the TUC: (i) the law provides for protection against acts of anti-union discrimination, but only where this is the sole or main purpose of the employer; an act of anti-union discrimination is not unlawful where the employer's purpose is incidentally to discriminate on grounds of trade union membership (section 145A of TULRA requires the "sole or main purpose" of an employer's offer to be the inducement of the worker to give up trade union membership or participation in trade union activities; moreover, section 152 of TULRA provides that a dismissal shall be regarded as unfair where the reason for it – or, if more than one, the principal reason – is trade union membership or activities); (ii) although workers have the right not to have inducements made to give up collective bargaining rights, this applies only where the union is recognized or seeking to be recognized (section 145B of TULRA); it does not apply where the union has been derecognized; (iii) where an employer makes inducements to workers to give up union representation, the union has no standing to bring legal proceedings to complain about the violation of its rights (sections 145A(5)–145B(5) of TULRA); this is an important omission, particularly in cases where workers who have been the subject of the inducement are unwilling to institute individual proceedings; and (iv) where the incumbent trade union is non-independent, a request for derecognition can only be made by an individual worker and not by an independent trade union; the independent trade union has no right of access to the workplace and no right to communicate with the workforce while derecognition procedures are taking place, while the non-independent union has a statutory right to communicate with the workers during the derecognition process. The Committee finally notes that the International Trade Union Confederation (ITUC) refers to various unfair practices and anti-union tactics in the framework of the statutory recognition scheme.

The Committee requests the Government to indicate in its next report additional information, including judicial decisions, on the protection provided against acts of anti-union discrimination, including those in which the employer's main purpose is not discriminatory, and against acts of interference.

Shipping sector. The Committee notes the issues raised by the TUC in relation to the shipping sector under Conventions Nos 147 and 180. Thus, according to the TUC, contracts of employment have been found to expressly forbid individuals from contacting a recognized trade union so as to favour the conclusion of "workforce agreements" with workers' representatives rather than collective agreements with trade unions, thereby lowering the terms and conditions of employment in this sector. ***The Committee requests the Government to provide its comments in this regard.***

Article 4 of the Convention. Statutory recognition procedure. The Committee's previous comments raised the need to ensure that under a system for nominating an exclusive bargaining agent, if there is no union representing the required percentage to be so designated (the majority vote in a ballot in which at least 40 per cent of the bargaining unit must vote in favour of union recognition), collective bargaining rights should be granted to all unions in a unit, at least on behalf of their own members. The Committee notes that according to the Government, bargaining units in the United Kingdom cover both those who are members of the recognized union and those who are not members. In other words, trade unions are rarely, if ever, recognized just to bargain on behalf of their own members only. This tradition ensures that bargaining structures are relatively simple and that workers in the same job or occupational category are not paid by reference to different systems of pay determination. There are thus no plans to introduce any new provisions enabling minority trade unions to bargain on behalf of their own members only. Nevertheless, minority unions are still entitled to provide important services to their members, in relation for instance, to disciplinary or grievance hearings.

The Committee once again recalls that problems of conformity with the principle of the promotion of collective bargaining, set out in the Convention, may arise when the law stipulates that a trade union must receive the support of the majority of the members of a bargaining unit to be recognized as a bargaining agent, since a union which fails to secure this absolute majority is thus denied the possibility of bargaining. ***The Committee requests the Government to indicate the measures taken or envisaged to review in consultation with the social partners, the TULRA as amended by the Employment Relations Acts of 1999 and 2004, so as to verify that the provisions on trade union recognition for collective bargaining purposes do not prevent trade unions in workplaces where no union meets the percentage requirements for recognition (40 per cent), from engaging in collective bargaining on behalf of their own members on a voluntary basis.***

Collective bargaining in small businesses. The Committee's previous comments concerned the TUC's indication that businesses employing less than 21 workers are excluded from the statutory procedure for union recognition, the effect of which has been to deny the employees of these small businesses the right to be represented by a trade union (Schedule 1A, paragraph 7(1) of TULRA).

The Committee notes that according to the Government, it would be inappropriate to subject very small organizations to the detailed legal requirements of the statutory recognition procedure. Trade unions are recognized by some very small employers through voluntary agreement. The Government acknowledges that recognized trade unions can operate very effectively in micro businesses. To demonstrate this fact, the Government helped finance an innovative research project with the UNITE union and community trade unions to identify the positive effects recognized trade unions can bring to small businesses. That research project was completed in April 2007, and the Government would expect it to be used by trade unions and employers to understand the role of the trade union in very small organizations. In

addition, the Advisory, Conciliation and Arbitration Service (CAS) and the Labour Relations Agency (LRA) in Northern Ireland, which are Government-funded, can provide advice to employers and trade unions on the issues which arise in any matter relating to the establishment and operation of union recognition arrangements. CAS/LRA can also provide conciliation services, at the joint request of both parties, to resolve any difficulties or disputes about trade union recognition.

The Committee notes that according to the latest comments made by the TUC, it would be possible to have a simplified statutory procedure for small businesses which reconciles the fundamental rights of the workers with the circumstances of the business. The TUC is also not aware of the UNITE/community unions innovative research project to which the Government refers; it wonders whether the report recommends any changes to the law.

The Committee emphasizes that in accordance with the free and voluntary nature of collective bargaining, it should be possible for all workers and employers, with the possible exceptions contained in *Article 6* of the Convention, to engage in collective bargaining. ***The Committee invites the Government to examine this matter with the social partners and requests it to furnish statistical data on the number and coverage of collective agreements, particularly in small businesses.***

Bermuda

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

The Committee notes that the Government's report has not been received. It also notes the comments made by the Bermuda Public Services Union (BPSU).

Protection against employer interference. In its previous comments, the Committee had requested the Government to indicate any measures envisaged to amend the 1998 Trade Union Amendment Act, which took effect on 1 May 2000, so as to further protect against any possible employer intimidation or interference in respect of union certification or decertification. The Committee recalls that this request originated in the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 1959 (320th Report, approved by the Governing Body at its 277th Session in March 2000). ***Recalling that in its previous report the Government had noted that this matter is still under consideration, the Committee once again requests the Government to indicate any measures taken or envisaged to further protect against any possible employer intimidation or interference in respect of union certification or decertification.***

Coverage of management personnel. In its previous comments the Committee, taking note of the conclusions of the Committee on Freedom of Association in Case No. 1959 and the Government's commitment to the objective of including management personnel within the scope of the provisions of the Trade Union Amendment Act, despite the defeat of an amendment to this effect in the Senate in August 1999, requested the Government to indicate in its next report the measures taken or envisaged in order to include management personnel within the scope of the Act and guarantee to them the rights established by the Convention. The Committee notes the comments made by the BPSU according to which there are no pending amendments to the Trade Union Amendment Act 1998, consolidated under the Trade Union Act, so as to afford management personnel the rights established by the Convention. The BPSU also refers to a case of denial of the right to organize to the middle management staff of a public institution. ***The Committee once again requests the Government to indicate in its next report the measures taken or envisaged in order to include management personnel within the scope of the Trade Union Act so as to guarantee to them the rights established by the Convention.***

The Committee hopes that, in the near future, it will note substantial progress in the application of the Convention.

Guernsey

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

Article 1 of the Convention. Protection against anti-union discrimination. Following its previous comments regarding the strengthening of sanctions concerning unfair dismissal, the Committee notes with ***satisfaction*** that the new legislation entitled "The Employment Protection (Guernsey) (Amendment) Law, 2005" foresees a six-month pay sanction award for unfair dismissal, which may be greater depending on the circumstances of the case, in law and in equity.

Jersey

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

The Committee takes note of the Employment Relations (Jersey) Law 2007 (ERL) which entered into force on 21 January 2008, as well its accompanying draft codes of practice which once adopted, will be "admissible in evidence and may be taken into account in determining any question arising in proceedings before the Jersey Employment Tribunal [JET] or a court" (introduction to the draft codes). The Committee also notes the comments made on this issue by the

Unite union in a communication dated 20 November 2007. The Committee finally recalls the conclusions and recommendations reached on the ERL and its accompanying codes by the Committee on Freedom of Association in Case No. 2473 (349th Report, paragraphs 261–278).

Article 3 of the Convention. Right of organizations to organize their activities and formulate their programmes. The Committee notes that the ERL does not confer any positive right to strike, but rather gives in article 19 specific immunity to an act (breach of contract) which would otherwise be tortious unless carried out by a registered union in contemplation of furtherance of an “employment dispute”. However, where a worker participates in a lawful strike, there is no right in the ERL for such worker to return to work after the strike, but rather only a right to compensation for unfair dismissal, provided for in article 77 of the ERL. The Committee therefore observes that under the ERL, the right to strike is not effectively guaranteed given that workers may not be able to return to work after having lawfully exercised this right.

Furthermore, the Committee notes with interest from the Government’s report that the draft Employment (Amendment No. 4)(Jersey) Law adopted on 22 October 2008 and currently subject to Privy Council approval – will amend the ERL so that under articles 77G and 77C, a tribunal can issue an order of reinstatement or re-engagement (i.e. re-employment under terms which, as far as possible, are as favourable as if the employee had been reinstated, unless the employee was partly to blame for the dismissal). ***The Committee requests the Government to indicate in its next report progress made in the adoption of this law.***

The Committee notes that under article 19 of the ERL, a strike is immune from tort only if it takes place in the framework of an “employment dispute”; according to article 20(3) of the ERL, immunity is lost if the conduct of a trade union does not conform to the definition of “reasonable conduct” when done in contemplation or furtherance of a dispute; the definition of “reasonable conduct” is found in code 2 which provides that it would be unreasonable conduct for a union to call upon employees to take part in secondary action. The Committee recalls that a general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action where the initial strike they are supporting is itself lawful (General Survey of 1994 on freedom of association and collective bargaining, paragraph 168). The Committee also notes that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement and that workers’ organizations should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by members and on workers in general, in particular as regards employment, social protection and the standard of living. ***The Committee therefore requests the Government to indicate in its next report the measures taken or contemplated to ensure that secondary action and social and economic protest action are protected under the law.***

The Committee notes furthermore, that code 2 provides that there is no immunity from tort for picketing or calling upon employees to picket a place of work other than that of the employees as well as for interference (e.g. because of noise or crowds) in the rights of neighbouring properties (i.e. private nuisance) and for trespassing on private property. The Committee is of the view that picketing in support of secondary action should be possible and that restrictions on strike pickets should be limited to cases where the action ceases to be peaceful (General Survey, op. cit., paragraph 174). ***The Committee therefore requests the Government to indicate the measures taken or contemplated to ensure that pickets in support of secondary action is possible and that limitations on strike pickets apply only where the action ceases to be peaceful.***

The Committee notes that an “employment dispute” can be according to article 1(1) of the ERL, either individual or collective; a collective employment dispute is defined in article 5 of the ERL as one taking place where a collective agreement already exists. According to Unite, this provision allows the employer to deny union immunity for industrial action simply by terminating the collective agreement; furthermore, in case of a recognition dispute where no collective agreement exists, the conditions allowing for strikes to be staged are met under article 5 of the ERL only where the employer employs more than 21 employees; thus, according to comments made by Unite, industrial action to further a recognition claim in small establishments is not immune from action in tort. ***The Committee requests the Government to provide its observations on the comments made by Unite and to indicate in its next report the measures taken to ensure that the conditions for protected industrial action are not such as to render such action virtually impossible, especially in relation to recognition disputes in small establishments.***

The Committee observes that articles 22 and 24 of the ERL provide that in the absence of the parties’ consent to the terms of a binding award, the JET can issue a declaration which is de facto and de jure integrated in individual contracts of employment and is therefore tantamount to binding arbitration. Code 3 contains similar provisions. The Committee recalls that compulsory arbitration seriously limits the means available to trade unions to further and defend the interests of their members as well as their right to organize their activities and to formulate their programmes and is not compatible with *Article 3 of Convention No. 87* (General Survey, op. cit., paragraph 153). ***The Committee requests the Government to indicate the measures taken or contemplated to ensure that compulsory arbitration is only possible in the case of essential services in the strict sense of the term, public servants exercising authority in the name of the State or where both parties agree to binding arbitration.***

The Committee notes that code 2 provides that “a small island community such as Jersey may have services which are considered essential to society which are different to those in the mainland United Kingdom, for example, a stoppage in transport links services would cause greater difficulties and inconveniences that are detrimental to the population”. The

Committee recalls that transportation is not an essential service in the strict sense of the term where strikes may be prohibited; however, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, the authorities could establish a system of negotiated minimum service in services which are of public utility rather than impose an outright ban on strikes (General Survey, op. cit., paragraph 160). ***The Committee therefore requests the Government to indicate the measures taken or contemplated to amend code 2 so as to ensure that transportation is not included among essential services, taking account of the possibility of introducing a negotiated minimum service.***

The Committee notes that article 3 of the ERL and code 2 contain a requirement of notice prior to industrial action; the notice should contain such information as to help the employer make plans to enable it to advise its customers of the possibility of disruption, so that they can make alternative arrangements or to take steps to ensure the health and safety of the employees, or the public, or to safeguard equipment which might otherwise suffer damage from being shut down or left without supervision. While noting that the obligation to give prior notice before calling a strike is in line with the Convention, the Committee also notes the comments by Unite according to which in one English case, an injunction was granted by the court to stop an industrial action because the union had failed to identify the specific site where each lecturer on strike had their desk, despite the fact that the union had specified the exact number of lecturers, the grade of every lecturer, and the department or sub-department in which they worked; Unite emphasizes that there is no explicit provision to ensure that there is no obligation to name employees who participate in a strike and to confine the information to be provided only to that which is in the union's possession. ***The Committee requests the Government to provide its observations on the comments made by Unite and to indicate any judicial decisions relevant to the application by the courts of articles 3 and 20(2) of the ERL as well as code 3.***

The Committee finally notes from the Government's report that further consultation and progress on the legislation is planned once a new Minister for Social Security is appointed after the elections presently taking place in Jersey; it is anticipated that a substantive review or programme of consultation will be undertaken following the Minister's formal appointment in December 2008. ***The Committee hopes that the Government will be in a position to indicate in its next report progress made with regard to reviewing the provisions of the ERL, the accompanying draft codes of practice as well as the draft Employment (Amendment No. 4)(Jersey) Law so as to ensure that trade unions enjoy the full guarantee of the rights available under the Convention.***

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

The Committee takes note of the Employment Relations (Jersey) Law 2007 (ERL) which entered into force on 21 January 2008, as well as its accompanying draft codes of practice which once adopted, will be "admissible in evidence and may be taken into account in determining any question arising in proceedings before the Jersey Employment Tribunal [JET] or a court" (introduction to the draft codes). The Committee also notes the comments made on this issue by the Unite union in a communication dated 20 November 2007. The Committee finally recalls the conclusions and recommendations reached on the ERL and its accompanying codes by the Committee on Freedom of Association in Case No. 2473 (349th Report, approved by the Governing Body at its 301st Session (March 2008), paragraphs 261–278).

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee notes from the Government's report that the Employment (Jersey) Law, 2003 (EL) provides that a dismissal is automatically unfair, from day one of employment, where an employee claims to have been dismissed on grounds relating to: being or proposing to become a trade union member; taking part in, or proposing to take part in, trade union activities at an appropriate time; not being a trade union member, or refusing to become (or remain) a member; and selection for redundancy on grounds relating to union membership or activities.

The Committee also notes with interest from the Government's report, that pursuant to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2473, the draft Employment (Amendment No. 4)(Jersey) Law was adopted on 22 October 2008 and is subject to Privy Council approval. The Committee notes that this Law amends the ERL so that under articles 77G and 77C, where a worker has been unfairly dismissed by reason of participation in lawful trade union activities, a Tribunal can issue an order of reinstatement or re-engagement (under terms which are, as far as possible, as favourable as if the employee had been reinstated, unless the employee was partly to blame for the dismissal). The Committee also notes, however, that according to article 77B and 77C, the Tribunal shall not have the power to compensate an employee for financial losses such as arrears of pay for the period between the dismissal and the order for re-employment, the reason being that such a possibility of back pay, would render the re-employment option more financially advantageous than the financial compensation currently available to unfairly dismissed employees. The draft also provides that any other rights and privileges, including any improvements in terms and conditions that the employee would have been entitled to, must be restored to the employee from the date of re-employment and not before.

The Committee recalls that the purpose of compensation for acts of anti-union discrimination must be to compensate fully, both in financial and in occupational terms, the prejudice suffered by a worker (General Survey of 1994 on freedom of association and collective bargaining, paragraph 219). ***The Committee requests the Government to indicate in its next report the measures taken or contemplated to review the provisions of the draft Employment (Amendment***

No. 4)(Jersey) Law so as to ensure fuller protection and compensation against any prejudice suffered by workers by reason of legitimate trade union activities.

Article 2. Protection against acts of interference. The Committee notes from the Government's report that there are currently no specific provisions relating to this issue in the EL or the ERL. However, it is the Minister's intention to introduce via the ERL a positive duty to prohibit employers from "buying out" employees' rights in respect of union activities by inducing employees not to join a workers' organization, or to relinquish membership of such an organization. This issue was raised in the framework of consultations on the EL and the ERL and the Minister intends that the matter should be given further consideration in the preparation of an amendment. The Committee notes that according to the comments made by the Unite trade union, Code 1 provides that where no prior collective agreement exists in a workplace, recognition may be granted to a trade union for collective bargaining purposes only where there are no employees in the bargaining unit in respect of whom the employer already recognizes one or more trade unions for the purposes of collective bargaining; such provisions enable the employer to recognize any union in respect of any employees even if the union is not representative, thereby preventing a representative union from accessing the statutory recognition procedure; moreover, the Code does not specify that the union so recognized should be independent. **The Committee requests the Government to provide its observations on these comments and to keep it informed of any measures taken or contemplated so as to introduce provisions prohibiting acts of interference by employers or their organizations in the establishment, functioning or administration of workers' organizations and vice-versa (and in particular, against acts designed to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations) as well as provisions ensuring rapid procedures and sufficiently dissuasive sanctions against such acts.**

Article 4. Promotion of collective bargaining. The Committee notes from the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2473 that article 1 of the ERL prevents agreements from qualifying as "collective agreements" within the law, unless concluded between an employer and a trade union representing a "substantial proportion of the employees engaged in the trade or industry concerned". In this respect, the Committee notes that according to Code 1, a key criterion for trade union recognition is the wish of the majority of employees and therefore, an employer should only be required to recognize a trade union where it can be clearly demonstrated that the majority of the employees within the bargaining unit want the trade union to be recognized by the employer. The Committee recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all unions in a unit, at least on behalf of their own members. **The Committee requests the Government to provide in its next report information on the measures taken or contemplated so as to ensure that where no union represents the majority of employees in a bargaining unit, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members.**

The Committee finally notes from the Government's report that further consultation and progress on the legislation is planned once a new Minister for Social Security is appointed after the elections presently taking place in Jersey; it is anticipated that a substantive review or programme of consultation will be undertaken following the Minister's formal appointment in December 2008. **The Committee hopes that the Government will be in a position to indicate in its next report progress made with regard to reviewing the provisions of the EL, the ERL and its accompanying draft codes of practice as well as the draft Employment (Amendment No. 4) (Jersey) Law, so as to ensure that workers and their organizations enjoy the full guarantee of the rights available under the Convention.**

Uruguay

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1954)

The Committee notes the comments made by the International Trade Union Confederation (ITUC), dated 29 August 2008, which refer to anti-union dismissals and an act of violence against a leader of the Uruguayan Federation of Commercial and Industrial Employees (FUECI). **The Committee requests the Government to send its observations on these matters with its next report.**

Article 4 of the Convention. The Committee notes that the Government reports that: (1) the national legislation does not include a single and complete text regulating collective bargaining and, consequently, part of the doctrine maintains that in Uruguay there are two collective bargaining models: the typical model and the model set up as a result of the convening of wages councils; (2) the re-establishment of wages councils in 2005 has revitalized both unionization and collective bargaining; (3) wages councils are tripartite bodies which have the task of setting minimum wages by category and branch of activity, and, although their basic task is to set minimum wages and categories, both through the application of other sections of Act No. 10449 (which establishes an entire system of collective bargaining for wages councils) and through practice, their powers have been expanded in the sense that they act as conciliation bodies in collective disputes, negotiating other working conditions and regulating trade union leave, etc; (4) in 2005, three bodies were set up at the general level: the Higher Tripartite Council, the Higher Rural Council and the body for negotiation in the public sector

and, as a consequence, 20 groups of wages councils have been set up covering nearly 200 negotiating areas; (5) the results were widely successful and, in more than 95 per cent of them, agreement was reached and, in the rest, matters were resolved by vote; a framework agreement was concluded in the public sector and several in the rural sector, and a third round of negotiations is planned for this year.

In this regard, while observing that the objective of wages councils in Uruguay has historically been to promote collective bargaining, the Committee observes that the possibility of a vote being held in the tripartite councils for setting conditions of employment infringes upon the principle of free and voluntary negotiation, which constitutes an essential aspect of the principles of freedom of association. The Committee recalls that setting minimum wages may be the subject of decisions by tripartite bodies. However, with regard to other conditions of work, the Committee emphasizes that, in accordance with the principles of free and voluntary collective bargaining between parties, established under Article 4 of the Convention, conditions of work should be set, without interference by the public authorities, by workers' organizations and employers or their organizations. *In these circumstances, the Committee requests the Government to take measures to promote collective bargaining as outlined above.*

Finally, the Committee notes that the Government reports that the Ministry of Labour and Social Security, the Planning and Budget Office and the Inter-Trade Union Assembly–Workers' National Convention (PIT–CNT) prepared a draft law on collective bargaining for the public sector which is being considered by the National Parliament. *The Committee requests the Government to provide information on any progress made with regard to the draft law in question.*

Bolivarian Republic of Venezuela

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1982)

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 28 August 2007 and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 27 August 2008. Finally, the Committee notes the conclusions of the Committee on Freedom of Association relating to the cases presented by national and international organizations of workers (Case No. 2422) and of employers (Case No. 2254). In its previous observations, the Committee noted the conclusions of the high-level mission which visited the country in January 2006.

Legislative issues

The Committee recalls that it previously raised the following issues:

- the need to adopt the Bill to amend the Basic Labour Act so as to eliminate the restrictions placed on the exercise of the rights granted by the Convention to workers' and employers' organizations. On this issue, the Committee made the following comments:

The Committee previously noted that a Bill to amend the Basic Labour Act took account of requests for amendment that it had made on the following points: (1) it deletes sections 408 and 409 (over-detailed enumeration of the mandatory functions and purposes of workers' and employers' organizations); (2) it reduces from ten to five years the required period of residence before a foreign worker may hold office in an executive body of a trade union organization (it should be noted that the new Regulations of the Basic Labour Act establish that trade union statutes may provide for the election of foreign nationals as trade union leaders); (3) it reduces from 100 to 40 the number of workers required to establish a trade union of independent workers; (4) it reduces from ten to four the number of employers required to establish an employers' organization; (5) it provides that the technical cooperation and logistical support of the electoral authority (National Electoral Council) for the organization of elections to executive bodies of trade unions shall be provided only where so requested by the trade union organizations in accordance with the provisions of their statutes, and that elections held without the participation of the National Electoral Council and which comply with the statutes of the trade unions concerned shall have full legal effect once the corresponding reports are submitted to the appropriate labour inspectorate. The Committee noted that the authorities of the Ministry and of the legislative authority support the position set out in this provision of the Bill and that, in practice, trade unions have now held elections without the participation of the National Electoral Council. The Committee also noted that the Bill provided that "in accordance with the constitutional principle of democratic changeover, the executive board of a trade union organization shall discharge its functions during the period established by the statutes of the organization, but in no case may a period in excess of three years be established". The Committee hoped that the legislative authority would include in the Bill a provision explicitly allowing the re-election of trade union leaders.

- the need for the National Electoral Council (CNE), which is not a judicial body, to cease interfering in trade union elections and to no longer be empowered to annul them, and the need for the statute for the election of executive bodies of national (trade union) organizations, which accords a preponderant role to the CNE in the various stages of such elections, to be amended or repealed;
- certain provisions of the Regulations of the Basic Labour Act, dated 25 April 2006, might restrict the rights of trade union organizations and employers' organizations: (1) the necessity for the trade union organization(s) to represent the majority of the workers to be able to engage in collective bargaining (section 115, sole paragraph, of the Regulations); and (2) the possibility of compulsory arbitration in certain essential public services (section 152 of the

Regulations). The Committee noted the Government's indication in its report that where there is no majority trade union, the minority unions can negotiate jointly;

- the Committee also noted the criticisms made by the International Confederation of Free Trade Unions (ICFTU) concerning resolution No. 3538 of February 2005 and observed that this issue had already been examined in March 2006 in Case No. 2411 by the Committee on Freedom of Association, which made the following recommendation (see 340th Report, paragraph 1400): “(b) Regarding the allegations relating to the Ministry of Labour resolution of 3 February 2005, giving trade union organizations 30 days to provide information on their administration and register of members in a form that includes each worker's full identity, place of residence and signature, the Committee considers that the confidentiality of trade union membership should be ensured and recalls that it would be advisable to establish, between trade unions, a code of conduct governing the conditions in which membership data is to be supplied, with the use of appropriate means of personal data processing, with guarantees of absolute confidentiality.”
The Committee requests the Government to adopt measures in this respect.

The Committee notes that, with regard to the legislative issues, the Government indicates that the Bill to reform the Basic Labour Act is at the consultation stage and that it will keep the Committee informed of any developments in this regard. Furthermore, the Government reiterates the information provided with regard to the Statutes for the election of trade union executive bodies. In reply to the observation concerning alleged deficiencies in social dialogue, the Government reiterates that it has demonstrated the extent of the participation of various social partners, including all social actors. The Government reiterates its comments made in its 2007 report.

The Committee notes the Government's indication that: (1) insinuations of violations of Convention No. 87 are undermined by the number of trade union organizations that are established (247 over the past six months) and the number of collective agreements approved (612 in 2007 covering 5,637,799 workers and 192 thus far in 2008 covering 42,625 workers); (2) the Bill to reform the Basic Labour Act continues to be on the legislative agenda, has the consensus support of the social partners and gives effect to the comments of the Committee of Experts; (3) consideration will be given to the inclusion in the above Bill of the possibility of re-electing the executive boards of trade union organizations, by determining the interpretation of the “changeover” referred to in article 21 of the Constitution; non-intervention in trade union elections is applied in practice and resolution 13 of the Ministry reaffirms the optional nature of the intervention of the CNE; (4) the CNE has prepared draft standards governing the election of trade union organizations; (5) the new Regulations of the Basic Labour Act include improvements in relation to trade union elections intended to prevent delays in elections; isolated cases of alleged violations have been presented as the general pattern and the Government has provided its observations in this respect to the Committee on Freedom of Association (Case No. 2422); and (6) it welcomes the offer of ILO technical assistance and will provide information on when and under what circumstances such assistance might be required.

The Committee notes with regret that for more than eight years, the Bill to reform the Basic Labour Act has been awaiting adoption by the Legislative Assembly, despite the fact that it has tripartite consensus support. Taking into account the significance of the restrictions which persist in the legislation with regard to freedom of association and the freedom to organize, the Committee once again urges the Government to take measures to accelerate the examination by the Legislative Assembly of the Bill to reform the Basic Labour Act and to ensure that the CNE ceases to interfere in trade union elections (the CNE's new draft on elections improves the situation but this non-legal body is still present at elections in different ways and resolves any appeals) and the statute for the election of trade union and national executive bodies is repealed. The Committee once again requests the Government to provide information on the scope of the Regulations of the Basic Labour Act in relation to compulsory arbitration in basic or strategic services and to amend the resolution of the Ministry of Labour, dated 3 February 2005, as indicated above.

Shortcomings in social dialogue

In successive observations in recent years the Committee has identified considerable shortcomings in social dialogue. The International Trade Union Confederation (ITUC), the Venezuelan Workers' Confederation (CTV), the General Confederation of Venezuelan Workers (CGT) and the Venezuelan Federation of Chambers of Commerce and Associations of Commerce and Production (FEDECAMARAS) have indicated that the authorities only hold formal consultations without the intention of taking into account the views of the parties consulted and that there is no authentic dialogue. Moreover, there are no structures for such dialogue and the Government does not convene the tripartite commission envisaged in the Basic Labour Act.

The Committee notes the Government's indications that: (1) it considers it essential that the high-level mission has noted the readiness of the Government and the social partners to embark on social dialogue which includes all actors and that both FEDECAMARAS and the CTV have participated in various meetings to discuss the regulations to be adopted under various laws; (2) the Government is convinced that the ideal dynamic to maintain a growing economy is, as has been demonstrated, through the promotion of inclusive, democratic, participatory and productive dialogue; it believes in broad and inclusive dialogue and, through this practice, it gives effect to the provisions of section 62 et seq. of the Regulations of the Basic Labour Act which legitimizes the broad basis for social dialogue; (3) this practice is demonstrated by the number of collective agreements registered and the number of trade union organizations established (mentioned above); (4) nowadays, workers are members of numerous trade union organizations, with various political and

ideological tendencies, and given this range of organizations, it is possible that some organizations which historically represented workers and employers exclusively, mistakenly claim that their former privileges are undervalued and allege favouritism; the new State of social justice includes all partners, without any favouritism or exclusion; (5) the State of Venezuela guarantees, respect and protects the exercise of freedom of association, both in its individual sphere and collectively, and therefore guarantees ideological and religious freedom, given that trade union action is seen as a direct expression of political pluralism, the essential basis for the democratic State of law and justice established by the Constitution; (6) the Government notes with great interest the observation of the Committee of Experts in 2007 concerning the alleged actions of certain middle-ranking officials in relation to allegations of favouritism or partiality with regard to certain workers' and employers' organizations; it reiterates that such attitudes do not reflect the usual and repeated behaviour of public servants; the Government's position is that public servants have a duty to deal with the questions and issues raised and complaints made by the various social partners, without distinction whatsoever.

The Committee notes the comments made by FEDECAMARAS on the application of the Convention that: (1) the Government fails to recognize FEDECAMARAS as the most representative organization and has imposed the representation of recently created organizations whose independent and representative nature is questioned by FEDECAMARAS since CONFAGAN, FEDEINDUSTRIA and EMPREVEN are institutions which follow Government policy and are neither independent, representative nor autonomous; (2) there is a complete absence of the necessary basic social dialogue and tripartite consultation as a consultation mechanism. In this regard, on 31 July 2008, the third Enabling Act, which authorized the President of the Republic to issue decrees with the rank, value and force of law expired. On the same day and under that authority, 26 new legislative decrees together with the amendment of other Acts with an impact on enterprises and operations in Venezuela were announced. The announcements were made in the summary of the *Official Gazette* of 31 July 2008 and published in extraordinary gazettes published subsequently. They include Acts relating to labour regulation; (i) the Act partially reforming the Basic Act on the Social Security System; (ii) the Act partially reforming the Social Insurance Act, and (iii) the Act on Housing Services and Habitat. Furthermore, 26 laws were also announced; and (3) this Enabling Act, as was the case with the two previous, has not been the subject of the prior consultation provided for in the Constitution as a prerequisite for its approval and subsequent publication. The legislative decrees infringe the Constitution in force by contradicting the principle of participatory democracy and by incorporating in their texts elements rejected in the referendum held on 2 December 2007 on the reform of the Constitution; the Constitution provides that Venezuela is a social State of law and justice, but the legislative decrees mentioned above generally have three fundamental things in common: they provide for greater institutional ideologization (with a view to creating a socialist economy and eliminating the free market) and they provide for greater control through intervention in the economy and commerce and centralized planning.

In its comments of 29 September 2007, the International Organisation of Employers (IOE) tackled some of these issues and pointed out that, through measures against economic freedom, private property and private initiative, the political pluralism established in the Constitution of 1999 is being replaced with an ideology based on a single and mandatory State.

Furthermore, according to FEDECAMARAS, for the past nine years, the Government has not convened the National Tripartite Committee, in accordance with the procedure provided for under sections 167 and 168 of the Basic Labour Act on minimum wages. The Government merely invokes section 172 which refers to the disproportionate increase in the cost of living, and does not consult FEDECAMARAS. Wage increases have been the result of Presidential decrees without due consultation being held with any sector. The Government's practice is to send consultation notices at very short notice and, on occasion, the correspondence has arrived after the date of publication of the decree concerned.

The Committee notes with concern these comments by FEDECAMARAS and regrets that the Government has not sent its reply on this matter. The Committee observes that, in its latest examination of Case No. 2254 in June 2008, the Committee on Freedom of Association concluded that very serious deficiencies had been identified in social dialogue. It emerges from its conclusions that the Government has not carried out the recommendations of the Committee on Freedom of Association with regard to its repeated request to: (1) establish a national, high-level joint committee in Venezuela with the assistance of the ILO, to examine each and every one of the allegations and matters presented in order to resolve problems through direct dialogue; (2) establish a forum for social dialogue in accordance with the principles of the ILO, having a tripartite composition which duly respects the representativeness of workers' and employers' organizations; and (3) convene the tripartite committee on minimum wages provided for in the Basic Labour Act.

The Committee, like the Committee on Freedom of Association, noting that there are still no structured bodies for tripartite social dialogue, once again emphasizes the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the independent and most representative workers' and employers' organizations. The Committee requests the Government to ensure that any legislation adopted concerning labour, social and economic issues within the framework of the Enabling Act be subject to real, in-depth consultations with the independent and most representative employers' and workers' organizations, while attempting as far as possible to find shared solutions.

The Committee once again invites the Government to request the technical assistance of the ILO for the establishment of the dialogue bodies mentioned and to ensure that the views of the most representative organizations

are duly taken into account in the attempt as far as possible to reach mutually acceptable solutions. In this context, it is important, taking into account the allegations of discrimination against FEDECAMARAS, the CTV and their member organizations, including the establishment or promotion of organizations or enterprises close to the regime, that the Government is guided exclusively by criteria of representativeness in its dialogue and relations with workers' and employers' organizations and that it refrains, as indicated by the Conference Committee in 2007, from any form of interference and complies with *Article 3* of the Convention. ***The Committee requests the Government to indicate any developments in social dialogue and its outcome, and to promote seriously the establishment of the dialogue bodies mentioned which, it strongly hopes, will be established in the very near future.***

Comments of the ITUC

The ITUC refers to various matters being dealt with by the Committee. The ITUC adds that the right to collective bargaining and the right to strike are gradually being weakened. The criminalization of strikes and demonstrations, as well as the interference in trade union autonomy, as a result of the intervention of the CNE in trade union elections, are contributing to this weakening. There have been reports of violations by the Labour Inspectorate and the SIVENSA Group.

According to the ITUC, the Regulations of the Basic Labour Act, amended on 25 April 2006, introduce a number of improvements to the legislation but establish the trade union referendum to confirm the representativeness of trade union organizations in the case of bargaining or collective labour disputes. This referendum mechanism is regulated entirely by the Ministry of Labour, which could also be interpreted as a veiled way for the State, as the main employer, to legitimize and interfere in the life of trade unions. Furthermore, the ITUC adds that unions are required to provide the identity of their members given that the resolution which requires trade union organizations to "deliver, within 30 days, the data on their administration and the identity of each member, in a form that includes each worker's full identity, place of residence and signature" remains in force.

The ITUC reports acts of violence and arrests of trade unionists in its comments of 2006 and 2008. Labour conflicts associated with the award of jobs in the construction and oil sectors and, to a lesser extent, in basic industries, continues to be a source of great concern. According to data from the Venezuelan Programme on Human Resources Education and Action (PROVEA) between September 2006 and October 2007, at least 95 persons were affected by violence. These included 69 trade union leaders and 26 workers. According to this organization, "the use of trade union assassinations is aggravating the climate of violence and insecurity, which is extremely detrimental to the exercise of trade union activities". Various trade union organizations have asked the Ministry of Justice to investigate cases of assassinations and punish the culprits.

Furthermore, the ITUC points out that the right to strike has been gradually limited and several workers who were making labour claims have been repressed and penalized. This is the case for ten leaders of the Union of Workers of Sanitarios Maracay who, in May 2007, were intercepted and arrested by National Guard forces and the police of Aragua as they were heading to Caracas to present to the National Assembly the situation of workers reflected in a list of demands. After several demonstrations and pressure by trade union leaders of the National Workers' Union (UNT), the trade unionists were freed, but the Office of the Attorney General accused the trade unionists of violating section 357 of the Penal Code and ordered them to appear before it every 15 days.

The ITUC reports that a representative of the Federation of Telecommunication Workers (FETRATEL) counted 243 collective agreements unsigned and at a standstill in the public sector and stated that "the Government does not believe in the trade union leaders promoting these agreements", which is the most serious problem to tackle. A leader of the National Union of Workers (UNT) refers to the situation with regard to collective bargaining as "alarming"; one of the cases concerns the public administration framework agreement, which has not been discussed for 27 months, and the agreement of the workers of the Ministry of Labour, which has not been discussed for 16 years. The labour representative of the Broad Popular Front (FAP) has counted 3,500 collective agreements which have not been discussed.

The ITUC also reports that the Venezuelan Federation of Teachers (FVM) and the 27 trade union organizations affiliated to it presented a complaint to the ILO calling on the Venezuelan State to restore the right to collective bargaining, denied since March 2006.

The Committee requests the Government to reply to the comments made by the ITUC in 2006 and 2008. The Committee emphasizes that freedom of association can only be exercised in conditions in which fundamental rights are fully respected and guaranteed and that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressures or threats of any kind against trade union and employers' leaders and their respective organizations.

Other comments of FEDECAMARAS

According to FEDECAMARAS, more than one year ago, on 24 May 2007, its headquarters were attacked by representatives of the Ezequiel Zamora National Campesino Front, the Simón Bolívar National Communal Front, the Alexis Vive Collective and the Coordinadora Simón Bolívar, including acts of violence against the institution and its property. Later, in the early hours of 24 February 2008, a metropolitan police inspector died (according to documents provided by FEDECAMARAS) as a result of the explosion of a device that had been planted at the front of the

FEDECAMARAS headquarters building. The appropriate report was made to the Office of the State Prosecutor, requesting the most comprehensive and exhaustive investigation into the events and the identification of those responsible, but to date no result has been achieved.

Furthermore, FEDECAMARAS states that anyone who is engaged in noteworthy trade union activities and who reports the Government to the media for constant violations of the Constitution and of the laws protecting their interests (protesting at the kidnappings of their members and price and exchange rate controls) is immediately prejudiced in their enterprises and in respect of their property as a means of exerting pressure, as was the case for the President and Vice-President of the National Federation of Stockbreeders (FEDENAGA). Several governmental organizations such as the National Integrated Tax Administration Service (SENIAT) and the Institute for the Defence and Education of the Consumer (INDECU) sent their prosecutors to the enterprises in order to prepare reports and fine the enterprises concerned.

With regard to land, the National Guard, together with the National Institute for Land (INT), intervene – on the pretext of recovering land – on productive lands, therefore affecting the national supply of agricultural and livestock products. The INT should not intervene on these private lands, but it demands the production of the legal antecedents and, when this is produced, it invalidates the historic title deeds showing that the land is private property. This practice constitutes “prior occupation”, which violates the Constitution and due process. It should be highlighted that “prior occupation” was proposed in the draft Constitution on which a referendum was held last December and was rejected. As a result of the work carried out by members in defence of these rights, trade union representatives and private employers in general are permanently harassed and threatened by the Government, as was the case most recently when the facilities of the transnational cement company CEMEX were seized.

The Committee notes with regret that the Government has not sent a reply to these comments, although prior to those comments it pointed out that it had ordered the capture of two alleged perpetrators of the attack on the FEDECAMARAS headquarters. The Committee recalls that acts of violence and intimidation against employers’ leaders, their organizations or their members are incompatible with the Convention. The Committee once again expresses its deep concern and recalls the gravity of these allegations and emphasizes that a movement of trade unions or employers can only develop where fundamental human rights are respected and in a climate free of violence of any kind. *The Committee recalls that, in 2007, the Conference Committee requested the Government to take measures to investigate these incidents so that those responsible could be punished and similar events did not occur in future and it requests the Government to provide information in this respect.*

The Committee welcomes the fact that the employers’ leader, Ms Albis Muñoz has been granted an amnesty, but notes with regret that the warrant for the arrest issued against the former President of FEDECAMARAS, Mr Carlos Fernández, which is preventing him from returning to the country without reprisal, remains in force.

Other matters

The Committee previously noted that a number of trade union organizations (300 unions according to the ITUC, due to a lack of authorization by the National Electoral Council), including certain trade union federations, had not held their trade union elections despite the expiry of the period for which they had elected their executive bodies. The high-level mission of 2006 referred to a profound and manifest misunderstanding among the social partners concerning the functions of the CNE. *In the absence of a reply from the Government on this point, the Committee emphasizes the importance of holding such elections since, as indicated in the report of the high-level mission, any delay in the procedures is accompanied by the non-recognition of trade unions for the purposes of collective bargaining.*

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

The Committee notes the Government’s report and other communications.

The Committee recalls that it previously asked the Government to provide information on: (1) the cases that have arisen in recent years in which two trade union organizations claimed to be the most representative; (2) the criteria used in practice by the authorities to determine the most representative trade union; and (3) the number of cases in which the decision of the administrative authority has been challenged in a court of law, indicating the grounds put forward by the complainant trade union organization.

The Committee notes that the Government points out that the criteria used to determine the most representative trade union is that provided for in the Regulations of the Basic Labour Act concerning trade union referendums and that it is not aware of any appeals being lodged against decisions concerning the representativeness of trade unions. The Committee observes that the Government has not sent specific information concerning the cases in which, given that two trade union organizations claimed to be the most representative, the labour authority would have had to have issued a decision.

In this regard, taking into account the comments of the International Trade Union Confederation (ITUC) that: (1) the collective bargaining processes in various sectors have been at a standstill since 2006 (it points out that 243 collective agreements have not been signed and more than 3,500 have not been discussed), and (2) that the trade union referendum mechanism could be a form of state interference in trade union life, the Committee once again requests the Government to provide information on the cases in which two trade union organizations claimed to be the

most representative, as well as on the administrative decisions adopted by the labour authority in accordance with the provisions on trade union referendums, and to send the texts of those provisions. The Committee also requests the Government to send its observations on the comments made by the ITUC on the situation with regard to collective bargaining.

Yemen

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in its communication dated 29 August 2008 referring to the issues pending before the Committee.

The Law on Trade Unions (2002). The Committee had previously raised a number of points in respect of the Law on Trade Unions. In the absence of the Government's reply thereon, the Committee must once again bring the Government's attention to the following issues.

Article 2 of the Convention.

- Exclusion from the scope of the Law of employees of high-level public authorities and Cabinets of Ministers (section 4). *Considering that senior public officials should be entitled to establish their own organizations and that the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 57), the Committee requests the Government to indicate whether the persons referred to in section 4 of the Law enjoy the right to establish and join trade unions.*
- The reference to the General Federation of Trade Unions of Yemen (GFTUY) made in sections 2 (definition of "General Federation"), 20 and 21, could result in making it impossible to establish a second federation to represent workers' interests. The Committee considers 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. *The Committee therefore requests the Government to amend the Law on Trade Union so as to repeal specific reference to the GFTUY and to indicate the measures taken or envisaged in this respect.*

Article 3.

- 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 considers 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 requests 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 draft Labour Code. The Committee recalls that in its previous observations it had noted that a draft Labour Code was under discussion and that several of its provisions were not in conformity with the Convention. In this respect, the Committee notes the Government's indication that the observations of the General Federation of Workers' Trade Unions of Yemen and the Employers' representatives, the ILO and the Committee of Experts have been taken into consideration and that following discussions with the social partners, the draft Code has been approved and referred to the Ministry of Legal Affairs. The Committee notes with interest the Government's indication that the draft Code will not be adopted unless the amendments requested by the Committee and the interested parties have been made and the approval of the social partners has been obtained.

The Committee recalls that its previous comments on the draft Labour Code concerned the following issues:

Article 2 of the Convention. The Committee recalls that in its previous observation, it had requested the Government to 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 to transmit the texts of any legislation or regulations ensuring their right to organize. The Committee had further requested the Government to consider revising section 173(2) of the draft Code so to ensure that minors between the ages of 16 and 18 may join trade unions without parental authorization and noted with interest the Government's intention to do so. The Committee notes the Government's indication that the Committee's observations with regard to sections 3B and 173(2) of the draft Code have been taken into consideration. *The Committee requests the Government to indicate any developments in this respect.*

In its previous comments, the Committee had noted the Government's indication that foreign persons holding diplomatic passports and those working in Yemen on the basis of political visas were excluded from the scope of the draft Code under section 3B(6) and that this category of workers was covered by the specific legislation, regulations and agreements on reciprocal treatment. The Committee had therefore requested the Government to indicate whether this category of foreign workers could in practice establish and join organizations of their own choosing. *In the light that no new information was provided by the Government, the Committee reiterates its previous request.*

Article 3. With regard to the Committee's previous request to provide a list of essential services referred to in section 219(3) of the draft Code, which empowers the Minister to submit disputes to compulsory arbitration, the Committee once again notes the Government's indication that the Council of Ministers will issue such a list once the Labour Code is promulgated. ***The Committee requests the Government to indicate any developments in this respect.***

Concerning section 211 of the draft Labour Code, which provides that strike notice must include an indication as to the duration of a strike, the Committee notes that the Government reiterates that it is willing to take into account the previous observation of the Committee to the effect that such a requirement unduly restricts the effectiveness of an essential means for furthering and defending workers' occupational interests. ***It requests the Government to indicate any progress made in this regard.***

Articles 5 and 6. The Committee had previously noted that section 172 of the draft Labour Code would appear to prohibit the right of workers' organizations to affiliate with international workers' organizations and that the Government had concurred that this section contradicted section 66 of the Law on Trade Unions, which ensures the right to affiliate with international organizations and the current practice. The Committee therefore expressed trust that the Government would take the necessary measures to withdraw section 172 from the draft Labour Code. The Committee notes the Government's indication referring to the Law on Trade Unions which allows workers' organizations to affiliate with the Arab, regional and international trade union federations and to contribute to their establishment. According to the Government, this Law leaves no room for any other text that might contradict its provisions. ***The Committee therefore once again trusts that section 172 will be withdrawn from the draft Labour Code and requests the Government to keep it informed in this respect.***

The Committee expresses the hope that the present legislative reform will bring the national legislation into full conformity with the Convention, in accordance with the comments above, and requests the Government to indicate any development in this regard.

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

Comments of the International Trade Union Confederation (ITUC). ***The Committee notes the comments submitted by the ITUC in its communication dated 29 August 2008 and requests the Government to communicate its observations thereon.***

Articles 1, 2 and 3 of the Convention. Protection against anti-union practices. The Committee recalls that for a number of years it had been requesting the Government to ensure that effective and sufficiently dissuasive sanctions that guarantee the protection of workers' organizations against acts of interference by employers or their organizations in trade union activities are expressly provided for in the national legislation. In its last observation, the Committee had noted the process of formulating the new draft legislative amendments to the Labour Code. It had further noted the Government's indication that it would endeavour to add provisions on penal responsibility of employers committing acts of anti-union discrimination and interference in trade union affairs in order to bring the legislation into conformity with the Convention. The Committee notes that in its report, the Government reiterates its previous statement and adds that the Committee's observation will be taken into account when making amendments to the Law on Trade Unions and supplementing the Penal Code. ***The Committee requests the Government to indicate the progress made in this respect and to provide a copy of the amended legislative texts as soon as they have been adopted.***

Article 4 of the Convention. Power granted to the Ministry of Labour to refuse registration of a collective agreement on the basis of consideration of "economic interests of the country". The Committee had previously requested the Government to amend sections 32(6) and 34(2) of the Labour Code so as to ensure that refusal to register a collective agreement is only possible due to a procedural flaw or because it does not conform to the minimum standards laid down by the labour legislation and not on the basis of consideration of "the economic interests of the country". The Committee notes that the Government reiterates that it has adopted the Committee's proposal with regard to the amendment of the abovementioned section of the Labour Code. The Committee further notes the Government's indication that the Labour Code is being revised by the Ministry of Legal Affairs before being submitted to the Council of Ministers and to the Parliament. ***Noting that the process of formulating the draft legislative amendments appears to be going in the right direction, the Committee trusts that the legislative amendments requested in its previous observations will be fully reflected in the new legislation. The Committee requests the Government to provide a copy of the draft Labour Code as soon as the final version of it is available.***

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. The Committee notes the Government's indication that the requested statistics on collective bargaining are now available and will be sent in its subsequent reports. ***The Committee expresses the firm hope that the Government will provide these statistics together with its next report.***

Zambia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, which are being translated and will be examined in the framework of the next reporting cycle.

The Committee recalls that for many years it has been requesting the Government to take measures to bring the following provisions of the Industrial and Labour Relations Act (ILRA) into conformity with the Convention:

- section 2(e), which excludes from the scope of the Act, and therefore from the guarantees afforded by the Convention, workers in the prison service, judges, registrars of the court, magistrates and local court justices, and section 2(2), which accords the Minister discretionary power to exclude certain categories of workers from the scope of the Act;
- sections 18(1)(b) and 43(1)(a), under which a person, having been an officer of an employers' or workers' organization whose certificate of registration has been cancelled, may be disqualified from being an officer of a trade union if that person fails to satisfy the commissioner that she or he did not contribute to the circumstances leading to such cancellation;
- section 76, which establishes no time frame within which conciliation should end before a strike can take place;
- section 78(6)–(8), under which a strike can be discontinued if it is found by the court not to be “in the public interest”;
- section 78(1), under which, as interpreted by a decision of the Industrial Relations Court, either party may take an industrial dispute to court;
- section 107, which prohibits strikes in essential services, defined too broadly, and empowers the Minister to add other services to the list of essential services, in consultation with the Tripartite Consultative Labour Council; and
- section 107, which empowers a police officer to arrest, without any possibility of bail, a person who is believed to be striking in an essential service and which imposes a fine and up to six months' imprisonment.

In this regard, the Committee notes the Government's indication that the concerns of the Committee are being addressed through the review of the labour laws and that the Amendment Bills were pending before the Cabinet. *It hopes that the envisaged amendments will take into account the comments that it has been making for many years and that they will be adopted in the near future following full and frank consultations with the social partners. The Committee requests the Government to provide information in its next report on any progress achieved in this respect and hopes that the amendments to the Act will be in full conformity with the provisions of the Convention.*

Finally, the Committee notes the comments made by the Federation of Free Trade Unions of Zambia (FFTUZ) in a communication dated 16 June 2008 alleging that the new draft amending the Industrial and Labour Relations Act (Bill No. 6 of 2008) contains provisions, which, if adopted, would violate workers' rights under the Convention and which were drafted without any consultation with the social partners. The Committee emphasizes the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights. A request with regard to the provisions of Bill No. 6 of 2008 is addressed directly to the Government.

Zimbabwe

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2003)

The Committee notes the discussion held on the application of the Convention by the Conference Committee on the Application of Standards in June 2008 in the absence of the Government's delegation, despite it being duly accredited and registered before the Conference. The Committee notes that the Conference Committee had decided to mention the case of Zimbabwe in a special paragraph of its report, as well as to mention this case as a case of continued failure to implement the Convention.

While taking due note of the Government's latest report in reply to its previous comments, the Committee observes the decision taken by the Governing Body at its 303rd Session to constitute a Commission of Inquiry into the non-observance by Zimbabwe of Conventions Nos 87 and 98. In these circumstances, and in accordance with usual practice which suspends the functioning of the supervisory machinery during the period of operation of a Commission of Inquiry, the Committee will renew its supervision of the application of the Convention in Zimbabwe once the Commission has concluded its work.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)

See the observation concerning the application of Convention No. 87.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 11** (*Kyrgyzstan, Tajikistan, Uganda*); **Convention No. 87** (*Australia, Cambodia, Cape Verde, Colombia, Congo, Democratic Republic of the Congo, Djibouti, El Salvador, France, Gambia, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Malawi, Mali, Mauritania, Mauritius, Mongolia, Montenegro, Namibia, Netherlands: Aruba, Netherlands: Netherlands Antilles, Pakistan, Papua New Guinea, Peru, Philippines, Portugal, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Serbia, Sierra Leone, Swaziland, Switzerland, Tajikistan, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Togo, Turkey, Uganda, Ukraine, United Kingdom, Zambia*); **Convention No. 98** (*Australia, Congo, Democratic Republic of the Congo, El Salvador, France: French Southern and Antarctic Territories, Ireland, Kyrgyzstan, Latvia, Lebanon, Lithuania, Mauritania, Montenegro, Morocco, Mozambique, Namibia, Niger, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Seychelles, Slovenia, South Africa, Tajikistan, United Republic of Tanzania, Togo, Tunisia, Turkey, Uzbekistan, Zambia*); **Convention No. 135** (*Antigua and Barbuda, El Salvador*); **Convention No. 141** (*Belize*); **Convention No. 151** (*Antigua and Barbuda, Belize, El Salvador*); **Convention No. 154** (*Antigua and Barbuda, Belize, Slovenia*).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 11** (*Zambia*); **Convention No. 87** (*Slovenia*); **Convention No. 98** (*Kenya, Mongolia, Peru*).

Forced labour

Afghanistan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

The Committee has noted the Government's report, as well as the comments on the application of the Convention made by the All Afghanistan Federation of Trade Unions (AAFTU), received with the report.

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 earlier comments, the Committee referred to the following provisions of the Penal Code, under which prison sentences involving an obligation to perform labour may be imposed:

- (a) sections 184(3), 197(1)(a) and 240 concerning, inter alia, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods;
- (b) section 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization under the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or makes propaganda for its extension or attraction to it, by whatever means it may be, or who joins such an organization or establishes relations, himself or through someone else with such an organization or one of its branches.

While having noted the Government's earlier indication concerning the special status given to prisoners convicted under the abovementioned sections of the Penal Code, the Committee pointed out that the imposition of sanctions involving compulsory labour on these persons remains contrary to the Convention, which prohibits the use of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee also refers in this connection to paragraphs 154 and 163 of its 2007 General Survey on the eradication of forced labour, where it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. A similar situation arises where certain political views are prohibited, subject to penalties involving compulsory labour, as a consequence of the prohibition of political parties or associations.

The Committee has noted the Government's intention to prepare and supply to the ILO a separate report related to the penal law provisions, as well as the Government's indications concerning the adoption of the new Prisons Law of 2005, which replaced the previous law of 1982, and the adoption in 2004 of the law related to the freedom of media. *The Committee asks the Government to communicate copies of these laws with its next report and hopes that the abovementioned penal provisions will be re-examined in the light of the Convention with a view to ensuring that no sanctions involving forced or compulsory labour may be imposed as a punishment for holding or expressing political or ideological views and that the Government will indicate the measures taken to this end.*

Austria

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c) of the Convention. Prisoners hired to private enterprises. In its earlier comments, the Committee referred to section 46, paragraph 3, of the Law on the execution of sentences, as amended by Act No. 799/1993, under which prisoners may be hired to enterprises of the private sector, which may use their labour in privately run workshops and workplaces both inside and outside prisons. The Committee recalled that compulsory work or service exacted from any person as a consequence of a conviction in a court of law is compatible with the Convention only if two conditions are met: namely, that the said work or service is carried out under the supervision and control of a public authority; and that the said person is not hired to or placed at the disposal of private individuals, companies or associations. The Committee has always made it clear that the two conditions apply cumulatively, i.e. the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense the Government from fulfilling the second condition, namely, that the person is not "hired to or placed at the disposal of private individuals, companies or associations". The Committee asked the Government to take the necessary measures to ensure observance of the Convention, such as for example to provide that any prisoners working for private enterprises offer themselves voluntarily without being subjected to pressure or the menace of any penalty and, given their conditions of captive labour, subject to guarantees as to wages and other conditions of employment approximating a free employment relationship.

The Committee previously noted the Government's indications that, in national law and practice, contracts exist only between the prisons administration and private enterprises, while prisoners, who are under an obligation to perform prison labour, have no labour contract with either an enterprise or the prisons administration; however, conditions of work are to a large extent determined by law, violations of which can be the subject of complaints by prisoners. The Government reiterates in its 2006 report that private enterprise employees give only technical instructions to prisoners hired to them and exercise only "specialist supervision", but they do not have any disciplinary powers, which remain with the prisons administration. The Government argues that a private company does not thereby have any right of disposal of the prisoners, since supervision is carried out by the prison staff.

In this connection, the Committee draws the Government's attention to the explanations concerning the scope of the terms "hired to or placed at the disposal of" in paragraphs 56–58 and 109–111 of the Committee's General Survey of 2007 on the eradication of forced labour and observes that these terms cover not only situations where prisoners are "employed" by the private company or placed in a position of servitude in relation to the private company, but also situations where the companies do not have absolute discretion over the type of work they can request the prisoner to do, since they are limited by the rules set by the public authority. The Committee also refers to paragraph 106 of its 2007 General Survey, where it considered that the prohibition for prisoners to be placed at the disposal of private parties is absolute and not limited to work outside penitentiary establishments, but applies equally to workshops operated by private undertakings inside prisons.

The Committee previously noted the Government's indication that, in conformity with the first condition set out in *Article 2(2)(c)* of the Convention, the work is carried out "under the supervision and control of a public authority". However, as regards the second condition, namely, that the person "is not hired to or placed at the disposal of private individuals, companies or associations", the Committee has already pointed out on numerous occasions that contracts for the hiring of prison labour to private enterprises in Austria correspond in all respects to what is expressly prohibited by *Article 2(2)(c)*, namely, that a person is "hired to" a private company. It is in the very nature of such hiring agreements to include mutual obligations between the prisons administration and the private enterprise.

Referring to the explanations in paragraphs 59–60 and 114–120 of its 2007 General Survey referred to above, the Committee points out once again that work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention. In such a situation, work of prisoners for private companies does not come under the scope of the Convention, since no compulsion is involved. The Committee has considered that, taking into account their captive circumstances, it is necessary to obtain prisoners' formal consent to work for private enterprises both inside and outside prisons. Further, since such consent is given in a context of lack of freedom with limited options, there should be indicators which authenticate this free and informed consent. The Committee recalls that the most reliable indicator of the *voluntariness* of labour is the work performed under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health. In addition, there may be also other factors that can be regarded as objective and measurable advantages which the prisoner gains from the actual performance of the work and which could be considered in determining whether consent was freely given and informed (such as the learning of new skills which could be deployed by prisoners when released; the offer of continuing the work of the same type upon their release; or the opportunity to work cooperatively in a controlled environment enabling them to develop team skills).

The Committee has noted the Government's indications in its 2006 and 2008 reports concerning the rise in the prisoners' wages in accordance with the rise in the wages index, as well as guarantees concerning the prisoners' working time, occupational safety and health and social security. It has also noted the Government's view concerning other factors that makes work in the prison system valuable from the prisoners' perspective, such as the learning of new vocational skills, enjoying social contacts within the penal institution, etc., which may contribute to their rehabilitation in society after release. However, as the Committee noted previously, under the Act on the execution of sentences, prisoners' consent is not required for work in private enterprise workshops inside prisons, but only for such work outside prison premises. In the absence of the consent requirement, the general scope of protective legislation, as well as other factors mentioned by the Government, cannot be regarded as indicators of a freely accepted employment relationship.

The Committee therefore reiterates its hope that the Government will at last take the necessary measures to grant prisoners working for private enterprises a legal status with rights and conditions of employment that are compatible with this basic human rights instrument. In particular, the Committee hopes that measures will be taken to ensure that free and informed consent is required for the work of prisoners in private enterprise workshops inside prison premises, so that such consent is free from the menace of any penalty and authenticated by the conditions of work approximating a free labour relationship, as well as by other objective and measurable factors referred to above.

Bahamas

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)

Article 1(c) of the Convention. Disciplinary measures applicable to seafarers. For many years, the Committee has been referring to certain provisions of the 1976 Merchant Shipping Act, under which various breaches of labour discipline are punishable with imprisonment (involving an obligation to work, under section 10 of the Prisons Act and rules 76 and 95 of the Prison Rules) and deserting seafarers from ships registered in another country may be forcibly conveyed on board the ship. The Committee has noted the Government's indications in its earlier reports that some amendments to the Merchant Shipping Act have been made. It notes, however, that under sections 129(b) and (c) and 131(a) and (b) of the updated text of the Merchant Shipping Act, which it has consulted on the Government's web site, penalties of imprisonment may still be imposed for breaches of discipline such as disobedience to lawful command, neglect of duty, desertion and absence without leave, and section 135 of the Act still provides for the forcible conveyance of deserting seafarers to ships registered in another country, where it appears to the minister that reciprocal arrangements will be made in that country.

The Committee recalls that *Article 1(c)* expressly prohibits the use of any form of forced or compulsory labour as a means of labour discipline. As the Committee repeatedly pointed out, only acts which endanger the ship or the life or health of persons are excluded from the scope of the Convention (see e.g. paragraphs 179–181 of the Committee's 2007 General Survey on the eradication of forced labour). ***The Committee therefore reiterates its hope that the necessary measures will at last be taken with a view to amending the above provisions of the Merchant Shipping Act, either by repealing sanctions involving compulsory labour or by restricting their application to the situations where the ship or the life or health of persons are endangered (as is the case, e.g. in section 128 of the same Act). The Committee requests the Government to provide information on the progress made in this regard in its next report.***

Article 1(d). Punishment for having participated in strikes. Over a number of years, the Committee has been referring to section 73 of the 1970 Industrial Relations Act, as amended, under which the minister may refer a dispute in non-essential services to the tribunal for settlement, if he considers that a public interest so requires; the recourse to strike action in this situation is prohibited, violation being punishable with penalties of imprisonment (involving an obligation to perform labour, as explained above) under sections 74(3) and 77(2)(a) of the same Act. The Committee has further noted that, according to section 76(1), a strike which, in the opinion of the minister, affects or threatens the public interest, might also be referred to the tribunal for settlement, failure to discontinue the participation in such a strike being punishable with imprisonment under section 76(2)(b).

The Committee previously noted the Government's indications in its earlier report that the proposed Trade Unions and Industrial Relations Bill had been tabled in the House of Assembly, and that it contained no provisions imposing sanctions of imprisonment for breach of the legislation, which may be punished only with fines. The Committee also noted the Government's repeated statement that the above provisions of the Industrial Relations Act had never been applied in practice, and that the legislation would be amended when a consensus is achieved after further consultation with the social partners.

While having noted these indications, the Committee reiterates the firm hope that the review of the Act announced by the Government for a number of years will soon result in the amendment of the above provisions, so that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike, in order to bring legislation into conformity with the Convention. Referring also to its comments made in 2007 under Convention No. 87, likewise ratified by the Bahamas, the Committee asks the Government to supply a copy of the new legislation, as soon as it is adopted.

Bangladesh

Forced Labour Convention, 1930 (No. 29) (ratification: 1972)

Articles 1(1) and 2(1) of the Convention. Restrictions on freedom of workers to terminate employment. Over a number of years, the Committee has been referring to the Essential Services (Maintenance) Act, No. LIII of 1952, under which termination of employment by any person employed by the central Government, without the consent of the employer, is punishable with imprisonment for up to one year, notwithstanding any express or implied term in the contract of employment providing that the employee may freely terminate his or her employment with notice (sections 3, 5(1)(b) and Explanation 2, and section 7(1)). Pursuant to section 3 of the Act, these provisions apply to every employment under the central Government and to any employment or class of employment declared by the Government to be an essential service. The Committee also referred to the Essential Services (Second) Ordinance No. XLI, 1958, which contains similar provisions (sections 3, 4(a) and (b) and 5).

The Committee points out, once again, referring also to the explanations contained in paragraphs 96 and 97 of its 2007 General Survey on the eradication of forced labour, that even regarding employment in essential services whose interruption would endanger the existence or well-being of the whole or part of the population, provisions depriving workers of the right to terminate their employment by giving notice of reasonable length are incompatible with the Convention.

The Committee notes the Government's statement in its report that the Essential Services (Maintenance) Act No. LIII, 1952, has not yet been repealed, but has become redundant and its provisions are no longer applied in practice. As regards the Essential Services (Second) Ordinance, No. XLI of 1958, the Government indicates again that it is still in force and is not listed among the existing legislative texts to be repealed in the course of the labour legislation reform.

While noting the Government's repeated statement that it is in favour of the freedom of workers to terminate their employment by way of notice of reasonable length, the Committee expresses the firm hope that the necessary measures will at last be taken to formally repeal the Essential Services (Maintenance) Act No. LIII, 1952, and to repeal or amend the Essential Services (Second) Ordinance No. XLI, 1958, in order to bring legislation into conformity with the Convention, and that the Government will soon be in a position to report the progress made in this regard.

Articles 1(1), 2(1) and 25. Trafficking in persons. Law enforcement. The Committee notes the information provided by the Government concerning various measures taken by different ministries, human rights organizations and law enforcement agencies to combat trafficking in persons for the purpose of exploitation, including awareness raising and prevention measures. The Government states that, due to these measures, and particularly due to the activities of law enforcement agencies, the problem has been considerably reduced. The Committee also notes statistical information concerning the number of investigations and convictions during the reporting period.

The Committee hopes that the Government will continue to provide information on the progress achieved in the implementation of the various action programmes against trafficking and will pursue its efforts to strengthen the law enforcement mechanism. Please continue to supply information on the number of trafficking offences reported, the number of prosecutions initiated and the number of convictions obtained, indicating the penalties imposed.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1972)

Article 1(a), (c) and (d) of the Convention. Penalties involving compulsory labour as a punishment for expressing political views, for breaches of labour discipline and for participating in strikes. For many years, the Committee has been referring to various provisions of the national legislation, under which penalties of imprisonment involving compulsory labour may be imposed as a punishment for expressing political views, for breaches of labour discipline and for participating in strikes in a wide range of circumstances. It referred in this connection to certain provisions of the Penal Code, the Special Powers Act (No. XIV of 1974), the Industrial Relations Ordinance (No. XXIII of 1969), the Control of Employment Ordinance (No. XXXII of 1965), the Post Office Act (No. VI of 1898), the Services (Temporary Powers) Ordinance (No. II of 1963) and the Merchant Shipping Ordinance (No. XXVI of 1983).

The Committee has noted the adoption of the Bangladesh Labour Act, 2006, which repealed and replaced the Industrial Relations Ordinance, 1969. However, the Committee notes with regret that the new Act does not contain any improvements as compared to the previous legislation in regard to the matters falling within the scope of the Convention. Thus, the Labour Act, 2006, still provides for certain restrictions on the right to strike, enforceable with sanctions of imprisonment involving compulsory labour, which is incompatible with the Convention. Regarding the Committee's earlier comments on the Penal Code and the Special Powers Act, 1974, the Committee previously noted the Government's repeated indications that the National Labour Law Commission had been examining the existing laws with a view to preparing recommendations to the Government regarding their amendment. ***The Committee expresses the firm hope that the necessary measures will at last be taken in order to bring the national legislation into conformity with the Convention and that the Government will soon be in a position to report the progress made in this regard.***

Article 1(c). Disciplinary measures applicable to seafarers. In its earlier comments, the Committee referred to sections 198 and 199 of the Merchant Shipping Ordinance (No. XXVI of 1983), which provide for the forcible conveyance of seafarers on board ship to perform their duties, and sections 196, 197 and 200(iii), (iv), (v) and (vi) of the same Ordinance, which provide for penalties of imprisonment (involving compulsory prison labour) for various disciplinary offences.

The Committee recalls that *Article 1(c)* of the Convention prohibits the exaction of forced or compulsory labour as a means of labour discipline and points out that only sanctions relating to acts tending to endanger the ship or the life or health of persons are not covered by the Convention. ***The Committee reiterates the firm hope, referring to the explanations provided in paragraphs 179–180 of its 2007 General Survey on the eradication of forced labour, that sanctions of imprisonment (involving compulsory labour) in the Merchant Shipping Ordinance will be either repealed or restricted to offences that endanger the safety of the ship or the life or health of persons, in order to bring the legislation into conformity with the Convention on this point. The Committee asks the Government to indicate, in its next report, the measures taken or envisaged to that effect.***

The Committee is also addressing a more detailed request on the above points directly to the Government.

Belize

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1983)

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

Article 1(c) and (d) of the Convention. Penalties involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes. In comments made for a number of years, the Committee has referred to section 35(2) of the Trade Unions Act, under which a penalty of imprisonment (involving, by virtue of section 66 of the Prison Rules, an obligation to perform labour) 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 pointed out 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 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 in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population), but also to other services, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

The Committee has noted from the Government's latest report that section 35(2) of the Trade Unions Act has not been amended. *While having noted the Government's repeated indication in its earlier reports that there had been no recorded penalties of imprisonment imposed under this section, the Committee expresses firm hope that the necessary measures will be taken to bring section 35(2) of the Trade Unions Act into conformity with the Convention and the indicated practice, and that the Government will soon be in a position to report the progress achieved in this regard.*

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

Burundi

Forced Labour Convention, 1930 (No. 29) (ratification: 1963)

The Committee takes note of the communication dated 30 August 2008 received from the Confederation of Trade Unions of Burundi (COSYBU), which was sent to the Government on 22 September 2008. *The Committee asks the Government to provide information in this regard in its next report.*

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

Articles 1(1) and 2(1) of the Convention. Compulsory community development work. Compulsory agricultural work. Compulsory labour resulting from a sentence handed down for the offences of begging and vagrancy. For many years, the Committee has drawn the Government's attention to the need to take measures to bring certain provisions of the national legislation into line with the Convention. The Committee notes from the information provided by the Government in its report that the provisions in question still appear to be in force.

With regard to Legislative Decree No. 1/16 of 29 May 1979, which establishes the obligation, under penalty of sanctions (one month of penal labour performed on one half-day a week), to perform community development work, the Committee notes that, according to the Government, Act No. 1/016 of 20 April 2005 organizing municipal administration, provides for voluntary participation in municipal development activities within the framework of national reconstruction. The Committee does not, however, note any provision to this effect in the version of the text annexed to the Government's report. Furthermore, the Committee notes that, according to the Government, the Legislative Decree of 29 May 1979 has been repealed. The Committee notes, however, that Act No. 1/016 of 20 April 2005 does not expressly repeal the abovementioned Legislative Decree. *The Committee would therefore be grateful if the Government would indicate, firstly, whether Act No. 1/016 of 20 April 2005 was amended following its promulgation in the sense indicated by the Government and, secondly, the provisions which expressly repeal Legislative Decree No. 1/16 of 29 May 1979.*

The Committee recalls that its previous comments referred to the following matters:

- the need to set out in the legislation the voluntary nature of agricultural work resulting from obligations relating to the conservation and utilization of the land and the obligation to create and maintain minimum areas of food crops (Ordinances Nos 710/275 and 710/276 of 25 October 1979);
- the need to repeal formally certain texts on compulsory cultivation, portage and public works (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953, and Decree of 10 May 1957);
- the need to amend sections 340 and 341 of the Penal Code, pursuant to which, in the event of begging or vagrancy, a person may be placed at the disposal of the Government for a period of between one and five years, during which time he may be forced to perform work in a prison institution.

Recalling the Government's statement, according to which the national legislation considered contrary to the Convention and dealing with matters covered by the Ministry responsible for agriculture was to be submitted for repeal at one of the subsequent meetings of the Council of Ministers, the Committee once again expresses the hope that the Government will make every effort to take concrete measures to bring the legislation into conformity with the Convention in the very near future.

The Committee is also addressing a request directly to the Government.

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

Central African Republic

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. Idleness, active population and compulsory activities. For many years, the Committee has been drawing the Government's attention to the need to formally repeal certain provisions of the national legislation which are contrary to the Convention inasmuch as they constitute a direct or indirect compulsion to work:

- Ordinance No. 66/004 of 8 January 1966 with respect to the suppression of idleness, as amended by Ordinance No. 72/083 of 18 October 1972, under which any able-bodied person aged between 18 and 55 years who cannot prove that she or he is engaged in a normal activity providing for her or his subsistence or that she or he is engaged in studies is considered to be idle and liable to a penalty of between one and three years of imprisonment;
- Ordinance No. 66/038 of June 1966 respecting the supervision of the active population, under which any person aged between 18 and 55 years who cannot justify belonging to one of the eight categories of the active population shall be called up to cultivate land designated by the administrative authorities and shall also be considered a vagabond if apprehended outside her or his *sous-préfecture* of origin and shall be liable to a sentence of imprisonment;
- Ordinance No. 75/005 of 5 January 1975 obliging all citizens to provide proof of the exercise of a commercial, agricultural or pastoral activity and making persons in violation of this provision liable to the most severe penalties; and
- section 28 of Act No. 60/109 of 27 June 1960 with respect to the development of the rural economy, under which minimum surfaces for cultivation are to be established for each rural community.

In its latest report, the Government indicates that it has decided to hold an inter-ministerial meeting with a view to sensitizing the ministers who initiated these texts about the necessity of repealing them. For practical reasons, this meeting could not be organized; nevertheless, the Labour Administration would spare no effort to bring about the repeal of the aforementioned texts. The Committee takes note of this information. ***This matter has been the subject of its comments for many years and the Committee expresses the firm hope that the inter-ministerial meeting to which the Government refers will very soon be held, and that it will lead to concrete proposals for the repeal of these texts, which are contrary to the Convention and which, although having fallen into disuse, remain in the national legislative scheme.***

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)

Article 1(a) of the Convention. Imposition of imprisonment involving an obligation to work as a sanction for expressing political views or views ideologically opposed to the established political, social and economic system.

1. In its previous comments, the Committee recalled that the Convention prohibits to impose sanctions involving an obligation to perform labour, including compulsory prison labour, on persons who, without having recourse to violence, hold or express political views, or views ideologically opposed to the established political, social or economic system. Considering that section 62 of Order No. 2772, of 18 August 1955, regulating the functioning of penal institutions and the work of detainees, provides for the obligation to work in prison, prison sentences imposed on persons who express certain political opinions or their opposition to the established system will have an impact on the application of the Convention.

In this context, the Committee has been drawing for many years the Government's attention to the need to amend or repeal the provisions of Act No. 60/169 of 12 December 1960 (dissemination of prohibited publications liable to prejudice the development of the Central African nation) and Order No. 3-MI of 25 April 1969 (dissemination of periodicals or news of foreign origin not approved by the censorship authority), which provide for sentences of imprisonment that involve compulsory labour. The Committee notes that, according to the concluding observations of the United Nations Human Rights Committee on the Application of the International Covenant on Civil and Political Rights by Central African Republic, Order No. 05.002 of 22 February 2005, promulgating the Freedom of the Press and Communication (Organization) Act, is likely to decriminalize press offences. The Committee notes that the "Committee nevertheless observes with concern that many journalists have been subjected to pressure, intimidation or acts of aggression, and even imprisonment" (Document CCPR/C/CAF/CO/2 of 27 July 2006). ***The Committee asks the Government to provide a copy of Order No. 05.002 promulgating the Freedom of the Press and Communication (Organization) Act and to indicate whether this new legislation has repealed Act No. 60/169 of 12 December 1960 and Order No. 3-MI of 25 April 1969. If not, please indicate the progress made in the process of repealing of these texts, to which the Government has been referring for a long time. Finally, the Committee would be grateful if the Government would indicate the legal provisions under which journalists have been imprisoned and the charges.***

2. ***In order to ascertain that no sentences involving the obligation to work 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 needs to be able to assess the scope of the provisions mentioned below and to this end it would be grateful if the Government would provide copies of any court decisions handed down under these provisions.***

- (i) Section 77 of the Penal Code (dissemination of propaganda for certain purposes; acts jeopardizing public safety, etc.) and sections 130–135 and 137–139 of the Penal Code (offences against persons occupying various public offices), which provide for prison sentences involving the obligation to work.
- (ii) Section 3 of Act No. 61/233 governing associations in the Central African Republic read in conjunction with section 12. Under section 12, the “founders, directors, administrators or members of any association that is unlawfully maintained or reconstituted after the act of dissolution” shall be liable to imprisonment. Under section 3 of this Act, any association which is “of such a nature as to give rise to political disturbances or cast discredit on political institutions and their functioning” shall be null and void.s

Chad

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

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

Article 2, paragraph 2(a), of the Convention. Work in the general interest imposed in the context of compulsory military service. The Committee notes Ordinance No. 001/PCE/CEDNACVG/91 reorganizing the armed forces, a copy of which was provided by the Government. It notes that military service is compulsory for every citizen of Chad. Under section 14 of the Ordinance, conscripts who are fit for service are classified into two categories: the first, the size of which is determined each year by decree, is incorporated and compelled to perform active service; the second remains at the disposal of the military authorities for two years and may be called up to perform work in the general interest by order of the Government. The Committee notes that similar provisions were contained in Ordinance No. 2 of 1961 on the organization and recruitment of the armed forces of the Republic, on which it commented for many years. Indeed, these provisions are not compatible with *Article 2, paragraph 2(a)*, of the Convention, under which, to be excluded from the scope of the Convention, any work or service exacted in virtue of compulsory military service laws must be of a purely military character. ***The Committee hopes that the Government will take the necessary measures to bring the provisions of section 14 of the Ordinance of 1991 reorganizing the armed forces and, as appropriate, any decrees issued thereunder, into conformity with the Convention.***

Article 2, paragraph 2(c). For many years, the Committee has been drawing the Government’s attention to the need to amend or repeal section 2 of Act No. 14 of 13 November 1959 authorizing the Government to take administrative measures for the relocation, internment or expulsion of persons whose activities constitute a danger for public order and security, under which persons convicted of penal offences involving prohibition of residence may be used for work in the public interest for a period, the duration of which is to be determined by order of the Prime Minister. This provision would allow the administrative authorities to impose work on persons subject to a prohibition of residence once they have completed their sentence. The Committee notes that the Government has not provided any information in this respect in its last report and that this provision is still in force. ***It hopes that the Government will take the necessary measures without further delay to amend or repeal section 2 of Act No. 14 of 13 November 1959 referred to above.***

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

Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with regret that the Government’s report received in January 2008 contains no reply to its previous comments, and that the earlier reports due for 2007, 2006 and 2005 were not received. The Committee recalls that, in its previous comments, it drew attention to the need to amend or repeal a number of texts that were inconsistent with the Convention – some of which were fairly old and were deemed by the Government to be obsolete. ***The Committee reminds the Government that it may call on the Office for technical assistance, and trusts that in its next report the Government will be in a position to inform that specific measures have been taken in response to the comments the Committee has been making for many years.***

Article 2, paragraph 2(a), of the Convention. 1. Work exacted under compulsory military service laws. The Committee has on several occasions stressed the need to amend Act No. 16 of 27 August 1981 establishing compulsory military service. According to section 1 of the Act, 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 drew the Government’s attention to the fact 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, paragraph 2(a)*, of the Convention. ***Noting the Government’s earlier statement that the practice of imposing on recruits work which is not purely military in nature has fallen into disuse and that it intended to repeal Act No. 16 of 1981 on compulsory national service, the Committee trusts that the necessary steps will be taken very shortly to amend or repeal this Act so as to bring the legislation into line with the Convention.***

2. Youth brigades and workshops. The Committee observes that the Government has never provided information on the practical effect given to Act No. 31-80 of 16 December 1980 on guidance for youth under which the party and mass organizations were gradually to create all the conditions for the formation of youth brigades and the organization of youth workshops (type of tasks performed, number of persons involved, duration and conditions of their participation, etc.). However, the Government did indicate earlier that since 1991 such practices had fallen into disuse. ***The Committee points***

out that this Act has never been formally repealed and asks the Government to indicate the measures taken or envisaged to repeal it.

Article 2, paragraph 2(d). Requisitioning of persons to perform community work in instances other than emergencies. In the comments it has been making for very many years, the Committee has pointed out that Act No. 24-60 of 11 May 1960 is inconsistent 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, paragraph 2(d)*, of the Convention, and provides that persons requisitioned who refuse to work are liable to a penalty of imprisonment of from one month to one year. **The Committee notes the Government's earlier statement that this Act has fallen into disuse, and once again urges the Government to take the necessary steps to have it repealed formally so as to avoid any uncertainty in law.**

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

Cyprus

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

Referring to its earlier comments, as well as to comments addressed to the Government under Convention No. 87, likewise ratified by Cyprus, the Committee notes **with satisfaction** that sections 79A and 79B of the Defence Regulations, which granted the Council of Ministers discretionary power to prohibit strikes in the services considered to be essential and to impose restrictions to terminate employment in such services, subject to penalties of imprisonment involving compulsory labour, were repealed by Order No. 366/2006 published in the Official Gazette on 22 September 2006.

Democratic Republic of the Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

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

Articles 1(1) and 2(1) of the Convention. 1. Work exacted for national development purposes. For several years the Committee has been requesting the Government to repeal Act No. 76-011 of 21 May 1976 concerning national development efforts and its Implementing Order No. 00748/BCE/AGRI/76 of 11 June 1976 concerning the performance of civic tasks in the context of the national food production programme. These legal texts, which aim to increase productivity in all sectors of national life, are contrary to the Convention inasmuch as they require, on pain of penal sanctions, every able-bodied adult person who is not already considered to be making his contribution by reason of his employment to carry out agricultural and other development work as decided by the Government. The legal texts also deem certain persons to be making their contribution, namely political representatives, wage earners and apprentices, public servants, tradesmen, members of the liberal professions, the clergy, students and pupils. The Committee notes that, in its latest report, the Government reiterates its previous declarations to the effect that these texts have lapsed and therefore, in effect, have been repealed. **The Committee stresses the importance of formally repealing texts which are contrary to the Convention, out of a concern for legal finality. It again expresses the hope that the Government will soon be in a position to communicate information on the measures taken to repeal or amend the abovementioned texts so as to ensure their conformity with the Convention in fact as well as in law.**

2. Work exacted as a means of levying taxes. In its previous comments the Committee drew the Government's attention to sections 18 to 21 of Legislative Ordinance No. 71/087 of 14 September 1971 on minimum personal contributions, which provide for imprisonment involving compulsory labour, upon decision of the chief of the local community or the area commissioner, of taxpayers who have defaulted on their minimum personal contributions. The Committee notes that, contrary to the information provided in its previous reports, according to which draft amendments to the provisions in question were under consideration, the Government, in its latest report, indicates that these provisions have lapsed and have therefore been effectively repealed. **Recalling that this matter has been the subject of its comments for many years, the Committee again expresses the firm hope that the Government will shortly adopt the necessary measures to ensure the conformity of the legislation with the Convention.**

Article 2(2)(c). Work exacted from detainees in preventive detention. For many years the Committee has been drawing the Government's attention to Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts, which allows work to be exacted from detainees who have not been convicted. The Government stated that, under section 64.3 of the Ordinance of 1965 governing prison labour, detainees who have not been convicted are not subject to the obligation to work. The Committee notes that in its latest report, the Government again indicates that Ordinance No. 15/APAJ has lapsed and therefore has, in effect, been repealed. **It again expresses the hope that the next time the legislation in this field is revised, the Government will adopt the necessary measures to repeal formally Ordinance No. 15/APAJ, so as to avoid any legal ambiguity.**

Article 25. Penal sanctions. In its previous comments, the Committee stressed the need to include a provision in national legislation establishing penal sanctions for persons who unlawfully exact forced or compulsory labour, in accordance with *Article 25* of the Convention. It noted that, under section 323 of the Labour Code adopted in 2002, any infringement of section 2.3, which prohibits the use of forced or compulsory labour, shall be punished by a maximum of six months' penal servitude plus a fine or by only one of these penalties, without prejudice to criminal legislation laying down more severe penalties. In this regard, the Committee expressed the hope that the Government would indicate the penal provisions which prohibit and sanction recourse to forced labour. **Since the Government has not replied to its previous observation on this matter, the Committee would be grateful if it would provide the requested information in its next report. Furthermore, it once again requests the Government to send an updated copy of the Penal Code and of the Code of Criminal Procedure.**

In addition, the Committee addresses a request directly to the Government concerning other points.

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

Dominica

Forced Labour Convention, 1930 (No. 29) (ratification: 1983)

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

Article 1(1) and Article 2(1) and (2)(a) and (d), of the Convention. National service obligations. In its earlier comments, the Committee requested the Government to take the necessary measures with a view 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 also referred to Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), likewise ratified by Dominica, which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development".

While noting the Government's previous indication that the National Service Act, 1977, has been omitted from the Revised Laws of Dominica, 1990, as well as the Government's repeated indications in its previous reports that section 35(2) of the Act has not been applied in practice, the Committee expresses firm hope 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 also addressing a request on certain other points directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very 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 Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service of young persons on completion of their studies. According to section 1 of the Act, young persons, male and female, who have completed their studies and who are surplus to the requirements of the armed forces, may be directed to work, such as development of rural and urban societies, agricultural and consumers' cooperative associations and work in production units of factories. The Committee recalled that the Conference, while adopting the Special Youth Schemes Recommendation, 1970 (No. 136), had rejected the practice of making young people participate in development activities as part of their compulsory military service, or instead of it, as being incompatible both with the present Convention and Convention 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.

The Committee previously noted the Government's indication concerning a proposal submitted to the Committee on Law Revision at the Ministry of Social Solidarity to amend the Act on general (civic) service of young persons referred to above, so as to provide for the voluntary nature of the service. The Government indicates in its latest report that the amendment of the Act is still under discussion. It also reiterates that, as regards the application of the current legislation, civic service continues to be of a voluntary nature and no application for exemption from such service submitted by any person has been refused.

The Committee expresses the firm hope that the Act concerning general (civic) service of young persons will soon be amended by clearly providing that the participation of young people in the civic service programme is voluntary, in order to ensure the observance of the forced labour Conventions. Pending the amendment, the Committee requests the Government to continue to provide information on the application of the above legislation in practice, including information on the number of persons who applied for exemption from such service and those whose applications have been refused.

The Committee is again addressing a request on certain other points 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 expressing political views opposed to the established system. For many years, the Committee has been referring to the following provisions of the Penal Code, the Public Meetings Act of 1923, the Meetings Act of 1914 and Act No. 40 of 1977 respecting political parties, which provide for penal sanctions involving compulsory labour in circumstances falling within the scope of *Article 1(a)* of the Convention:

- (a) section 98(a)bis and 98(d) of the Penal Code, as amended by Act No. 34 of 24 May 1970, which prohibit 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, encouraging calls to oppose the union of the people's

- working forces, 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;
- (b) sections 98(b), 98(b)bis and 174 of the Penal Code (concerning advocacy of certain doctrines);
 - (c) the Public Meetings Act, 1923, and the Meetings Act, 1914, granting general powers to prohibit or dissolve meetings, even in private places;
 - (d) sections 4 and 26 of Act No. 40 of 1977 respecting political parties, which prohibit the creation of political parties whose objectives are in conflict with Islamic legislation or with the achievements of socialism, or which are branches of foreign parties.

The Committee points out once again, referring also to the explanations provided in paragraphs 152–166 of its 2007 General Survey on the eradication of forced labour, that the abovementioned provisions are contrary to the Convention in so far as they provide for sanctions involving compulsory prison labour for expressing certain political views or views ideologically opposed to the established system, or for having infringed a discretionary decision by the administrative authorities depriving people of the right to make public their opinions or suspending or dissolving certain associations.

The Committee has taken due note of the adoption of Act No. 95 of 2003, to which the Government refers in its 2006 report in reply to the Committee's earlier comments. It has noted that section 2 of the Act has abolished the penalty of hard labour in the Penal Code or any other penal text, and replaced it with the penalty of "aggravated imprisonment" (as distinct from "simple imprisonment"), which involves an obligation to work. The Committee refers in this connection to the explanations in paragraph 147 of the above General Survey, in which it pointed out that the scope of the Convention is not restricted to sentences of "hard labour" or other particularly arduous forms of labour, as distinct from ordinary prison labour. The Convention makes no distinction between "hard labour" and compulsory labour exacted from people as a result of any other type of sentence and prohibits the use of "any form" of forced or compulsory labour as a sanction, as a means of coercion, education or discipline, or as a punishment in respect of the persons within the ambit of *Article 1(a), (c) and (d)*.

The Committee also draws the Government's attention to the explanations contained in paragraphs 154, 162 and 163 of the above General Survey, where it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of 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. Since opinions and views ideologically opposed to the established system are often expressed at various kinds of meetings, if such meetings are subject to prior authorization granted at the discretion of the authorities and violations can be punished by sanctions involving compulsory labour, they also come within the scope of the Convention.

The Committee has observed that the scope of the provisions referred to above is not limited to acts of violence or incitement to the use of violence, armed resistance or an uprising, but appears to provide for the punishment of the peaceful expression of non-violent views that are critical of government policy and the established political system, with penalties involving compulsory labour. ***The Committee therefore reiterates the firm hope that the necessary measures will at last be taken to bring the above provisions into conformity with the Convention, and that the Government will report on the action taken to this end. Pending the amendment of the legislation, the Committee again requests the Government to provide full information on their application in practice, supplying sample copies of the relevant court decisions and indicating the penalties imposed.***

Article 1(b). Use of conscripts for purposes of economic development. The Committee refers in this connection to its observation addressed to the Government under Convention No. 29, likewise ratified by Egypt.

Article 1(d). Penal sanctions involving compulsory labour as a punishment for participation in strikes. In comments it has been making for many years, the Committee referred to sections 124, 124A, 124C and 374 of the Penal Code, under which strikes by any public employees may be punished with imprisonment, which may involve compulsory labour. The Committee requested the Government to take the necessary measures to ensure the observance of *Article 1(d)* of the Convention, which prohibits the use of compulsory labour as a punishment for having participated in strikes.

The Committee has noted the Government's repeated indications in its reports that terms of imprisonment under the above sections of the Penal Code vary from six months to one year, which means that the imprisonment in question is "simple imprisonment" which involves no obligation to perform labour. However, the Committee previously noted that section 124 refers to imprisonment for a period of up to one year, which may be doubled in certain cases; the maximum penalty is two years under section 124A; sections 124 and 124A apply in conjunction with sections 124C and 374 of the Code. The Committee also noted previously that under sections 19 and 20 of the Penal Code, imprisonment with labour is imposed in all cases where persons are sentenced to imprisonment for one year or more. It follows from the provision of section 20 that the judge will pass a sentence of imprisonment with labour already when the term of imprisonment is one year, which is the maximum term under section 124, paragraph 1. As regards the provision of section 124, paragraph 2, concerning a possibility to double the term of imprisonment, this provision is applicable in certain cases defined in terms large enough to raise questions about their compatibility with the Convention: when such work stoppages create disorder among the people or are prejudicial to the public interest.

The Committee therefore expresses the firm hope that appropriate measures will be taken in this connection to ensure the observance of the Convention, so that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike. Having also noted the Government's indication in its previous report that no court decisions have been issued yet under the abovementioned sections of the Penal Code, the Committee hopes that, pending the amendment of the legislation, the Government will supply copies of such court decisions, if and when they are handed down.

Article 1(c) and (d). Sanctions involving compulsory labour applicable to seafarers. In its earlier comments, the Committee referred to sections 13(5) and 14 of the Maintenance of Security, Order and Discipline (Merchant Navy) Act, 1960, under which penalties of imprisonment (involving compulsory labour) may be imposed on seafarers who together commit repeated acts of insubordination. The Committee recalled in this connection that *Article 1(c) and (d)* of the Convention prohibits the exaction of forced or compulsory labour as a means of labour discipline or as punishment for having participated in strikes. The Committee observed that, in order to remain outside the scope of the Convention, punishment should be linked to acts that endanger or are likely to endanger the safety of the vessel or the life or health of persons.

The Committee previously noted the Government's indication in its report that the above Act was being amended. *Since the Government's latest report contains no new information on this matter, the Committee reiterates its hope that, in the course of the revision, the abovementioned provisions of the 1960 Act will be brought into conformity with the Convention and that the Government will supply a copy of the amended text, as soon as it is adopted.*

The Committee is also addressing a request on certain other points directly to the Government.

El Salvador

Forced Labour Convention, 1930 (No. 29) (ratification: 1995)

Articles 2(1) and 25 of the Convention. Trafficking in persons and penalties. In its previous observation, the Committee requested the Government to provide information about pending prosecutions as well as copies of any existing court rulings on the application of national legislation (sections 367 and 370 of the Penal Code) that penalizes trafficking in persons.

The Committee notes with interest the information provided by the Government in its report, according to which 11 sentences of from three to nine years' imprisonment were imposed during the period from October 2006 to March 2008. The Government indicated that the text of the court judgements in these cases could not be supplied until the Supreme Court of Justice ruled on the appeals that were pending before it. *The Committee hopes that the Government will provide a copy of the rulings mentioned as soon as possible, and that it will continue to inform about sanctions imposed on those responsible for the crime of trafficking in persons.*

The Committee also notes with interest the adoption of the Strategic Plan 2008–12 of the National Committee against Trafficking in Persons, developed with assistance from the International Organization for Migration and the International Labour Organization, which has the objective of creating conditions and instruments that can contribute to the eradication of trafficking in persons. *The Committee hopes that the Government will provide information about the actions undertaken in the different areas of the Strategic Plan, namely the legal framework, caring for victims, prevention, communication and sensitization.*

Germany

Forced Labour Convention, 1930 (No. 29) (ratification: 1956)

Article 1(1) and Article 2(1) and (2)(c), of the Convention. Work of prisoners for private enterprises. In comments made for many years on law and practice in Germany, the Committee referred to the situation of prisoners working for private enterprises. It noted, in particular, that such prisoners fall into two categories: (a) prisoners performing work on the basis of a free employment relationship outside penitentiary institutions; and (b) prisoners who are obliged to work, without their consent, in workshops run by private enterprises within state prisons, in conditions bearing no resemblance whatsoever to the free labour market. The Committee pointed out that the latter situation is incompatible with *Article 2(2)(c)* of the Convention, which expressly prohibits convicted prisoners from being hired to or placed at the disposal of private individuals, companies or associations. It also noted with regret that the requirement of the prisoner's formal consent to be employed in a workshop run by a private enterprise, laid down in section 41(3) of the Act on the execution of sentences of 1976, was suspended by the Second Act to improve the budget structure, of 22 December 1981, and had remained a dead letter since that time.

The Committee has noted the Government's indication in its 2006 and 2008 reports that, when work is carried out for private companies in prisons, only the material for the work is brought into the prisons by the companies, the supervision of the prisoners concerned being the sole responsibility of the prison staff. The Committee recalls in this connection that compulsory work or service exacted from any person as a consequence of a conviction in a court of law is compatible with the Convention only if two conditions are met: namely, that the said work or service is carried out under

the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations. The fact that prisoners remain at all times under the authority and control of the prison administration does not detract from the fact that they are “hired to” a private enterprise – a practice designated in *Article 2(2)(c)* of the Convention as being incompatible with this basic human rights instrument.

Referring to the explanations in paragraphs 59–60 and 114–120 of its General Survey of 2007 on the eradication of forced labour, the Committee points out once again that work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention. In such a situation, work of prisoners for private companies does not come under the scope of the Convention, since no compulsion is involved. The Committee has considered that, taking into account their captive circumstances, it is necessary to obtain prisoners’ formal consent to work for private enterprises both inside and outside prisons. Further, since such consent is given in a context of lack of freedom with limited options, there should be indicators which authenticate this free and informed consent. The Committee recalls that the most reliable indicator of the *voluntariness* of labour is the work performed under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health. In addition, there may be also other factors that can be regarded as objective and measurable advantages which the prisoner gains from the actual performance of the work and which could be considered in determining whether consent was freely given and informed (such as the learning of new skills which could be deployed by prisoners when released; the offer of continuing the work of the same type upon their release; or the opportunity to work cooperatively in a controlled environment enabling them to develop team skills).

The Committee notes with regret the Government’s statement in its 2006 and 2008 reports that, in view of the overall economic situation in Germany, the federal Government has still not taken any steps to bring into force a provision for the consent of prisoners to work in private workshops, as laid down in section 41(3) of the Act on the execution of sentences of 1976, or any steps to raise prisoners’ remuneration or include them in the pension insurance scheme.

The Committee notes the Government’s indication in its latest report that, throughout the federal territory, an average of 11.61 per cent of prisoners worked for private enterprises in 2006, though figures for the *Länder* ranged from 2 up to 20 per cent. The Government states that the work situation in prisons is characterized by a job shortage, and the prison authorities are therefore striving to increase the percentage of private companies in prisons to bring down the number of unemployed. As regards the wages earned by prisoners working in private workshops, the Committee previously noted the Government’s view that the existing level of prisoners’ remuneration in Germany was still insufficient and that, in spite of the Federal Constitutional Court’s decision of 24 March 2002, which currently precludes the success of any policy initiatives aimed at further increasing prisoners’ remuneration, the Government would nevertheless continue to promote its view and monitor closely the budgetary situation in the *Länder*. The Government also expressed its intention to pursue its efforts as regards the inclusion of prisoners in the state pension schemes. As regards conditions of work of prisoners working for private enterprises, the Committee has noted from the Government’s reports that their hours of work generally correspond to the regular weekly working hours in the public service, and the statutory safety and health and accident prevention provisions are also fully applied.

While having duly noted this information, the Committee reiterates its concern that, more than 50 years after the ratification of this fundamental human rights Convention, a significant proportion of the prisoners working for private enterprises in Germany is hired to private enterprises which use their labour without their consent and in conditions bearing no resemblance whatsoever to the free labour market. While noting the Government’s repeated statement in its reports that the Federal Constitutional Court has ruled that compulsory work of prisoners for private companies is compatible with the Basic Law, the Committee points out once again that, as explained above, the situation is still not in conformity with the Convention, both in legislation and in practice.

Noting the Government’s view expressed in its reports that the work of prisoners for private companies should be adapted as closely as possible to normal working conditions – so as to facilitate the prisoners’ reinsertion into working life – the Committee expresses the firm hope that the necessary measures will at last be taken, both at the federal and at the Länder levels, to ensure that free and informed consent is required for the work of prisoners in private enterprise workshops inside prison premises, so that such consent is free from the menace of any penalty and authenticated by the conditions of work approximating a free labour relationship, as well as by other objective and measurable factors referred to above. The Committee hopes, in particular, that the provision for the consent of prisoners to work in private workshops, already made in section 41(3) of the 1976 Act referred to above, will at last be brought into operation, together with the provisions regarding their contribution to the old-age pension scheme, as foreseen by section 191 et seq. of the same Act, and that the Government will soon be in a position to report the progress made in this regard.

Ghana

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

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

Article 1(a), (c) and (d) of the Convention. 1. In comments made for a considerable number of years, the Committee has referred to provisions of the Criminal Code, the Newspaper Licensing Decree, 1973, the Merchant Shipping Act, 1963, the Protection of Property (Trade Disputes) Ordinance and the Industrial Relations Act, 1965, under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for non-observance of restrictions imposed by discretionary decision of the executive on the publication of newspapers and the carrying on of associations, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes. Having requested the Government to adopt the necessary measures in regard to these provisions to ensure that no form of forced or compulsory labour (including compulsory prison labour) might be exacted in circumstances falling within *Article 1(a), (c) or (d)* of the Convention, the Committee noted the Government's statement that the National Advisory Committee on Labour was discussing the comments of the Committee of Experts and that it was the wish of the Government to bring the legislation concerned into conformity with the Convention. The Government also indicated in its report received in 1996 that the National Advisory Committee on Labour concluded discussions on the Committee of Experts' comments and submitted recommendations to the Minister in March 1994 designed to bring domestic legislation into conformity with ILO standards, and the comments of the Committee of Experts had been submitted to the Attorney-General for a closer study and expert comments.

In its reports received in 1999 and 2001, the Government has indicated that the action of the Attorney-General to bring the legislation into conformity with the Convention in accordance with the recommendations of the National Advisory Committee on Labour has been halted in view of the proposed review and codification of the labour laws. It has also indicated that the tripartite National Forum that includes representatives of the Attorney-General's Office, the National Advisory Committee on Labour and the employers' and workers' organizations, would consider the comments made by the Committee of Experts regarding the application of the Convention.

The Government indicates in its latest report that the National Forum has already codified all the country's labour laws into a single labour bill, which is being considered by the Cabinet and will be forwarded to Parliament to be passed into law. ***The Committee expresses firm hope that the necessary action will at last be taken on the various points which are once again recalled in detail in a request addressed directly to the Government.***

2. The Committee previously noted the adoption of the Political Parties Law, 1992, the Emergency Powers Act, 1994, and the Public Order Act, 1994, which gave rise to a number of questions under the Convention that are also reiterated in the request addressed directly to the Government.

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

Guyana

Forced Labour Convention, 1930 (No. 29) (ratification: 1966)

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

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. In its earlier comments, the Committee referred to observations concerning the application of the Convention by Guyana received from the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in 2003 and forwarded to the Government on 13 January 2004, which contained allegations that there was evidence of trafficking for forced prostitution and reports of child prostitution in cities and remote gold mining areas.

The Committee notes the adoption of the Combating of Trafficking in Persons Act, 2005, as well as the Government's indication in the report that 300 volunteers have been trained to identify cases of trafficking. ***The Committee would appreciate it if the Government would provide information on the following matters:***

- ***the activities of the task force to develop and implement a national plan for the prevention of trafficking in persons, to which reference is made in section 30 of the above Act, supplying copies of any relevant reports, studies and inquiries, as well as a copy of the National Plan;***
- ***statistical data on trafficking which is collected and published by the Ministry of Home Affairs in virtue of section 31 of the Act;***
- ***any legal proceedings which have been instituted as a consequence of the application of section 3(1) of the 2005 Act on penalties, supplying copies of the relevant court decisions and indicating the penalties imposed, as well as the information on measures taken to ensure that this provision is strictly enforced against perpetrators, as required by Article 25 of the Convention.***

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

Hungary

Forced Labour Convention, 1930 (No. 29) (ratification: 1956)

Article 2(2)(c) of the Convention. 1. *Work of prisoners for private companies.* In its earlier comments, the Committee referred to the national provisions allowing the law enforcement authorities to conclude agreements concerning the employment of prisoners not only with public bodies or institutions, but also with private companies (section 101(3) of Order No. 6/1996 (VII 12) of the Ministry of Justice on the implementation of provisions concerning prison sentences and detention). It noted that Law-Decree No. 11 of 1979 on the execution of prison sentences provides for an obligation of convicts to work (section 33(1)(d)). The Committee also noted that the employment-related rights of prisoners are governed by the general provisions of labour law (subject to certain deviations), but their minimum

remuneration corresponds only to one third of the general minimum wage (section 124(2) of the above Order No. 6/1996 (VII 12)) and they do not acquire pension rights under the existing legislation.

The Committee noted the Government's repeated statement in its reports that prisoners are in a legal relationship with a penitentiary institution and are not directly employed by a third party, and perform labour under the supervision and control of the law enforcement bodies. It also noted the Government's statement that the principal goal of employing inmates is to promote their rehabilitation and reintegration into society, as well as the Government's view (also reiterated in its latest report) that the work performed by convicts (including the "public utility labour") is covered by the exception provided for in *Article 2(2)(c)* and therefore should not be considered as forced or compulsory labour.

The Committee recalled, however, that *Article 2(2)(c)* of the Convention expressly prohibits that convicted prisoners are hired to or placed at the disposal of private individuals, companies or associations, in a sense that the exception from the scope of the Convention provided for in this Article for compulsory prison labour does not extend to work of prisoners for private companies, even under public supervision and control. Under this provision of the Convention, work or service exacted from any person as a consequence of a conviction in a court of law is excluded from the scope of the Convention only if two conditions are met, namely: (i) that the said work or service is carried out under the supervision and control of a public authority; and (ii) that the said person is not hired to or placed at the disposal of private individuals, companies or associations. The Committee has always made it clear that the two conditions are applied cumulatively; i.e. the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense the Government from fulfilling the second condition, namely that the person is not hired to or placed at the disposal of private individuals, companies or associations. The Committee therefore asked the Government to take the necessary measures to ensure observance of the Convention, such as, e.g., to provide that any prisoners working for private companies offer themselves voluntarily without being subjected to pressure or the menace of any penalty and, given their conditions of captive labour, subject to guarantees as to wages and other conditions of employment approximating a free employment relationship.

The Government reiterates in its latest report that, in national law and practice, contracts exist only between the economic organizations of penal authorities and private companies, while prisoners, who are under an obligation to perform prison labour, are in relation solely with the economic organizations of penal authorities; however, general labour legislation is applicable with regard to their conditions of work (with certain differences). It follows from the sample contracts concluded between the economic organizations of penal authorities and private companies, supplied by the Government, that the economic organization of penal authorities is responsible for providing prison workforce for the production, which will be organized under the job description and instructions as well as regular quality control of the private company, which will also supply all the necessary raw materials and tools and provide training for the workers; the private company will also pay a rental fee for the premises provided for the production and the "fee for the leased work". It is specifically mentioned that the private company shall continuously control the production through its technical specialists, that the economic organization of penal authorities shall obey the instructions given by the private company, and that the contracting parties agree that they will cooperate during the term of the "lease work agreement". The Government reiterates, however, that prisoners remain at all times under the supervision and control of the staff of the economic organization of penal authorities, in accordance with the provisions of the Convention.

In this connection, the Committee draws the Government's attention to the explanations concerning the scope of the terms "hired to or placed at the disposal of" in paragraphs 56–58 and 109–111 of the Committee's 2007 General Survey on the eradication of forced labour and observes that these terms cover not only situations where prisoners are "employed" by the private company or placed in a position of servitude in relation to the private company, but also situations where the companies do not have absolute discretion over the work performed by the prisoner, since they are limited by the rules set by the public authority. The Committee also refers to paragraph 106 of its 2007 General Survey, where it considered that the prohibition for prisoners to be placed at the disposal of private parties is absolute and not limited to work outside penitentiary establishments, but applies equally to workshops operated by private undertakings inside prisons.

While noting the Government's indication that, in conformity with the first condition set out in *Article 2(2)(c)* of the Convention, the work is carried out "under the supervision and control of a public authority", the Committee observes that, as regards the second condition, namely, that the person "is not hired to or placed at the disposal of private individuals, companies or associations", contracts for the use of prison labour concluded with private companies in Hungary correspond in all respects to what is expressly prohibited by *Article 2(2)(c)*, namely, that a person is "hired to" a private company. It is in the very nature of such hiring agreements (or "lease work agreements", as they are called in the sample contracts supplied by the Government) to include mutual obligations between the prison authorities (or their economic branches) and the private company.

Referring to the explanations in paragraphs 59–60 and 114–120 of its 2007 General Survey referred to above, the Committee points out once again that work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves voluntarily, without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention. In such a situation, work of prisoners for private companies does not come under the scope of the Convention, since no compulsion is involved. The Committee has considered that, taking into account their captive circumstances, it is necessary to obtain prisoners' formal consent to work for private enterprises both inside and outside

prisons. Further, since such consent is given in a context of lack of freedom with limited options, there should be indicators which authenticate this free and informed consent. The Committee recalls that the most reliable indicator of the voluntariness of labour is the work performed under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health. In addition, there may also be other factors that can be regarded as objective and measurable advantages which the prisoner gains from the actual performance of the work and which could be considered in determining whether consent was freely given and informed (such as the learning of new skills which could be deployed by prisoners when released; the offer of continuing the work of the same type upon their release; or the opportunity to work cooperatively in a controlled environment enabling them to develop team skills).

Noting with interest the Government's indication in the report that, in the course of the preparation of the comprehensive amendment of Law-Decree No. 11 of 1979 on the execution of prison sentences, the provisions of the Convention are being taken into account, the Committee expresses the firm hope that the necessary measures will be taken to ensure that free and informed consent is required for the work of prisoners for private companies both inside and outside prison premises, so that such consent is free from the menace of any penalty and authenticated by the conditions of work approximating a free labour relationship, as well as by other objective and measurable factors referred to above. The Committee requests the Government to supply a copy of the revised penitentiary legislation, as soon as it is adopted.

2. *"Public utility labour" performed by convicted persons placed at the disposal of private parties.* In its earlier comments, the Committee referred to the Penal Code provisions concerning "public utility labour", which shall be performed, as a penal sanction, without deprivation of a person's freedom and without remuneration, but may be replaced by confinement in prison, if the convicted person fails to fulfil his or her labour obligations (sections 49 and 50 of the Penal Code). The Committee noted the Government's indications that the work to be performed as public utility labour must be of public interest and that the employer (which may not only be a public institution, but also a private business organization) shall observe the safety provisions and ensure the same working conditions as those enjoyed by workers employed on the basis of a contract.

The Committee notes the Government's indications concerning the National Strategy of Civil Crime Prevention and the adoption of Government decision No. 1036/2005 (IV.21) on tasks to be implemented in 2005–2006 in this connection, including the organization of special programmes for persons sentenced to public utility labour.

The Committee previously noted the Government's indication in its report that convicted persons comply with their working obligations voluntarily and can choose freely between the two kinds of punishment. *Referring to the above considerations in point 1 of the present observation concerning the prohibition contained in Article 2(2)(c), as well as to the explanations in paragraphs 123–128 in its 2007 General Survey on the eradication of forced labour, the Committee hopes that the Government will indicate, in its next report, how free choice between the two kinds of punishment is guaranteed and whether, in the course of drafting the new penitentiary legislation, a requirement of the voluntary consent of convicts to work for a private employer is taken into account. Please also provide information on the practical implementation of special programmes for carrying out public utility labour referred to above, including a list of authorized associations or institutions using such labour and giving examples of the type of work involved.*

Indonesia

Forced Labour Convention, 1930 (No. 29) (ratification: 1950)

Articles 1(1), 2(1) and 25 of the Convention. 1. *Trafficking in persons.* In its previous observation the Committee, noting the persistence of the practice of trafficking in persons in Indonesia, and the gravity and extent of the phenomenon, expressed the hope that the Government would provide detailed information concerning its efforts to combat this problem, particularly with regard to prevention and protection measures and to the punishment of perpetrators.

The Committee notes the information supplied by the Government in its report concerning the implementation of the National Plan of Action for the Elimination of Trafficking in Women and Children, and, in particular, the information on the prevention and protection measures, law enforcement, as well as intersector and intergovernmental coordination and cooperation. The Committee notes the "challenges" in relation to efforts in Indonesia to combat trafficking in persons, which the Government identified in its national report submitted in March 2008 to the Working Group on the Universal Periodic Review of the UN Human Rights Council (A/HRC/WG.6/1/IDN/1). *The Committee hopes that the Government will provide more specific and detailed information about task forces required to be set up under section 58(2) and (3) of Law No. 21/2007 to implement policies, programmes, and activities to prevent trafficking in persons, particularly at the regional (provincial and district) and municipal levels of government, including information about their operation and functioning and the amount and adequacy of budgetary allocations they receive, and, in general, information about the attention being paid to the problem of trafficking at that level of government.*

The Committee notes the information in the Government's report on recent law enforcement efforts, including the references to judicial cases involving the arrest, prosecution and punishment of perpetrators. *The Committee hopes that the Government will continue to provide information about the judicial proceedings instituted under Law No. 21/2007, as well as, more generally, information regarding the enforcement by police and judicial authorities of criminal*

provisions relating to trafficking in persons, including statistics about prosecutions, convictions and sentences imposed.

The Committee notes the reference in the Government's report to Decree No. 10 of July 2007 of the Chief of the Indonesian National Police, issued under section 45 of Law No. 21/2007 in relation to establishment of "special service rooms" in local police stations in every province and city to protect victims of trafficking and to examine witnesses in trafficking investigations. The Government also refers to Regulation No. 9/2008 promulgated under section 46(2) of Law No. 21/2007 on the establishment of "integrated service centers" in every city and regency to protect victims and witnesses in trafficking cases. The Committee also notes the reference to an undated multi-stakeholder initiative that entails disseminating information to and sensitizing prosecutors regarding Law No. 21/2007. ***The Committee hopes that the Government will continue to provide information about the operation and functioning of these special service units, particularly their use in criminal investigations and witness protection programmes, and that it will also supply copies of the provisions referred to above. The Committee repeats its request for information on the operation of the Witness and Victim Protection Institution (LPSK), including a copy of the annual report which the LPSK is required to submit to the House of Representatives under article 13(2) of Law No. 13/2006.***

2. *Vulnerable situation of Indonesian migrant workers with regard to the illegal exaction of forced labour.* In its previous observation the Committee noted, inter alia, that Law No. 39/2004 on the placement and protection of Indonesian workers abroad does not appear to provide effective protection for migrant workers against the risks of exploitation due to its vague provisions and its numerous shortcomings and that, despite these and other measures adopted by the Government, many Indonesian workers continue to turn to illegal networks, thereby increasing the risk of exploitation. ***The Committee hopes that the Government will provide detailed information on tangible measures it is taking to improve the protection of Indonesian migrant workers against exploitation and the imposition of forced labour, both in Indonesia and following their departure abroad.***

The Committee notes the references in the Government's report to the issuance of several legal provisions to implement Law No. 39/2004, including: Presidential Decree No. 81/2006 (and the establishment under that Decree of a coordinating body, the National Board for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI)); Presidential Instruction No. 6/2006 on reform of the policy on the protection and placement of Indonesian workers abroad; and Decree No. 18/2007 of the Ministry of Manpower and Transmigration. The Government refers to several measures taken pursuant to Presidential Instruction No. 6/2006, including: the establishment of citizens' advisory services in six destination countries; allocations made under the state budget to "Indonesian Labour" to subsidize the printing of "overseas workers cards" and the costs of pre- and post-departure training programmes; and the establishment of "integrated service rooms" at airport gates. The Committee also notes the Government's reference to the increased number of Indonesian labour attachés assigned to destination countries.

The Committee notes that the measures noted above appear to place greater emphasis on addressing the shortcomings of worker placement and placement-related procedures than on worker protections. ***The Committee therefore hopes that the Government will provide greater information about the protective aspects of the provisions noted above and about the measures being taken to implement them, and that it will also supply copies of those provisions. The Committee would be grateful for more specific information about the activities of the National Board for the Placement and Protection of Indonesian Overseas Workers as they relate to the protection of Indonesian migrant workers. Please also provide more detailed information about measures being taken or contemplated to protect Indonesian migrant workers by way of controlling the exploitative aspects of activities of private recruitment agencies including their fee-charging practices. The Committee hopes that the Government will continue to report on all measures being taken or envisaged to overcome the shortcomings of the legislation in force, particularly Law No. 39/2004.***

In its previous observation the Committee noted that the Memorandum of Understanding (MoU) concluded with the Government of Malaysia in May 2006 does not guarantee standard labour protections; does not include measures to prevent and respond to cases of abuse; and contains provisions that contribute to maintaining Indonesian migrant workers in situations of great vulnerability, particularly through its authorization for employers to confiscate and hold workers' passports. The Committee notes with concern that in its latest report the Government, in referring to this authorization under the MoU, appears to justify the practice as having a protective purpose and as benefiting the workers concerned, and it also refers to a makeshift programme involving the printing of a worker ID card "as a passport substitute". ***The Committee hopes that the Government will take steps without delay to amend its MoU with the Government of Malaysia to prohibit employer withholding of worker passports, to eliminate all other restrictions on the fundamental rights of domestic and other migrant workers, to guarantee standard labour protections, and to provide for measures to prevent and respond to cases of worker abuse. The Committee trusts that the Government will ensure that similar safeguards and protections are included in all other such bilateral agreements, including the 13 agreements referred to by the Government in its report. The Committee would be grateful for information from the Government in its next report indicating the progress made, as well as copies of all memoranda of understanding it refers to in its report.***

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)

The Committee notes the Government's report, as well as copies of relevant legislative texts attached as appendices. The Committee also notes the discussion of the Committee on the Application of Standards which took place during the 97th Session of the Conference in June 2008, and the conclusions of that Committee, which, inter alia, called upon the Government to supply detailed information to the Committee in its next report on the progress made in bringing its legislation into conformity with the requirements of the Convention. The Committee notes, however, that the Government's report contains little new information in reply to the Committee's earlier comments. ***The Committee therefore hopes that the Government's next report will contain full particulars on the matters raised by the Committee in its earlier comments and discussed below. The Committee also hopes that the Government will consider the possibility of availing itself of ILO technical assistance, in order to facilitate the process of bringing its law and practice into conformity with the Convention.***

Article 1(a) of the Convention. Use of forced labour as a punishment for expressing views opposed to the established political, social or economic system. 1. The Committee notes the text supplied by the Government, indicating that Presidential Decree No. 11 of 1963 on the eradication of subversive or rebellious activities, which contained provisions punishing the distortion, undermining or deviation from the ideology of Pancasila State or the broad policy lines of the State, was repealed by Law No. 26 of 1999. While considering this to be a step forward, the Committee observes, as it has in comments addressed to the Government since 2003, that sentences of imprisonment (which involve compulsory prison labour under articles 14 and 19 of the Criminal Code and articles 57(1) and 59(2) of the Prisons Regulations) may be imposed under sections 107(a), 107(d) and 107(e) of Law No. 27 of 1999 on Revision of the Criminal Code in relation to crimes against state security, upon any person who disseminates or develops the teachings of "Communism/Marxism-Leninism" orally, in writing or through any media, or establishes an organization based on such teachings, or establishes relations with such an organization, with a view to replacing Pancasila as the State's foundation. The Committee has repeatedly requested that the Government take necessary measures to repeal or amend sections 107(a), 107(d) and 107(e) of Law No. 27/1999, in order to bring the legislation into conformity with the Convention.

The Committee notes that once again the Government's report contains no information about steps being taken or contemplated towards that end. It notes the statement of the Government representative during the discussion of this case by the Conference Committee in June 2008 that Law No. 27/1999 was developed by members of Parliament and adopted through a national consensus and therefore remained valid. While noting this statement, the Committee shares the view of the Conference Committee that compliance with ratified Conventions requires steps beyond reliance on national consensus. ***The Committee expresses the firm hope that the necessary measures will be taken without delay to bring sections 107(a), 107(d) and 107(e) of Law No. 27/1999 into conformity with the Convention, and that the Government will soon be in a position to report on progress achieved in that regard.***

2. In its previous comments the Committee has noted that Law No. 9 of 1998 on the Freedom of Expression in Public imposes certain restrictions on the expression of ideas in public during public gatherings, demonstrations, parades, etc., and that sections 15, 16, and 17 of the Act provide for the enforcement of those restrictions with penal sanctions by way of reference to "applicable" criminal provisions. The Committee requested the Government to identify those sanctions, supplying copies of the relevant texts, and to provide information on the application of Law No. 9/1998 in practice, including copies of court decisions defining or illustrating its scope, so as to enable the Committee to assess its conformity with the Convention.

The Committee notes that during the discussion of this case by the Conference Committee in June of 2008, the Government representative stated only that sanctions for non-compliance with Law No. 9/1998 were contained in sections 15, 16 and 17 of that Act. The Committee notes that the Government has supplied a copy of the Act, but once again has provided no information that could identify the applicable criminal penalties, as referred to in sections 15, 16 and 17; nor has it provided information on the application of the Act in practice, including copies of court decisions defining or illustrating its scope. ***The Committee trusts that the Government will provide the information requested above in its next report.***

3. The Committee notes the statement of the Government's representative in the Conference Committee indicating that the draft revision of the Criminal Code was still not completed. In its previous observation, the Committee noted information indicating that the Constitutional Court, in its ruling on Case No. 6/PUU-V/2007, found articles 154 and 155 of the Criminal Code to be contrary to the Constitution of 1945. These articles establish the penalty of imprisonment (involving compulsory labour) for up to seven years and four and a half years, respectively, for a person who publicly gives expression to feelings of hostility, hatred or contempt against the Government (article 154) or who disseminates, openly demonstrates or puts up a writing containing such feelings, with the intent to give publicity to the contents or to enhance the publicity thereof (article 155). The Committee further noted that, in ruling No. 013-022/PUU-IV/2006, the Constitutional Court found that it was inappropriate for Indonesia to maintain articles 134, 136bis and 137 of the Criminal Code (respecting deliberate insults against the President or the Vice-President), since they negate the principle of equality before the law, diminish freedom of expression and opinion, freedom of information and the principle of legal certainty. Accordingly, in the view of the Constitutional Court, the new draft text of the Criminal Code must also exclude provisions that are identical or similar to those of articles 134, 136bis and 137 of the Criminal Code.

Furthermore, the Committee noted the cases of several persons convicted to heavy sentences of imprisonment, involving compulsory labour, for the peaceful expression of their political opinions, their peaceful support to an independence movement, or for the simple fact of having raised a separatist flag in the eastern provinces of Papua and West Irian Jaya, under the above provisions of the Criminal Code and article 106, under which a maximum sentence of imprisonment of 20 years may be imposed for an attempt to separate part of the territory of the State.

The Committee once again expresses its deep concern and hopes that the Government will take into account the rulings of the Constitutional Court in the context of the adoption of the new Criminal Code. It requests the Government to provide a copy of the Code as soon as it has been adopted. In the meantime, it requests the Government to indicate the manner in which articles 106, 134, 136bis and 137 of the Penal Code are applied in practice, with copies of any court rulings issued thereunder.

Article 1(d). Recourse to compulsory labour as a punishment for having participated in strikes. In its previous observation the Committee requested the Government to take appropriate measures to amend sections 139 and 185 of the Manpower Act so as to limit their scope to essential services in the strict sense of the term and to ensure that no penalty involving compulsory labour can be imposed on persons participating in strikes, as required by the Convention. The Committee notes the conclusions of the Conference Committee referred to above, in which it urged the Government to take, without delay, all the necessary measures to eliminate sanctions involving compulsory labour that could be imposed for participation in strikes, so as to bring its law and practice into conformity with the Convention.

The Committee once again expresses the hope that the Government will take measures without further delay to amend sections 139 and 185 of the Manpower Act so as to ensure that no penalty involving compulsory labour can be imposed on persons participating in strikes. While awaiting this amendment, the Committee once again requests the Government to provide information on the effect given in practice to articles 139 and 185, including copies of court decisions defining or illustrating their scope.

Jamaica

Forced Labour Convention, 1930 (No. 29) (ratification: 1962)

Article 1(1) and Article 2(1) and (2)(c), of the Convention. Work of prisoners for private companies. In its earlier comments, the Committee referred to section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991, under which no inmate may be employed in the service of, or for the private benefit of, any person, except with the authority of the Commissioner or in pursuance of special rules. The Committee noted that, under section 60(b) of the Corrections Act, as amended by the Corrections (Amendment) Act, 1995, the Minister may establish programmes under which persons serving a sentence in a correctional institution may be directed by the superintendent to undertake work in any company or organization approved by the Commissioner, subject to such provisions as may be prescribed relating to their employment, discipline and control, and such work may be within the centre or institution or outside its limits. The Committee also noted the information concerning the functioning of the Correctional Services Production Company (COSPROD), as well as the Government's repeated statement that, under this programme, some inmates had been working under the conditions of a freely accepted employment relationship, with their formal consent and subject to guarantees regarding the payment of normal wages.

The Committee notes the Government's statement in its latest report that the Department of Correctional Services has not yet entered into any discussion regarding a change in a policy for the issues raised. The Government confirms its previous indication that there is no activity which is undertaken through forced labour and that participation of inmates in the work on farms managed by COSPROD is voluntary.

The Committee expresses the firm hope, referring also to the explanations provided in paragraphs 59–60 and 114–120 of its General Survey of 2007 on the eradication of forced labour, that section 155(2) of the Correctional Institution (Adult Correction Centre) Rules, will be amended so as to ensure that no prisoners may work for private individuals, companies, etc., except where they do so voluntarily, with their free and formal consent and under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health, in order to bring this provision into conformity with the Convention and the indicated practice. The Committee again requests the Government to provide a copy of any special rules referred to in the above section 155(2) and to continue to provide information on its application in practice, pending the amendment.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers. For a number of years, the Committee has been referring to the following provisions of the Jamaica Shipping Act, 1998, under which certain disciplinary offences are punishable with imprisonment (involving an obligation to perform labour under the Prisons Law):

- section 178(1)(b), (c) and (e), which provides for penalties of imprisonment, inter alia, for wilful disobedience or neglect of duty or combining with any of the crews to impede the progress of the voyage; an exemption from this

liability applies only to seafarers participating in a lawful strike after the ship has arrived and has been secured in good safety to the satisfaction of the master at a port, and only at a port in Jamaica (section 178(2));

- section 179(a) and (b), which punishes with similar penalties the offences of desertion and absence without leave.

The Committee noted the Government's indications in its 2004 report that the Maritime Authority had given written instructions to the Attorney General's Department and the Office of the Parliamentary Council to amend the above sections of the Shipping Act, 1998, in order to make its provisions compatible with the Convention. In its latest report, the Government states again that no response has been received from the abovementioned bodies on the Maritime Authority's request.

The Committee recalls, referring also to paragraphs 179 to 181 of its 2007 General Survey on the eradication of forced labour, that provisions under which penalties of imprisonment (involving an obligation to perform labour) may be imposed for desertion, absence without leave or disobedience are incompatible with the Convention. Only sanctions relating to acts that are likely to endanger the safety of the ship or the life or health of persons (e.g. as provided for in section 177 of the 1998 Shipping Act) have no bearing on the Convention.

The Committee trusts that the necessary measures will at last be taken to bring the legislation into conformity with the Convention, e.g. by limiting the scope of the relevant provisions of the Shipping Act, 1998, as indicated above, and that the Government will soon be in a position to report the progress made in this regard.

Japan

Forced Labour Convention, 1930 (No. 29) (ratification: 1932)

1. In its earlier comments, the Committee examined the issues of sexual slavery (so-called "comfort women") and industrial slavery during the Second World War. The Committee refers in this connection to its earlier considerations concerning the limits of its mandate in respect of these historical breaches of the Convention. In 2006, the Committee in its observation firmly repeated its hope that the Government would in the immediate future take measures to respond to the claims of the surviving victims, the number of whom have continued to decline with the passing years. The Committee also requested the Government to continue to inform it about any recent judicial decisions and related developments. In its 2007 observation, the Committee, in addition, requested the Government to respond to the communications by the workers' organizations.

2. The Committee notes the information communicated by the Government in its reports received on 10 July 2008, 1 September 2008 and 17 October 2008, as well as the Government's electronic communications dated 10 and 18 October 2008.

Comments received from workers' organizations

3. In 2008, the Committee has received further information from a number of workers' organizations, such as:

- All-Japan Shipbuilding and Engineering Union (dated 25 May and 21 August 2008);
- Tokyo Regional Council of Trade Unions (Tokyo-Chihyo) (dated 27 May and 20 August 2008);
- All-Japan Dockworkers Union-Nagoya Branch (dated 25 May and 2 June 2008);
- Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) (dated August 2008);
- Heavy Industry Labor Union (Japan) (dated 25 August 2008);
- Teachers' Union of Nagoya Municipal High School (dated 26 August 2008);
- Aichi Union Seibonoie Branch (dated 25 August 2008);
- International Trade Union Confederation (ITUC) (dated 2 September 2008);
- Japanese Trade Union Confederation (JTUC-RENGO) (dated 17 September 2008).

Copies of these communications were forwarded to the Government for any comments it might wish to make. The Committee notes the Government's response to these communications received on 19 November 2008.

4. The above communications of the workers' organizations referred, inter alia, to the status of cases pending in Japanese courts involving claims by victims of wartime industrial forced labour. The Committee notes that, according to the information communicated by the Tokyo Regional Council of Trade Unions (Tokyo-Chihyo), as of 31 July 2008 there were five such cases pending in the appellate courts. In all of these cases the lower courts had dismissed the claims, either on procedural grounds as time-barred and barred by state immunity or as having been waived by post-war treaties and communiqués. In two cases, final judgements dismissing the appeals were issued in July of 2008 by the Supreme Court of Japan, including the Niigata case, which involved a favourable decision on 26 March 2004 by the Niigata District Court and a judgement awarding compensation of 8 million yen to each victim, but which was subsequently overturned by the Tokyo High Court on 14 March 2007.

5. The Committee notes the indication of the Tokyo Regional Council of Trade Unions (Tokyo-Chihyo), in its communication dated 20 August 2008, that in one of the cases pending before the Fukuoka High Court, the court issued a

ruling on 21 April 2008, in which it recommended that the parties, including the Government of Japan as one of the defendants, seek reconciliation and an amicable settlement of the claims involved. The All-Japan Dockworkers Union-Nagoya Branch, in its communication dated 2 June 2008, referred to a petition for a recommendation for reconciliation and amicable settlement lodged with the Japan Supreme Court, in the case against the Government of Japan and Mitsubishi Heavy Industries, Ltd, brought by Korean victims of wartime industrial forced labour, the petition having been lodged after the Government of Japan declined to respond to a recommendation for settlement made by the Nagoya High Court in its judgement on 31 May 2007.

6. The communications from the workers' organizations also referred to the issue of military sexual slavery as it continues to be taken up by several UN bodies, in particular, in the form of recommendations of the Working Group (of the UN Human Rights Council) on the Universal Periodic Review adopted in May 2008 (A/HRC/8/44, paragraph 60); as an item on the List of Issues taken up by the UN Human Rights Committee (CCPR/C/JPN/Q/5), in connection with its consideration in September 2008 of the Government's fifth periodic report under the International Covenant on Civil and Political Rights; and in recommendations of the UN Committee against Torture in connection with its consideration, in May 2007, of the first periodic report of the Government under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/JPN/CO/1, paragraphs 12 and 24).

7. The communications from the workers' organizations also referred to recent motions and resolutions on the issue of military sexual slavery adopted by several parliamentary bodies, which call for further measures to be taken by the Government of Japan. These include: a unanimous resolution passed by the lower house of the Netherlands Parliament on 20 November 2007; Motion 291 passed by the House of Commons of Canada on 28 November 2007; a joint motion for a resolution on "Justice for 'Comfort Women'", adopted by the European Parliament on 13 December 2007; as well as resolutions adopted by the Japanese District Councils of Takarazuka and Tokyo Kiyose on 25 March 2008 and 25 June 2008, respectively, urging the Government to take measures to examine and reveal the historical truth about the issue, to restore dignity and justice to the victims, to provide them with compensation, and to further educate the public.

Government's response

8. The Committee notes the Government's indication, in its report received on 1 September 2008, that as of 31 May 2008 there were 13 cases still pending in the Japanese courts involving claims by victims of military sexual slavery and wartime industrial forced labour (one and 12 cases, respectively). According to the report, during the period from 1 June 2006 to 31 May 2008 the courts pronounced on these issues in three "comfort women" cases (two cases by the Supreme Court and one at the district court level) and in 17 "conscripted forced labour" cases (seven cases by the Supreme Court, five judgements at the high court level, and five at the district court level). The Government also indicates that: "In all these cases, the courts have dismissed the plaintiffs' claims for compensation against the GOJ in accordance with domestic law and international law including the relevant treaties settling war-related issues".

9. The Committee notes the Government's indications in its report received on 1 September 2008 and in its electronic communications of 10 and 18 October 2008 that, with regard to the issue of "comfort women", the position of the Government expressed in the August 1993 statement of the then Chief Cabinet Secretary, Yohei Kono, in connection with a report on the findings of a government inquiry, had remained unchanged and continued to represent the Government's present position on this matter, and that the new Prime Minister Taro Aso had recently reaffirmed his support for this statement. The statement reads in part as follows:

Undeniably, this was an act, with the involvement of the military authorities of the day, that severely injured the honour and dignity of many women. The Government of Japan would like to take this opportunity once again to extend its sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as comfort women ... It is incumbent upon us, the Government of Japan, to continue to consider seriously, while listening to the views of learned circles, how best we can express this sentiment ...

10. The Committee has noted from the Government's statements in its report received on 1 September 2008, as well as in its replies to and comments on the recommendations of UN bodies referred to above, that with regard to non-legal measures to respond to the claims of surviving victims of wartime industrial forced labour and military sexual slavery and to meet their expectations, the Government has placed a heavy, almost exclusive emphasis on the Asian Women's Fund (AWF) and its related activities, an initiative launched in 1995 and continued until the Fund was dissolved on 31 March 2007, and that the AWF appears to constitute the sole measure the Government has contemplated taking to fulfil its acknowledged moral responsibility to the victims. The Committee recalls that in its 2001 and 2003 observations it considered that the rejection by the majority of former "comfort women" of monies from the AWF because it was not seen as compensation from the Government, and the rejection, by some, of the letter sent by the Prime Minister to the few who accepted monies from the Fund as not accepting government responsibility, suggested that this measure had not met the expectations of the majority of the victims. The Committee therefore expressed the hope that the Government would make efforts, in consultation with the surviving victims and the organizations which represent them, to find an alternative way to compensate the victims in a manner that would meet their expectations. The Committee recalls in this connection the Government's statement in its report received on 26 September 2006, with reference to the dissolution of the AWF in March 2007, that it "will continue to make efforts to seek further reconciliation with the victims".

11. The Committee hopes that in making these further efforts to seek reconciliation with the victims, the Government will, in the immediate future, take measures to respond to the claims being made by the aged surviving

victims. The Committee also requests the Government to continue to provide information about recent judicial decisions and related developments.

Jordan

Forced Labour Convention, 1930 (No. 29) (ratification: 1966)

Article 2(2)(c) of the Convention. Prison labour. For a number of years, the Committee has been referring to Prison Regulations No. 1 of 1955 issued under the Prison Act of 1953, which provided that prisoners might carry out work for an officer or members of the army by authorization of the Minister of Defence (section 8(e)). The Committee notes *with satisfaction* that the Government confirms that all prison regulations issued under the Prison Act No. 23 of 1953, which has been repealed by Act No. 9 of 2004 on Reformatory and Rehabilitation Centres, have become null and void.

Kenya

Forced Labour Convention, 1930 (No. 29) (ratification: 1964)

Articles 1(1) and 2(1) of the Convention. Compulsory labour in connection with the conservation of natural resources. For many years, the Committee has been referring to sections 13 to 18 of the Chief's Authority Act (Cap. 128), according to which able-bodied male persons between 18 and 45 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. On numerous occasions, the Committee asked the Government to take the necessary measures to repeal or amend these provisions, in order to bring the legislation into conformity with the Convention. However, as the Committee noted previously, the amendments introduced by Act No. 10 of 1997 not only failed to bring the legislation into compliance with the Convention, but the non-compliance was even aggravated by raising the age limit for call-up for compulsory labour to 50 years of age.

The Committee has noted that, in its latest report, the Government has confirmed its previous indication that the task force on the review of labour laws addressed the issue of compulsory labour required by the Chief's Authority Act (Cap. 128). The Government states that the Act is to be replaced with the Administrative Authority Bill, and meanwhile the principles of the Convention have been incorporated in the Employment Bill, which prohibits forced labour, subject to permitted exemptions.

The Committee has noted with interest the adoption of the Employment Act (No. 11 of 2007), which prohibits the exaction of forced or compulsory labour (section 4(1) and (2)). *While noting this information, the Committee expresses the firm hope that the Administrative Authority Bill, which is intended to replace the Chief's Authority Act, will be adopted in the near future and that the legislation will be brought into conformity with the Convention. It asks the Government to supply a copy of the Administrative Authority Act, as soon as it is adopted.*

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)

Article 1(a), (c) and (d), of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views, for breaches of labour discipline and for the participation in strikes. Since many years, the Committee has been referring to certain provisions of the Penal Code, the Public Order Act, the Prohibited Publications Order, 1968, the Merchant Shipping Act, 1967, and the Trade Disputes Act (Cap. 234), under which sentences of imprisonment (involving compulsory labour) may be imposed as a punishment for the display of emblems or the distribution of publications signifying association with a political object or political organization, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes.

The Committee has noted the Government's repeated statement in its reports that it is committed to bring the national legislation into conformity with the Convention. *It notes from the Government's latest report that the Merchant Shipping Act, 1967, has been reviewed and is looking forward to receiving a copy of the revised legislation. The Committee expresses the firm hope that all the abovementioned provisions will soon be brought into conformity with the Convention and that the Government will report on the progress achieved in this regard. It also asks the Government to provide information on various points raised in a more detailed request addressed directly to the Government.*

Kuwait

Forced Labour Convention, 1930 (No. 29) (ratification: 1968)

Articles 1(1) and 2(1) of the Convention. Freedom of domestic workers to terminate employment. In its earlier comments, the Committee expressed concern about the conditions under which domestic servants can leave their employment and their possibility to have recourse to courts if necessary. The Committee noted that the Labour Code currently in force excludes domestic workers. It also noted the Government's indications that the new draft Labour Code would cover this category of workers and that, under section 5 of the draft Labour Code, the competent minister would make an order specifying the rules governing the relationship between domestic servants and their employers. Having noted that the new Labour Code has not yet been adopted, the Committee requested the Government to supply a copy of

Order No. 362, of 4 April 2004, issued by the Council of Ministers, which provides for the establishment of a permanent committee for the regulation of the situation of migrant workers in the private sector, including domestic workers, under the chairmanship of the Minister of Social Affairs and Labour.

The Committee trusts that the new Labour Code, once adopted, will provide adequate protection for domestic workers as regards their freedom to terminate employment, and that the Government will communicate a copy of the new Code, as soon as it is adopted. The Committee again requests the Government to communicate a copy of the Council of Minister's Order No. 362, which, as the Government indicated, was attached to the report, but has not been received in the ILO. Please also provide information on the activities of the permanent committee on migrant workers referred to above, as well as sample copies of contracts of employment concluded with domestic workers in accordance with the model contract issued by the Ministry of Interior.

Articles 1(1), 2(1) and 25. Trafficking in persons. The Committee previously noted the Government's indication in its report that the victims of forced labour have the right to turn to the authorities, though without being allowed to stay in the country during the civil action unless their legal residence allows them to do so. The Committee asked the Government to indicate the measures taken or envisaged to allow the victims of trafficking to turn to the authorities and to stay in the country at least for the duration of court proceedings.

In its latest report, the Government merely states that victims of trafficking, as any other persons suffering from unjust acts, have the right to turn to the authorities and to courts to defend their rights. The Committee refers in this connection to the explanations provided in paragraphs 73–85 of its 2007 General Survey on the eradication of forced labour, where it observed that victims of trafficking are often perceived by the authorities as illegal aliens and that they should be granted permission to stay in the country to defend their rights and should be efficiently protected from reprisals if they are willing to testify; the protection of victims of trafficking may also contribute to law enforcement and to the effective punishment of perpetrators.

The Committee hopes that the Government will indicate, in its next report, measures taken or envisaged both in legislation and in practice, to prevent, suppress and punish trafficking in persons, including victim protection measures, such as, for example, protection of victims willing to testify from reprisals by the exploiters or any measures to encourage the victims to turn to the authorities and to stay in the country at least for the duration of court proceedings. Please also indicate whether there is an intention to introduce penal provisions aiming specifically at the punishment of trafficking in persons.

Article 25. Penal sanctions for the illegal exaction of forced or compulsory labour. The Committee previously noted that the legislation does not contain any specific provision under which the illegal exaction of forced or compulsory labour is punishable as a penal offence, and invited the Government to take the necessary measures, for example by introducing a new provision to that effect in the legislation. The Committee noted that the Government had referred in its reports to various penal provisions (such as sections 49 and 57 of Law No. 31 of 1970 on the amendment of the Penal Code, or section 121 of the Penal Code) prohibiting public officials or employees to force a worker to perform a job for the State or for any public body, as well as to section 173 of the Penal Code, which provides for the imposition of penalties on anyone who threatens another person physically or with damage to his reputation or property with a view to forcing the victim to do something or to refrain from doing something.

The Committee pointed out that the abovementioned provisions do not appear to be sufficient to give effect to *Article 25* of the Convention which stipulates that “the illegal exaction of forced or compulsory labour shall be punishable as a penal offence”, and that “it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and strictly enforced”.

The Committee expresses the firm hope that the Government will take the necessary measures (e.g. through the adoption of the new Labour Code or through the amendment of the Penal Code) in order to give full effect to this Article of the Convention. Pending the adoption of such measures, the Committee asks the Government to provide information on the application of the above penal provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.

The Committee is also addressing a request on certain other points directly to the Government.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

Article 1(a) of the Convention. Punishment for expressing political views. For a number of years, the Committee has been referring to Legislative Decree No. 65 of 1979 concerning public meetings and gatherings, which establishes a system of prior authorization (which may be refused without giving reasons, under section 6 of the above Decree) and, in the event of violations, provides for a penalty of imprisonment involving, by virtue of the Penal Code, an obligation to work. The Committee stressed the importance for the effective observance of the Convention of legal guarantees respecting the right of assembly and the direct bearing that a restriction of this right can have on the application of the Convention. Indeed, it is often through the exercise of this right that political opposition to the established order can be expressed, and in ratifying the Convention the State has undertaken to guarantee persons who manifest this opposition in a peaceful manner the protection that the Convention affords them.

The Committee has noted the Government's indication in its report received in August 2007 that consultations will be held with the competent authorities to discuss the feasibility of amending section 2 of the above Legislative Decree, which provides for the exemption of certain kinds of meetings from its scope. However, the Committee has become aware that Legislative Decree No. 65 of 1979 was declared unconstitutional by the Constitutional Court in 2006. It has also noted that a new law concerning public meetings and gatherings was promulgated in 2008. ***The Committee would appreciate it if the Government would communicate a copy of the new law with its next report, so that the Committee can examine it at its next session.***

Article 2(c) and (d). Disciplinary measures applicable to seafarers. For many years, the Committee has been referring to certain provisions of Legislative Decree No. 31 of 1980 regarding security, order and discipline on board ship, under which various breaches of discipline (unauthorized absence, repeated disobedience, failure to return to the vessel) committed by common agreement by three persons may be punished by imprisonment involving an obligation to work. The Committee recalled that penalties imposed for violations of labour discipline or punishment for having participated in a strike do not come within the scope of the Convention only where such acts endanger the safety of the vessel or the life or health of persons, but that sections 11, 12 and 13 of the above Legislative Decree do not limit the application of the penalties to such acts.

The Committee has noted the Government's repeated statement that it gives utmost priority to the adoption of the necessary measures to remove any conflict with the provisions of the Convention. The Government also states that Legislative Decree No. 31 of 1980 is intended to address dangerous acts which endanger the safety of the vessel or the life or health of persons on board, and the imposition of penalties is restricted in all cases to such acts.

While noting these indications, the Committee reiterates its hope that the necessary measures to amend Legislative Decree No. 31 of 1980 will be taken, e.g. by clearly indicating that the imposition of penalties involving compulsory labour is strictly limited to acts endangering the vessel or the life or health of persons. Pending the adoption of such measures, the Committee requests the Government to supply information on the application of the above Legislative Decree in practice, supplying copies of court decisions and indicating the penalties imposed.

Liberia

Forced Labour Convention, 1930 (No. 29) (ratification: 1931)

The Committee notes the Government's brief report on the application of the Convention. ***It hopes that the Government's next report will contain full and detailed information on the following matters raised in the Committee's earlier comments.***

Articles 1(1), 2(1) and 25 of the Convention. Forced labour and captivity practices in connection with armed conflict. In its earlier comments, the Committee referred to the allegations concerning forced labour and captivity practices which took place in the south-eastern part of the country in connection with armed conflict, where children were allegedly held hostage by adults and used as a source of forced and captive labour. The Committee previously noted the Government's indication in its report that the special investigation committee sent by the Government to investigate the alleged forced labour practices in the south-eastern region recommended that a national committee be established to trace and reunite displaced women and children taken captive during the war and that, in order to enhance the National Reconciliation and Reunification Programmes, "local authorities should be directed to encourage their citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment for appropriate investigation and corrective measures".

While having noted that the south-eastern part of the country was in a grave humanitarian crisis and an extreme state of poverty and that any reported situations of forced labour exploitation were due to the consequences of the war, the Committee expressed the hope that the Government would encourage joint efforts and cooperation between governmental bodies and non-governmental organizations at all levels with a view to the effective elimination of all forms of compulsory labour, including that of children, and requested the Government to supply full information on measures taken to this end.

The Committee notes the Government's brief indication in its report supplied in May 2008 that a tripartite national committee is being considered to investigate the complaints of forced labour and hostage situation in the south-eastern region, that consultations for this investigation have already begun and the committee is expected to start its work in the near future. ***The Committee reiterates the firm hope that the Government will provide, in its next report, full information on the activities of the abovementioned tripartite national committee and on the specific action taken to investigate the situation in the South-East as regards the alleged practices of forced labour, as well as on the measures taken to eliminate such practices. The Committee also hopes that the Government will supply information on the results achieved in this regard by the Liberian Truth and Reconciliation Commission (TRC), which was set up to investigate human rights violations and was empowered to recommend for prosecution the most serious offenders, as well as information on the progress achieved in the establishment of an Independent National Human Rights Commission and drawing up of a national human rights action plan.***

Recalling also that, under Article 25 of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence and it shall be an obligation of the State to ensure that the penalties imposed are really adequate and are strictly enforced, the Committee hopes that the necessary action to give effect to this Article will be taken in the near future, by imposing penal sanctions on persons convicted of having exacted forced labour, and that the Government will provide, in its next report, information on any legal proceedings which have been instituted for that purpose and on any penalties imposed.

The Committee is also addressing a request on certain other points directly to the Government.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

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

Article 1(a) of the Convention. Imposition of prison sentences involving the obligation to work as punishment for expressing political views. In its earlier comments the Committee observed that prison sentences (involving, under Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws, an obligation to work) might be imposed in circumstances falling within *Article 1(a)* of the Convention under section 52(1)(b) of the Penal Law (punishing certain forms of criticism of the Government) and section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Committee also requested the Government to provide a copy of Decree No. 88A of 1985 relating to criticism of the Government.

The Committee has noted the Government's indication in its report that section 216 of the Election Law and Decree No. 88A of 1985 have been repealed. *Since the copies of repealing Acts referred to by the Government as annexed to its report have not been received at the ILO, the Committee hopes that copies will soon be forwarded. The Committee also requests the Government to state whether section 52(1)(b) of the Penal Law is still in force and, if so, to indicate the measures taken with a view to ensuring observance of the Convention.*

The Committee previously noted that under a Decree adopted by the People's Redemption Council before its dissolution in July 1984, parties can be forbidden if they are considered to have engaged in activities or expressed objectives which go against the republican form of government or basic Liberian values. *The Committee again requests the Government to indicate whether the provisions of this Decree are still in force and, if so, to provide a copy of the text of the Decree.*

Article 1(c). Disciplinary measures applicable to seafarers. In its earlier comments the Committee noted that under section 347(1) and (2) of the Maritime Law, local authorities shall apprehend and deliver a seafarer who deserts from a vessel with the intention of not returning to duty and who remains unlawfully in a foreign country. Referring to paragraph 171 of its 2007 General Survey on the eradication of forced labour, the Committee must point out that measures to ensure the due performance by a worker of his service under compulsion of law (in the form of physical constraint or the menace of a penalty) constitute forced or compulsory labour as a means of labour discipline and are thus incompatible with the Convention. *The Committee hopes that section 347(1) and (2) of the Maritime Law will soon be repealed and that the Government will supply information on the measures taken to this end.*

The Committee also noted that under section 348 of the Maritime Law various other offences against labour discipline by seafarers such as incitement to neglect duty, assembling with others in a tumultuous manner, may be punished with imprisonment of up to five years (involving an obligation to work). The Committee refers to paragraph 179 of its 2007 General Survey on the eradication of forced labour where it pointed out that sanctions relating to acts tending to endanger the ship or the life or health of persons on board do not fall within the scope of the Convention. However, as regards more generally breaches of labour discipline such as desertion, absence without leave or disobedience, all sanctions involving compulsory labour should be abolished under the Convention. In a great number of maritime nations, similar penal provisions have been repealed, restricted in scope to cases involving a danger to the ship or the life or health of persons, or otherwise amended so as to provide for a fine or some other penalty not falling within the scope of the Convention. *The Committee therefore again expresses the hope that measures will be taken to bring section 348 of the Maritime Law into conformity with the Convention, and that the Government will provide information on the action taken to this end.*

In its earlier comments the Committee referred to Decree No. 12 of 30 June 1980 prohibiting strikes. It notes the Government's statement in its report that a draft law repealing the abovementioned Decree is now before the competent authority for passing into law. *The Committee requests the Government to provide a copy of the repealing law as soon as it is adopted.*

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

Mauritius

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)

Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers. In comments made since 1992, the Committee has observed that, under sections 183(1) and 184(1) of the Merchant Shipping Act of 1986, certain breaches of discipline by seafarers (such as desertion, neglect or refusal to join the ship, absence without leave, neglect of duty) are punishable by imprisonment (under conditions involving the performance of compulsory labour), and that under section 183(1), (3) and (4), seafarers who are not citizens of Mauritius, and who commit such offences, may be forcibly conveyed on board ship for the purpose of proceeding to sea. Referring to paragraph 180 of its 2007 General Survey on the eradication of forced labour, the Committee recalls that, in order to be compatible with the Convention, provisions imposing penalties of imprisonment on seafarers for breaches of labour discipline should be restricted to actions that endanger the safety of the ship, or the life or health of persons on board. In its previous observation, the Committee reiterated its hope that the Merchant Shipping Act would be brought into conformity with the Convention in the near future, and that the Government would soon be able to indicate further progress achieved in this regard.

The Committee notes that, in its latest report, the Government refers to the Merchant Shipping Bill 2007, which aims to repeal and replace the Merchant Shipping Act of 1986. The Government states that the Bill “takes on board the observation” of the Committee. According to the Explanatory Memorandum of the Bill, it “makes better provision for the incorporation of the international conventions to which Mauritius is a party and of the protocols which apply to this country”. The Committee notes that the Bill no longer contains a separate provision on offences by seafarers, nor does it contain any provision making explicit reference to such breaches of discipline by seafarers as desertion, neglect or refusal to join the ship, or absence without leave. It further notes, however, that, under section 217(16)(n), the Bill continues to treat disobedience as a criminal offence, punishable by imprisonment (involving the imposition of compulsory labour), in penalizing a seafarer who “refuses to obey the master’s order, neglects his duty or assaults any member of the crew”. The Committee also notes the overly broad and vague wording of section 217(16)(j) of the Bill, which provides that “any person” (and therefore presumably any seafarer) who on board a ship so conducts himself that he is likely “to cause interference or annoyance to the other persons on board the ship” commits an offence punishable by imprisonment, and observes that it also raises problems of compatibility with the Convention.

The Committee therefore observes that the Merchant Shipping Bill 2007 continues to provide for criminal sanctions, involving imprisonment attended by the imposition of compulsory labour, for breaches of labour discipline that fall within the scope of activities protected under *Article 1(c)* of the Convention. ***The Committee trusts that the Government will take measures to further amend the Merchant Shipping Bill 2007, so as to ensure that its provisions are in conformity with the Convention, and that it will communicate a copy of the Bill as soon as it has been adopted into law.***

Article 1(d). Sanctions for participation in strikes. The Committee has noted the observations in the communication of the International Confederation of Free Trade Unions (now the International Trade Union Confederation) dated 6 July 2006, as well as the Government’s reply to these comments in its communication of 18 October 2006. In its previous comments the Committee referred to the need to revise the Industrial Relations Act 1973 (IRA) in order to bring it into line with the Convention. In particular, it observed that, under sections 82 and 83 of the IRA, submission of any industrial dispute to compulsory arbitration is left to the discretion of the Minister; that the decision handed down following this procedure is enforceable (section 85) and any strike becomes unlawful (section 92); and that participation in a strike thus prohibited may be punished by imprisonment (section 102), a sanction which involves compulsory labour by virtue of section 35(1)(a) of the Reform Institutions Act. The Committee recalls, referring also to paragraphs 182–186 of its 2007 General Survey on the eradication of forced labour, that provisions for compulsory arbitration enforceable with sanctions that involve compulsory labour are incompatible with the Convention.

Referring to its comments addressed to the Government under Convention No. 87, likewise ratified by Mauritius, the Committee notes the adoption of the Employment Relations Act, 2008 (ERA) which, once proclaimed, will replace the Industrial Relations Act 1973 (IRA). However, the Committee notes that section 82(1)(b) of the ERA provides that, where the duration of a strike which is not unlawful is such that an industry or a service is likely to be seriously affected, or employment is threatened, the Prime Minister may apply to the Supreme Court for an order prohibiting the continuation of the strike. It notes further that section 82(3) of the ERA provides that, where the Supreme Court makes an order under subsection (1)(b), it shall refer the matter to the Tribunal for arbitration. The Committee considers that this amendment, which transfers authority from the Prime Minister to the Supreme Court, still allows for the imposition by the authorities of compulsory arbitration procedures, enforceable by penal sanctions against participants in strikes that involve the imposition of compulsory labour and, therefore, is incompatible with Convention No. 105.

The Committee trusts that measures will be taken in the near future to further amend section 82 of the Employment Relations Act 2008 so as to ensure, in conformity with the Convention, that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike. The Committee requests the Government to indicate in its next report progress made with regard to the proclamation of the ERA and to communicate the complete text as soon as it enters into force.

Morocco

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

Article 2, paragraph 2(d), of the Convention. Requisitioning of persons. In its previous comment, the Committee once again stressed the need to amend or repeal several legislative texts which authorize the requisitioning of persons and goods in order to satisfy national needs (the Dahirs of 10 August 1915 and 25 March 1918, as retained in the Dahir of 13 September 1938 and reintroduced by Decree No. 2-63-436 of 6 November 1963). Indeed, these provisions went beyond what is authorized under *Article 2, paragraph 2(d)*, of the Convention, according to which requisitioning, and constantly imposing work, should be strictly limited to situations endangering the existence or well-being of the whole or part of the population.

In its report, the Government points out that the Labour Directorate is in constant contact with the Ministry of the Interior in order to review the provisions of the Dahir of 1938 to bring it into conformity with the Convention, and that the public authorities have never, in practice, resorted to the requisitioning of persons. The Committee takes note of this information. It points out that, in its 2003 report, the Government had already referred to an agreement with the social partners to repeal this decree. ***Given the number of years that have lapsed since its first comments on the matter, the***

general consensus that the provisions of the legislation should be changed and the fact that, in practice, these provisions have never allegedly been used, the Committee hopes that the contacts with the Ministry of the Interior will result in the adoption of specific legislative measures without further delay.

Article 25. Imposition of really effective penalties. In its last comments, the Committee expressed its reservations as to the dissuasive nature of the penalties against persons guilty of exacting forced labour in the legislation. According to sections 10 and 12 of the new Labour Code, any employer in breach of the prohibition to requisition employees to perform forced labour or to work against their will, is liable to a fine of between 25,000 and 30,000 dirhams and, in the event of a repeated offence, a fine of double that amount and imprisonment for between six days and three months, or one of these two penalties. Only cases of repeated violations of the prohibition of forced labour may be penalized by a prison sentence, although the judge might, however, opt for a mere fine if he or she considers it appropriate.

In its report, the Government points out that the fines provided under section 12 of the Labour Code are the maximum provided under this legislation, and that a prison sentence has serious consequences for the person involved because he or she is subsequently illegible for public office or able to compete for public markets. The Committee takes note of these details. *Given the seriousness of the offence of resorting to forced labour, the Committee is of the opinion that the penalties imposed must be effective enough to ensure that they are truly of a dissuasive nature. The Committee hopes that the Government will re-examine this matter, either in the context of a revision of the Labour Code or by criminalizing forced labour in the Penal Code and establishing the corresponding penalties for offences or crimes.*

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1966)

Article 1(d) of the Convention. Imposition of prison sentences involving an obligation to work as punishment for having participated in strikes. In its previous comments, the Committee pointed out how proper application of the Convention could be affected by too broad interpretation by national courts of the provisions of section 288 of the Penal Code. According to this provision, anyone, who through violence, the use of force, threats or deception, causes or maintains, or endeavours to cause or maintain, a concerted stoppage of work with the aim of forcing an increase or decrease in wages or jeopardizing the free exercise of industry or work, is liable to a sentence of imprisonment of from one month to two years. It also pointed out that sentences of imprisonment involve an obligation to work pursuant to section 28 of the Penal Code and section 35 of Act No. 23-98 on the organization and operation of prisons.

In its latest report, the Government states that the obligation to work established in section 28 of the Penal Code and 35 of the Act on the organization and operation of prisons applies to convicts, and that prison labour is excluded from the definition of forced labour given in Convention No. 29. The Government again asserts that there is no link between the right to strike and the obligation to work in prison in so far as the prison sentence established in section 288 of the Penal Code applies only in the event of violence, use of force, threats or deception in the course of a strike. It adds that the Bill on the exercise of the right to strike, which needs the consensus of the social partners, has not as yet been enacted.

The Committee takes note of this information. It points out that, although compulsory prison labour carried out under certain conditions does constitute an exception to forced labour within the meaning of Convention No. 29, in certain circumstances compulsory prison labour can, nevertheless, fall within the scope of Convention No. 105. Where work, including prison work, is exacted, in whatever manner, for expressing political views or views opposed to the established political, social or economic system or for participating in a strike, such work imposed in these specific circumstances constitutes forced labour within the meaning of Convention No. 105. Thus, prison sentences, where they involve compulsory work, fall within the scope of the Convention if they sanction the prohibition on expressing views or opposition or participation in a strike.

The Committee concedes that section 288 of the Penal Code does not directly address the right to strike but aims to penalize such violent behaviour or obstruction of freedom to work as might arise during a collective work stoppage, that is to say a strike. However, in the past, the courts have construed these provisions broadly, so that they have enabled strikers whose conduct has been peaceful to be punished. The Committee recalls that a worker having carried out a strike in a peaceful manner may not be liable to penal sanctions, and that in no case may he or she incur a prison sentence. *In these circumstances, the Committee requests the Government to indicate whether the courts have had recourse to provisions of section 288 of the Penal Code recently and if so to specify the conduct that they have sanctioned and the penalties they have imposed. Please provide copies of court decisions handed down to enable the Committee to assess the scope of these provisions and thus satisfy itself that no prison sentences involving an obligation to work can be imposed on workers who exercise their right to strike peacefully.*

Myanmar

Forced Labour Convention, 1930 (No. 29) (ratification: 1955)

Historical background

1. In its earlier comments, the Committee discussed in detail the history of this extremely serious case, which has involved the Government's long-standing, persistent non-observance of the Convention, as well as the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in

March 1997 under article 26 of the Constitution. The continued failure by the Government to comply with these recommendations and the observations of the Committee of Experts, as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.

2. The Committee recalls that the Commission of Inquiry, in its conclusions on the case, pointed out that the Convention was violated in national law and in practice in a widespread and systematic manner. In its recommendations, the Commission urged the Government to take the necessary steps to ensure:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, in particular by the military.

3. In its earlier comments, the Committee of Experts has identified four areas in which measures should be taken by the Government to achieve the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

Developments since the Committee's previous observation

4. There have been a number of discussions and conclusions by ILO bodies, as well as further documentation received by the ILO, which has been considered by the Committee. In particular, the Committee notes the following information:

- the discussions and conclusions of the Conference Committee on the Application of Standards during the 97th Session of the International Labour Conference in June 2008;
- the documents submitted to the Governing Body at its 301st and 303rd Sessions (March and November 2008), as well as the discussions and conclusions of the Governing Body during those sessions;
- the comments made by the International Trade Union Confederation (ITUC) in a communication received in September 2008 together with the detailed appendices of more than 600 pages; and
- the reports of the Government of Myanmar received on 4 and 20 March, 2 and 19 June, 26 September and 31 October 2008.

The Supplementary Understanding of 26 February 2007 – extension of the complaints mechanism

5. In its previous observation, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar, and the role of the Liaison Officer in its implementation, as an important new development and a subject of major discussion in ILO bodies. As the Committee previously noted, the SU provides for a new complaints mechanism to be established and put into operation, and has as its prime object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation”. The Committee notes that the complaints mechanism was extended on 26 February 2008 on a trial basis for one year, until 25 February 2009 (ILC, 97th Session, *Provisional Record* No. 19, Part 3, Doc. D.5). The Committee further discusses the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

Discussion and conclusions of the Conference Committee on the Application of Standards

6. The Committee on the Application of Standards once again discussed this case in a special sitting during the 97th Session of the Conference in June 2008 (ILC, 97th Session, *Provisional Record* No. 19, Part 3). The Conference Committee observed that, although certain steps had been taken in the application of the SU, “much more needed to be done with commitment and urgency”. The Conference Committee expressed its concern that awareness of the existence of the complaints mechanism under the SU “remained very low”, and it urged the Government to give early approval to the translation, in all local languages, of an easily understandable brochure, for wide public distribution, explaining the law and the procedure for lodging a complaint under the SU. The Conference Committee noted that, although the complaints mechanism continued to operate, penalties were not being imposed under the Penal Code, and no criminal convictions of

members of the armed forces had taken place. The Conference Committee also emphasized that it was critical that the ILO Liaison Officer had sufficient resources available to undertake his responsibilities, and it underlined the urgent need for the Government to accept a strengthened network of facilitators to deal with complaints from all over the country. The Conference Committee also noted with concern the reported cases of retaliation and harassment against complainants and volunteer facilitators who cooperated with the Liaison Officer, and it called on the Government to ensure that all retaliation and harassment, based on any legal or other pretext, cease with immediate effect and that the perpetrators be punished with the full force of the law.

Discussions in the Governing Body

7. The Committee notes from the report submitted to the 303rd Session of the Governing Body in November 2008 (GB.303/8/2), regarding the progress of the SU complaints mechanism that, as of 6 November 2008, the Liaison Officer had received 121 complaints (GB.303/8/2, paragraph 3). Of those complaints, 70 had been formally submitted for investigation and appropriate action to the Government Working Group on Forced Labour. Of the cases submitted, 50 had been responded to in a manner considered satisfactory and were subsequently closed, while 20 cases were either still awaiting government response or remained open while the process continued. Thirty-nine of the cases submitted involved individual complaints of under-age recruitment into the military (GB.303/8/2, paragraph 3).

8. The Committee notes in the same report to the Governing Body the indications of the Liaison Officer that it was evident that awareness levels among a large majority of the population regarding their right and possibility to complain were very low; that this low level of awareness together with the physical difficulties of actually lodging a complaint meant that the complaints facility currently did not reach out significantly beyond Yangon and neighbouring divisions (paragraph 9); that “extensive negotiations” were continuing to take place on the translation of the SU and the original Understanding of 2002 and final approval had yet to be granted (paragraph 8); and that the Government had yet to consider or approve the text of a simply worded brochure to be translated into local languages, for wide public distribution, explaining the law and the procedure for lodging a complaint under the SU (paragraph 9).

9. In its conclusions (GB.303/8), the Governing Body, inter alia, stressed the urgency of giving full effect to the recommendations of the Commission of Inquiry and to the subsequent decisions of the International Labour Conference (paragraph 1). While recognizing a certain degree of cooperation to make the SU complaints mechanism function, it expressed its continued concern about the slow pace of progress and the urgent need for much more to be done (paragraph 2). The Governing Body underlined the urgent need to raise the awareness of military and civil authorities, as well as the general public, concerning the legislation prohibiting forced labour and the rights contained in the SU. It also pointed out that those guilty of exacting forced labour, including under-age recruitment into the military, must be prosecuted and meaningfully punished, and victims must be entitled to reparation (paragraph 3). It emphasized the need for the Liaison Officer to be able to carry out his functions effectively throughout the country, and for public access to the ILO Liaison Office to be unhindered and free from the fear of reprisals (paragraph 4). Finally, the Governing Body called for an end to the harassment and detention of persons exercising their rights under the SU (paragraph 5).

Communication received from the International Trade Union Confederation

10. The Committee notes the comments made by the ITUC in its communication received in September 2008. Appended to this communication were 49 documents, amounting to more than 600 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities. In many cases, the documentation refers to specific dates, detailed locations and circumstances, and specific civil bodies, military units and individual officials. It includes allegations of government-imposed compulsory labour taking place in all but one of the 14 states and divisions of the country. Specific incidents referred to involve allegations of a wide variety of types of work and services requisitioned by the authorities, including work directly related to the military or militia groups (portering, construction and maintenance of military camps, other tasks for the benefit of the military such as human minesweeping and sentry/security duty, and forced recruitment of children and of prisoners upon completion of their sentences), as well as work of a more general nature, including work in agriculture (such as forced cultivation of castor oil nuts), construction and maintenance of roads, bridges, and dams, and other infrastructure work.

11. The ITUC documentation includes translated copies of 59 written orders from military and other authorities to village authorities in Karen and Chin States, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. The information also includes reports of allegations that persons turning to the ILO Liaison Office to file complaints of forced labour often face retaliation and harassment. One such case involved 20 villagers from Pwint Phyu Township in the Magwe Division who, after filing a complaint of forced labour with the ILO, were questioned five times within one month by local authorities. Another case involved 70 residents from Arakan State, who were questioned by officers of the Military Affairs Security Department of the Labour Ministry after submitting a forced labour complaint to the ILO and were forced to sign a document stating they had been coerced into filing their petition. The ITUC communication also refers to information alleging that forced labour has been exacted by military and local authorities in the Irrawaddy Delta region for reconstruction work in the wake of cyclone Nargis in May 2008. It refers, for example, to allegations that: at the Maubin camp for displaced people, 1,500 men and women were forced to work in quarries; that in Ngabyama village in Southern Bogale Township, authorities forced survivors to cut trees and

reconstruct roads; and that in Bogalay soldiers were imposing forced labour on local villagers. The documentation also includes testimonies alleging the forced appropriation of money by military commanders from villages in SPDC-controlled areas, allegedly as “donations” being collected for distribution to survivors of the cyclone. A copy of the ITUC’s communication and its annexes was transmitted to the Government on 22 September 2008 for such comments as it may have wished to provide.

The Government’s reports

12. The Committee notes the Government’s reports, referred to in paragraph 4 above. It is grateful for the very lengthy report received on 31 October 2008, which is in large part a compilation of information the Government previously supplied, but which also includes a lengthy summary of the history of developments in this case from the Government’s point of view with an emphasis on its history of cooperation with the International Labour Office, as well as several pages of updated information concerning measures which, according to the Government, are being taken to implement the June 2008 conclusions of the Conference Committee, as well as this Committee’s observations. The Committee notes, however, that in its most recent reports, the Government did not respond in detail to the numerous specific allegations contained in the communication from the ITUC referred to above, other than to provide information about the status of several court cases involving the criminal prosecution and punishment of persons who were acting as volunteer facilitators for the SU complaints mechanism or who were labour activists with links to the ILO or engaged in associational activities aimed at promoting labour rights. These cases have also been matters of particular concern to ILO supervisory bodies. The Committee notes that the information about these cases contained in the Government’s most recent report is a repetition of the information included in the reports received on and before 19 June 2008. The Committee notes the updated information on these cases in the report of the Liaison Officer of 7 November 2008 submitted to the 303rd Session of the Governing Body (GB.303/8/2). ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued, widespread imposition of forced or compulsory labour by military and civil authorities throughout the country, which are documented in the recent communication from the ITUC.***

Assessment of the situation

Issuing specific and concrete instructions to the civilian and military authorities

13. The Committee notes initially that in its latest reports the Government has given no indication that it has taken measures to formally repeal the relevant provisions of the Village Act and the Towns Act. With regard to Order No. 1/99 as supplemented by the Order of 27 October 2000, which prohibit forced labour, the Government repeats its reference to instructions it states had previously been issued, yet once again it has not supplied details as to the content of those instructions. The Committee notes the reference to a lecture to deputy township judges on 18 February 2008, delivered jointly at an “On-Job Training Course No. 18” by the Director-General of the Department of Labour and the ILO Liaison Officer, which was aimed at raising those participants’ awareness “about forced labour broadly” and to enable them to “make right decisions”. The Committee also notes that the report of the Liaison Officer submitted to the Conference Committee in June 2008 referred to the first of two five-day training for trainers’ courses, led by the Assistant to the Liaison Officer, in association with UNICEF and the ICRC, which it states had been successfully completed. Its 37 participants were officers and non-commissioned officers of the Recruitment Regiment, the Basic Training Camps, and personnel of the Social Welfare Department, and the second programme of this kind was scheduled for the last week of June and was to be followed by the participants leading multiplier training courses around the country (ILC, 97th Session, *Provisional Record* No. 19, Part 3, doc. D.5, paragraph 7). The Committee notes the information in the Government’s reports received on 20 March and 26 September 2008, on activities undertaken by the Committee for the Prevention of Military Recruitment of Under-age Children. This information also refers to a plan for “multiplier courses” on measures for the prevention of child recruitment into the military to be given to military officers and lower ranking trainees at a number of military training centres during 2008. It indicates, inter alia, that in June 2008 representatives of the Committee for the Prevention of Military Recruitment of Under-age Children and the Ministry of Defence issued “guidance” to assistant judge advocates-general and to department heads of division and regional commands and military training schools, which, in turn, was intended to support “legal education” lectures on the prevention of recruitment of children into the military that were to be given to military officers and lower ranking military personnel at a number of regiments and units. The Committee notes that in its latest reports the Government provided no further information about the plans for multiplier courses or legal education lectures referred to earlier.

14. The Committee considers that steps taken to issue instructions to civilian and military authorities on the prohibition of forced and compulsory labour, such as those referred to above, are vital and need to be intensified. However, given the continued dearth of information regarding such measures, including the detailed content of materials referred to, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to the orders. The Government has provided no information that would support an observation that, in actual practice, recourse to forced or compulsory labour by the authorities, and in particular the military, has declined on account of instructions regarding the prohibition of forced labour, which the Government indicates has been conveyed to them. ***The Committee stresses that in order for the***

Government to eradicate forced labour, the activities referred to above are vital and need to take place on a larger scale and in a more systematic way. The Committee requests the Government to report in greater detail on these activities, including the full content of the materials and curricula utilized, as well as information about their effectiveness in bringing about a decline, in actual practice, in the imposition of forced or compulsory labour.

15. In its previous observation the Committee expressed the hope that the Government would also bring constitutional clarity to the prohibition of forced labour. In its latest report, the Government states that application of the Convention has “been included in the New State Constitution”, which was approved in a constitutional referendum in May 2008 and is due to take effect in 2010, and it refers to section 359 (paragraph 15 of Chapter VIII – “Citizenship, Fundamental Rights and Duties of Citizens”) of that instrument, which states: “The State prohibits any form of forced labour except hard labour as a punishment for crime duly convicted and duties assigned thereupon by the State in accord with the law in the interests of the people.” The Committee, referring also to paragraph 42 of its General Survey of 2007 on the eradication of forced labour, recalls that, for purposes of the Convention, certain forms of compulsory work or service, which would otherwise fall under the general definition of “forced or compulsory labour”, are expressly excluded from its scope by *Article 2(2) of the Convention*, and that these exceptions are subject to the observance of certain conditions which define their limits. The Committee notes with regret that the exemption from the prohibition of forced labour in the new Constitution for “duties assigned thereupon by the State in accord with the law in the interests of the people” encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2)*. The Committee also expresses deep concern about the fact that the Government not only failed to repeal legislative texts identified by the Commission of Inquiry and this Committee, but also included in the text of the Constitution a provision which may be interpreted in such a way as to allow a generalized exaction of forced labour from the population. Moreover, as the Committee pointed out in paragraph 67 of its General Survey referred to above, even those constitutional provisions which expressly prohibit forced or compulsory labour may become inoperative where forced or compulsory labour is imposed by legislation itself. ***The Committee therefore trusts that the Government will at long last take the necessary steps to amend or repeal the relevant legislative texts, in particular the Village Act and the Towns Act, and that it will also amend paragraph 15 of Chapter VIII of the new Constitution, in order to bring its law into conformity with the Convention.***

Ensuring that the prohibition of forced labour is given wide publicity

16. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes the indication from the report of the Liaison Officer dated 7 November 2008, which was submitted to the Governing Body at its 303rd Session, that since March 2008, the Liaison Officer had undertaken two joint awareness-raising missions with senior Department of Labour officials (GB.303/8/2, paragraph 6). The Government appears to refer in its report received on 31 October 2008 to the same activities, indicating that joint field visits were planned by the Director General of the Department of Labour and the ILO Liaison Officer to Myitkyinar and Monywa in late October 2008 to carry out awareness-raising workshops. The Committee reiterates its view that such activities are critical in helping to ensure that the prohibition of forced labour is widely known and applied in practice, and they should continue and be expanded. It notes the indication of the Liaison Officer in his report to the Governing Body (GB.303/8/2), that there still had been no response to repeated calls from ILO supervisory bodies for a widely publicized, high-level statement reconfirming the Government’s commitment to the elimination of forced labour (paragraph 10).

17. In its previous observation the Committee noted that the complaints mechanism of the SU in itself provided an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and would be punished as a penal offence, as required by the Convention. In that vein, the Committee notes with concern the statements of the Liaison Officer about the continued shortcomings of the SU in his latest report to the Governing Body (GB.303/8/2), which are referred to above in the discussion of the Governing Body proceedings. ***The Committee hopes that the Government will, without further delay, take measures to intensify and expand the scale and scope of its efforts to give wide publicity to and raise public awareness about the prohibition of forced labour, including the use of the SU complaints mechanism as an important modality of awareness raising, and that in its next report it will provide information about such measures as well as the impact they are having on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.***

Providing for the budgeting of adequate means for the replacement of forced or unpaid labour

18. In this regard, the Committee recalls that in its recommendations the Commission of Inquiry stated that: “(A)ction must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required.” The Committee, in its previous observations, has also stressed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee notes that, in its latest reports, the Government provides no new information, stating as it has previously that it “provides the budget allotment including labour costs for all the Ministries to implement their respective projects”, and “to confirm that the budgetary allotment for the workers are already allocated to the

respective Ministry”. *The Committee repeats its earlier request for the Government, in its next report, to provide precise, detailed information about the measures it has taken to budget for adequate means for the replacement of forced or unpaid labour.*

Ensuring the enforcement of the prohibition of forced labour

19. With regard to the enforcement of prohibitions of forced labour, the Committee notes the assessment of the Liaison Officer, as reported to the Governing Body in November of 2008, that: “In the main, complaints lodged (under the SU) have been dealt with expeditiously by the Government Working Group” (GB.303/8/2, paragraph 5); and that: “The Government’s response to the complaints mechanism at senior level remains reasonably positive” (GB.303/8/2, paragraph 20). However, in its previous observation the Committee expressed its concern that only one case forwarded by the Liaison Officer to the authorities for investigation and appropriate action had so far resulted in the prosecution of those responsible (Case No. 001, which led to the prosecution of two civilian officials), and there were no indications that, in the cases forwarded which involved allegations against military personnel, any action, criminal or even administrative (other than reprimands), had been taken against any military personnel. The Committee notes that this situation remained largely unchanged in 2008, except for three cases against military personnel, referred to in the report of 7 November 2008 submitted to the 303rd Session of the Governing Body, in which fines (28 days’ and one 14 days’ salary; in one case loss of one year’s seniority) rather than reprimands were imposed (GB.303/8/2, paragraph 7). The Committee notes in the same report the statements of the Liaison Officer that administrative penalties against military personnel continue to be proportionately lighter than those imposed on their civilian counterparts, and that, during the period following the submission of previous reports to the ILO supervisory bodies, no further prosecutions of alleged perpetrators under either the Penal Code or military regulations, resulting in imprisonment, had taken place (GB.303/8/2, paragraph 7).

20. The Government has in its latest reports provided no new information about any prosecutions against perpetrators of forced labour being pursued in the court system outside the framework of the SU complaints mechanism. The Committee notes that, in its report received on 31 October 2008, the Government makes reference, as in previous years, to a mechanism that has been put in place for the public to register complaints directly with law enforcement authorities, and it also refers, as it has previously, to an appendix containing a table of cases with notations indicating that in 2003 and 2004 ten cases involving complaints of forced labour were filed directly in the Myanmar courts, several of which resulted in convictions and the imposition in January and February of 2005 of prison sentences under section 374 of the Penal Code. The Committee previously noted these cases in its observation published in its 2005 report. The Committee notes that three of the cases were dismissed, and in the remaining cases the persons convicted and sentenced were all civil administration officials, despite the fact that at least two of the cases involved allegations against military personnel.

21. *The Committee emphasizes once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. As emphasized by the Commission of Inquiry, this requires thorough investigation, prosecution and adequate punishment of those found guilty, including cases involving military personnel.*

Concluding remarks

22. The Committee fully endorses the conclusions concerning Myanmar of the Governing Body and the general evaluation of the forced labour situation by the Liaison Officer. In the light of these conclusions and evaluation, the Committee continues to believe that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. This requires, beyond the agreement of the SU, that the authorities redouble their efforts to establish the necessary conditions for the successful functioning of the complaint mechanism, and that they take without further delay the long-overdue steps to repeal the relevant provisions of domestic legislation and adopt the appropriate legislative and regulatory framework to give effect to the recommendations of the Commission of Inquiry. *The Committee trusts that the Government will demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the very explicit practical requests addressed by the Committee to the Government, and that all the required steps will be taken to achieve compliance with the Convention, both in law and in practice, so that the most serious and long-standing problem of forced labour will be finally resolved.*

Nigeria

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views. 1. In its earlier comments, the Committee referred to the Public Order Act, Cap. 382, Laws of the Federation of Nigeria, 1990, which contains provisions imposing certain restrictions on the organization of public assemblies, meetings and processions (sections 1–4), offences being punishable with imprisonment (sections 3 and 4(5)), which involves compulsory prison labour. The Committee recalled that *Article 1(a)* of the Convention prohibits the use of

forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee also refers in this connection to paragraphs 154 and 162 of its General Survey of 2007 on the eradication of forced labour, where it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. Since opinions and views opposed to the established system are often expressed at various kinds of meetings and assemblies, restrictions affecting the organization of such meetings and assemblies may give rise to similar problems of the application of the Convention, if such restrictions are enforceable with penalties involving compulsory labour.

While noting the Government's statement in the report that the Public Order Act, Cap. 382, does not impose restrictions on the organization of public assemblies by workers for trade union activities and there is therefore no conviction for violation, the Committee observes, however, that the above Act still imposes restrictions on the freedom of expression enforceable with sanctions involving compulsory labour, which is incompatible with the Convention.

The Committee therefore expresses the firm hope that the necessary measures will be taken in order to bring the provisions of the Public Order Act into conformity with the Convention. While having noted the Government's indication in its previous report that there was no record of the violation of the provisions of the Act, the Committee reiterates its hope that, pending the amendment, the Government will continue to provide information on its application in practice, including information on convictions for violation of its provisions and on penalties imposed.

2. In its earlier comments, the Committee referred to the Nigerian Press Council (Amendment) Act, 2002, which imposes certain restrictions on journalists' activities enforceable with penalties of imprisonment (section 19(1) and (5)(a)), which involves compulsory prison labour. *While having noted the Government's repeated indication in its reports that no conviction has been made under the Act, and referring also to the explanations in point 1 of this observation, the Committee reiterates its hope that measures will be taken to repeal or amend these provisions in order to bring the legislation into conformity with the Convention and the indicated practice. Pending the amendment, the Government is requested to continue to provide information on the application of these provisions in practice, indicating, in particular, any convictions under the above Act and penalties imposed.*

Article 1(c) and (d). Punishment for breaches of labour discipline and for participation in strikes. In its earlier comments, the Committee referred to the following provisions enforceable with sanctions of imprisonment (which involves compulsory prison labour):

- section 81(1)(b) and (c) of the Labour Decree, 1974, under which a court may direct fulfilment of a contract of employment and posting of security for the due performance of so much of the contract as remains unperformed, and a person failing to comply with such direction may be committed to prison;
- section 117(b), (c) and (e) of the Merchant Shipping Act, under which seafarers are liable to imprisonment for breaches of labour discipline even in the absence of a danger to the safety of the ship or of persons;
- section 17(2)(a) of the Trade Disputes Act, Cap. 432, of 1990, under which participation in strikes may be punished with imprisonment.

The Committee previously noted the Government's indications that all these provisions were under consideration by the National Labour Advisory Council. It also noted the Government's indication in its 2005 report that the review of the labour laws had been completed and submitted to the federal Government for further action. In its latest report, the Government states that the provisions referred to above have been addressed in the Collective Labour Relations Bill. *The Committee expresses the firm hope that all of the legislative provisions referred to above will soon be amended, so as to bring legislation into conformity with the Convention, and that the Government will indicate, in its next report, the progress achieved in this regard.*

Pakistan

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

The Committee notes with regret that no comments have been received from the Government in reply to the following communications received from the organizations of workers, which contain observations concerning the application of the Convention by Pakistan: communications dated 31 August and 19 September 2006 received from the International Confederation of Free Trade Unions (now – the International Trade Unions Confederation (ITUC)), communication dated 30 March 2007 received from the All Pakistan Federation of United Trade Unions (APFUTU) and communication dated 2 May 2007 received from the Pakistan Workers Federation (PWF). The Committee previously noted that the above communications were sent to the Government, in September and October 2006 and in May and June 2007, for any comments it might wish to make on the matters raised therein. The Committee also notes two new communications received from the ITUC (dated 29 August 2008) and PWF (dated 21 September 2008), which were sent to the Government, in September and October 2008, for any comments it might wish to make on the matters raised

therein. *The Committee hopes that the Government will not fail to supply its comments in its next report, so as to enable the Committee to examine them at its next session.*

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

I. Articles 1(1) and 2(1) of the Convention

A. Debt bondage

1. In its earlier comments, the Committee noted the difficulties in the implementation of the Bonded Labour System (Abolition) Act (BLSA), 1992. The Committee notes the communications from the All Pakistan Federation of Trade Unions (APFTU) and the All Pakistan Trade Union Federation (APTUF) dated 26 April 2005 and 14 May 2005, respectively, which contain comments on the observance of the Convention and which were forwarded to the Government in June and July 2005 for any comments it might wish to make on the matters raised therein. Among other things, the APTUF observed that the BLSA was not being implemented, and the APTUF similarly observed that laws, including those concerning bonded labour, were not being enforced due to the absence of adequate labour inspection machinery. *Since no comments from the Government on these communications have been received to date, the Committee hopes the Government will provide them in its next report.*

2. The Committee notes the National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers of 2001, which the Government communicated in its latest report. The Committee notes that under the plan of action, a National Committee for the Abolition and Rehabilitation of Bonded Labour was to be established to coordinate the implementation of the plan, with the specific functions of:

- reviewing the implementation of the BLSA and of the action plan;
- monitoring the work of the district-level vigilance committees set up under section 15 of the BLSA and the Bonded Labour System (Abolition) Rules, 1995; and
- addressing concerns of national and international bodies on bonded and forced labour issues.

The Committee notes the statement by the Ministry of Labour in its 2005 draft Labour Protection Policy, that the 2001 National Policy and Plan of Action “clearly establishes the intentions and commitment of Government to implement in full” the Convention. The Committee further notes, however, the statement of the Ministry of Labour in its document, “Labour Policy, 2002”, dated 23 September 2002, that the targets and activities set out in the 2001 National Policy and Plan of Action “need to be actively implemented”.

Implementation of National Policy and Plan of Action for the Abolition of Bonded Labour

3. The Committee notes that in its latest report the Government specifies recent initiatives against bonded labour it is taking or contemplating, apparently within the framework of its 2001 National Policy and Plan of Action, including:

- establishment of a Legal Aid Service Unit in the Labour Departments of Punjab and NWFP with a toll free help line to provide legal advice and assistance to needy bonded labourers, with a plan envisaged to hire legal experts to provide legal assistance;
- launching a scheme to construct low-cost housing for freed bonded labour families in the agricultural sector of Sindh, which will provide shelter to these families and contribute to their rehabilitation;
- organizing training workshops for key district government officials and other concerned stakeholders to enhance their capacity and enable them to draw up district-level plans to identify bonded labourers and activate the district vigilance committees; and
- incorporating the issue of bonded labour into the syllabi of judicial, police and civil service academies, in order to help sensitize judicial, law enforcement, and civil service officials to the problem, and holding capacity-building seminars.

4. The Committee notes the Government's indication that, under the BLSA, inspection functions in the area of bonded labour have been assigned to the regular labour inspectorate, as well as to local government heads/officials and police departments. The Committee also notes from the 2001 action plan document, that the fund mandated by the BLSA Rules had been established and an initial deposit of 100 million rupees had been made. The Government, in its report received in January 2005 (on the application of the Abolition of Forced Labour Convention, 1957 (No. 105)), indicates that work has started on making the Bonded Labour Fund functional, and that a project manual was being prepared to provide guidelines to executing agencies for preparing project proposals for financing.

5. While recognizing these government initiatives to try and combat bonded labour, the Committee hopes that necessary measures are being taken or envisaged to ensure the effective implementation of the 2001 National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers. The Committee hopes that in its next report the Government will provide detailed information on progress made and practical results achieved, including copies of relevant reports on all of the activities, projects, institutions and mandates referred to in the action plan. The Committee further asks that the Government provide information clarifying the present status of the district vigilance committees as well as their role in, and relationship to, the labour inspection process, and that it supply information about actions that both the district magistrates and vigilance committees are taking to ensure the effective implementation of the BLSA and the fulfilment of their other functions as mandated under the BLSA and the 1995 rules, such information to include copies of monitoring/evaluation reports prepared by the National Committee for the Abolition and Rehabilitation of Bonded Labour.

Special programme of action to combat forced/bonded labour

6. The Committee in its report (on the application of Convention No. 105), received in January 2005, the Government indicates that since mid-2002 it has been carrying out a special Programme of Action to Combat Forced/Bonded Labour with technical assistance from the ILO. The Government indicates that under the programme the ILO was, among other things, to provide training on human rights and bonded labour concerns to the District Nazims, members of the vigilance committees, and judicial and law enforcement officials; to assist the Government in developing partnerships with stakeholders, employers, and workers; to provide advice on the creation of a high-level national body to combat forced labour; and to assist it in launching demonstration projects to test the feasibility of approaches adopted to tackle the problem. *The Committee asks that, in its next report, the Government provide more detailed and comprehensive information concerning this programme and its implementation, including copies of the most recent reports evaluating programme activities and outcomes.*

Debt bondage: Data-gathering measures to ascertain the current nature and scope of the problem.

7. The Committee notes that under the 2001 National Policy and Plan of Action a national survey to ascertain the extent of bonded labour was to have been undertaken by January 2002, yet it notes the Government's indication in its latest report that no such quantitative survey has yet been carried out to measure the quantum of the problem in the country.

8. The Committee notes a 2004 report of an initiative of the Ministry of Labour and the ILO, entitled "Rapid Assessment Studies of Bonded Labour in Different Sectors in Pakistan", which contains findings and conclusions from a series of rapid assessment studies conducted from October 2002 to January 2003 by teams of social scientists and researchers under the auspices of the Bonded Labour Research Forum (BLRF), the aim of which was to explore the existence and nature of bonded labour in ten sectors – namely, agriculture, construction, carpet weaving, brick making, marine fisheries, mining, glass bangles, tanneries, domestic work, and begging – and to seek preliminary conclusions. The project represented the first phase of a larger research programme and was intended to lay the groundwork for detailed sector studies and a national survey to determine the incidence of bonded labour across the country, as foreseen in the Government's National Plan of Action. The rapid assessment studies focused primarily on debt bondage but also explored other forms of bonded and forced labour without debt.

9. The Committee notes the conclusion in the report that the findings in "the sectors covered ... yield fresh insights into the workings of the *peshgi* (advance payments) system and its possible relationship with bonded labour and other coercive labour arrangements". The correlation was found to be "relatively weak" in some sectors but present in others. The report also emphasizes the findings that there exist "other forms of labour bonding and coercion ... not clearly associated with the *peshgi* system".

10. ***The Committee reiterates its hope that the Government, as a follow-up to the preliminary part of the research programme noted above and in accordance with the mandate of its 2001 National Policy and Plan of Action, will undertake a statistical survey on bonded labour throughout the country, using a valid methodology in cooperation with employers' and workers' organizations and with human rights organizations and institutions, and that it will supply information on the progress achieved in this connection.***

Bonded labour in agriculture

11. In its previous observation, the Committee noted the Government's view that there are built-in deficiencies in its labour laws on dealing with labour engaged in the agricultural sector. ***The Committee asks once again that the Government supply further information on the issue, as well as information on measures taken or envisaged to remedy the situation, in the context of the eradication of bonded labour in agriculture.***

B. Trafficking in persons

12. The Committee notes the promulgation of the Prevention and Control of Human Trafficking Ordinance, 2002 (PCHTO), which entered into force in October 2002. Among other things, the ordinance criminalizes "human trafficking", which it defines, in part, as trafficking that entails the use of coercion for the purpose of attaining any benefit or for the purpose of exploitative entertainment, slavery or forced labour (sections 2(h) and 3); makes trafficking offences punishable by sanctions involving sentences of imprisonment of up to seven years and, in cases of trafficking of women, of up to ten years, as well as fines (section 3); provides for special sentences for trafficking offences committed by organized criminal groups (section 4) and for repeated offences (section 5); provides for the payment of compensation and expenses to victims (section 6); and makes trafficking in persons cognizable by the courts as a prosecutable offence (sections 8 and 10). ***The Committee asks that in its next report the Government supply a copy of the most recent rules and regulations that have been promulgated to implement the PCHTO.***

Trafficking in persons. Data-gathering measures to ascertain the current nature and scope of the problem.

13. The Committee notes the 2005 report of the International Organisation for Migration (IOM) entitled, "Data and research on human trafficking: A global survey", which indicates that Pakistan continues to be a major destination country for trafficked women as well as a major transit country of persons trafficked from Bangladesh to Middle Eastern countries, where women are exploited for sexual exploitation. The report indicates that men are seldom viewed as "victims of trafficking" and more often in the context of irregular migration, and that this shortcoming has limited the availability of knowledge and data on trafficking in men in South Asia. The report emphasizes that, while available studies contribute to an understanding of the causes, sources, destinations, and consequences of trafficking, current statistics on trafficking in persons are outdated or anecdotal, and there is an urgent need to carry out comprehensive national baseline surveys with the aim of developing a South Asian database on trafficking in persons. ***In light of these indications, the Committee hopes that the Government will undertake a national baseline survey on trafficking in persons, in cooperation with employers' and workers' organizations as well as other societal organizations and institutions, and that it will supply information on the progress achieved in this connection.***

Practical measures aimed at the effective elimination of trafficking in persons.

14. The Committee notes the information concerning the Government's collaboration with the IOM in an action programme on migration issues which includes, as a significant component, the problem of trafficking in persons. The Committee notes that, at the 12th Summit of the South Asian Association for Regional Cooperation (SAARC) in Islamabad in January 2004, the Government agreed to the Islamabad Declaration, which among other things calls on member States to "move towards an early ratification" of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, adopted in 2002 (paragraph 19). The Committee also notes that in May 2005, representatives of the Government and other participants at the Fifth South Asia Ministerial Conference adopted the "Islamabad Declaration: Review and Future Action", in which, among other things, they "recognize the gaps and challenges in implementation" in a number of areas, including an inadequate commitment, awareness, measures, and resources to combat violence against women (paragraph 5(g)); and the lack of regional cooperation and partnership initiatives to address problems of regional concerns such as trafficking in women (paragraph 5(q)). ***The Committee hopes that the Government will continue to develop policies and take measures that are aimed at the effective elimination of trafficking in persons in both law and practice, in conformity with the Convention, and that in its next report it will supply detailed information in this connection.***

II. Restrictions on voluntary termination of employment

15. In its earlier comments, the Committee referred to the information supplied by the Government representative to the Conference Committee in June 1999, according to which an amendment to the Essential Services (Maintenance) Act of 1952, under which government employees who unilaterally terminate their employment without consent from the employer are subject to a term of imprisonment, was to be considered by the tripartite Commission on the Consolidation, Simplification and

Rationalization of Labour Laws. The Government indicated in its report of 2000 that the Commission's final report was expected at the end of September 2000. *As the Government's latest report contains no new information on this subject, the Committee once again requests the Government to supply a copy of the Commission's report. The Committee expresses its firm hope that the Government will take the necessary steps to bring the federal and provincial essential services Acts into conformity with the Convention and will report on the progress achieved in this regard.*

16. *The Committee also repeats its request for copies of the full texts of the following Ordinances enacted in 2000: the Removal from Service (Special Powers) Ordinance, No. XVII of 27 May 2000; the Civil Servants (Amendment) Ordinance, No. XX of 1 June 2000; and the Compulsory Service in the Armed Forces (Amendment) Ordinance, No. LXIII of 6 December 2000.*

III. Article 25. Adequacy and enforcement of penalties for the exaction of forced or compulsory labour

Enforcement of Bonded Labour System (Abolition) Act, 1992.

17. The Committee previously noted the allegations of the ICFTU, contained in its communications of 2001, according to which the Bonded Labour System (Abolition) Act, 1992 (BLSA) had not been applied in practice, as few officials were willing to implement it for fear of incurring the wrath of the landlords, thus allowing the latter to use forced labour with impunity. *Recalling that Article 25 of the Convention provides that the illegal exaction of forced or compulsory labour shall be punishable by penalties that are really adequate and strictly enforced, the Committee once again requests information on the number of inspections under the BLSA, as well as information about any legal actions taken against employers of bonded labourers, including copies of any court rulings in such cases.*

Enforcement of Prevention and Control of Human Trafficking Ordinance.

18. With regard to enforcement of the Prevention and Control of Human Trafficking Ordinance, 2002 (PCHTO), the Committee notes a press statement by the Minister of the Interior in June 2005 that, during the period from 2003 to May 2005, 888 trafficking-related complaints under the PCHTO were registered with the Federal Investigation Agency; that as many as 737 suspected traffickers were arrested; that in 336 of these cases investigations subsequently led to court prosecutions; and that these prosecutions resulted in 85 convictions and four acquittals, with the remaining cases still pending in trial. The Committee also notes from the report of the Prime Minister Secretariat, "One year performance of the Government, August 2004 August 2005", dated 29 August 2005, a section on "Curbing human trafficking" in a chapter entitled "Improving law and order", which states:

The Government through the Federal Investigation Agency has adopted stringent measures to curb human trafficking ... For sustained action against human trafficking, Anti-Trafficking Units (ATUs) have been set up at FIA HQ and in zonal directorates. These outfits are dedicated units for the enforcement of laws relating to prevention of human trafficking to and from Pakistan. To solicit support from the Civil Society, leading NGOs have also been co-opted for information and assistance.

The Committee also notes the indication in the 2005 Annual Report of the Law Division of the Ministry of Law, Justice and Human Rights that, while the Government has promulgated an ordinance to criminalize human trafficking, "a lot needs to be done for effective implementation of that ordinance".

19. *The Committee asks that in its next report the Government provide updated information on the enforcement of the PCHTO, including statistics concerning the numbers of trafficking-related complaints registered, individuals arrested, court proceedings initiated, convictions obtained, penalties imposed, and victim compensation awarded, including copies of all relevant court rulings. More generally, it hopes that the Government, in accordance with Article 25 of the Convention, will endeavour to both assess whether and ensure that the penalties provided under the PCHTO that punish trafficking are really adequate and will strive to ensure that the PCHTO is strictly enforced, and that it provide information in this connection, including updated information concerning the evolution of the system of anti-trafficking units and assessing its strengths and shortcomings.*

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

I. The Committee notes with regret that the Government has not yet responded to the observations made in 2001 by the International Confederation of Free Trade Unions (now the International Trade Union Confederation, ITUC), and in 2005 by the All Pakistan Federation of Trade Unions (APFTU) concerning the application of the Convention, which were forwarded to the Government in 2001 and 2005 respectively. The Committee also notes a new communication received from the Pakistan Workers' Federation (dated 21 September 2008), which was sent to the Government in October 2008 for any comments it might wish to make on the matters raised therein. *The Committee hopes that the Government will not fail to supply its comments concerning all the abovementioned communications of workers' organizations in its next report, so as to enable the Committee to examine them at its next session.*

II. The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following matters:

Article 1(c) and (d) of the Convention. Forced or compulsory labour as punishment for breach of contract or participation in strikes in non-essential services. 1. In earlier comments made under the present Convention and the Forced Labour Convention, 1930 (No. 29), the Committee has noted that the Pakistan Essential Services (Maintenance) Act (ESA), 1952, and corresponding provincial Acts, prohibit employees from leaving their employment, even by giving notice, without the consent of the employer, as well as from striking, subject to penalties of imprisonment that may involve compulsory labour. The Committee has also noted previous comments, made under the Convention by the APFTU, according to which the Government has applied provisions of the ESA to workers employed in non-essential services, including various public utilities such as the Water and Power Distribution Authority (WAPDA), the Karachi Port Trust, and Sui Gas, as well as railways and telecommunications, and these workers cannot resign from their service and cannot go on strike.

2. The Committee notes the indication of the Worker member of Pakistan, in the Conference Committee at the 90th Session of the International Labour Conference in June 2002, that management in the Karachi Electric Supply Corporation, and in the telecommunications and railway industries generally, had been making use of the provisions of the ESA to prevent workers from presenting their legitimate demands and to refuse any type of social dialogue. He referred in particular to workers in Quetta

who had gone on strike and been arrested. The Committee also notes, from the APFTU communication dated 26 April 2005, the indication that the provisions of the ESA continue to be applied to ban strikes in non-essential services.

3. The Committee notes the indications by the Government representative in the Conference Committee in June 2002 that, while that the Act has remained on the books, that most public sector organizations to which the ESA was applied were undergoing privatization, including WAPDA and the telecommunications and oil and gas sectors, and that the Act would therefore no longer be applicable when those organizations had been fully privatized. The Committee notes from its latest report the Government's indication, which it has repeated for a number of years, that the provisions of the ESA are applied restrictively.

4. The Committee points out once again, with reference to the explanations provided in paragraphs 110 and 123 of its General Survey of 1979 on the abolition of forced labour, that the Convention does not protect persons responsible for breaches of labour discipline or strikes that impair the operation of essential services in the strict sense or in other circumstances where life and health are in danger; however, in such cases there must exist an effective danger, not mere inconvenience. Furthermore, all the workers concerned – whether in any employment under the federal and provincial governments and local authorities or in public utilities, including essential services – must remain free to terminate their employment by reasonable notice; otherwise, a contractual relationship based on the will of the parties is changed into service by compulsion of law, which is incompatible with both the present Convention and the Forced Labour Convention, 1930 (No. 29), likewise ratified by Pakistan. The Committee also recalls that, in its comments to the Government on its application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it has observed that the ESA includes services which cannot be considered essential in the strict sense of the term, including, among others, oil production, postal services, railways, airways, and ports, and it has for some time requested that the Government amend the ESA so as to ensure that its scope is limited to essential services in the strict sense of the term. The Committee refers the Government to its comments under Convention No. 87 on this point. ***It reiterates its firm hope that the ESA, and corresponding provincial Acts, will be repealed or amended in the near future so as to ensure the observance of the Convention, and that the Government will report on the action taken to this effect.***

5. In comments made for many years, the Committee has referred to sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969), under which, whoever commits any breach of any term of any settlement, award or decision or fails to implement any such term may be punished with imprisonment which may involve compulsory labour. The Committee notes the promulgation of the Industrial Relations Ordinance (IRO) of 2002, which has repealed the 1969 Ordinance (section 80). The Committee notes with interest, from the indications of the Government in its latest report, as well as the text of sections 65, 66, and 67 of the IRO, that the penalties of imprisonment have been eliminated.

Forcible return of seafarers on board ship. 6. The Committee has, from the time of the Government's ratification of the Convention in 1960, referred to sections 100 to 103 of the Merchant Shipping Act, 1923, under which penalties involving compulsory labour may be imposed in relation to various breaches of labour discipline by seafarers, and seafarers may be forcibly returned on board ship to perform their duties. The Committee notes the promulgation of the Pakistan Merchant Shipping Ordinance (PMSO), 2001 (No. LII of 2001). It observes that the PMSO still contains provisions, particularly sections 204, 206, 207, and 208, which would permit, in respect of various breaches of labour discipline, such as absence without leave, wilful disobedience, or combining with the crew in "neglect" of duty, the imposition of sanctions involving the forcible conveyance of seafarers on board ship, as well as imprisonment (which may involve compulsory labour by virtue, inter alia, of section 3(26) of the General Clauses Act, 1897). ***The Committee regrets that, after decades of comments addressed to the Government on this point, the Government has promulgated new legislation without eliminating the divergences between its national legislation and the Convention. The Committee hopes that the Government will amend or repeal without delay those provisions of the 2001 Ordinance that prescribe penalties for breaches of labour discipline under which seafarers may be imprisoned or forcibly returned on board ship to perform their duties. The Committee asks the Government to provide information on the progress made in this regard. The Government is also asked to provide a copy of the implementing rules or regulations promulgated under section 603 of the 2001 Ordinance.***

Article 1(a) and (e). Forced labour as a means of political coercion. 7. In comments made for many years, the Committee has referred to certain provisions in the Security of Pakistan Act, 1952 (sections 10–13), the West Pakistan Press and Publications Ordinance, 1963 (sections 12, 23, 24, 27, 28, 30, 36, 56 and 59) and the Political Parties Act, 1962 (sections 2 and 7), which give the authorities wide discretionary powers to prohibit the publication of views and to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour.

8. The Committee notes the promulgation of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, which repeals the West Pakistan Press and Publications Ordinance, 1963 (section 45). Under the registration provisions of the 2002 Ordinance, a District Coordination Officer must deny authentication of a declaration, which must be made as a prerequisite for publication of a newspaper, in cases where the declaration has been filed by a person convicted of a criminal offence involving moral turpitude or for wilful default of public dues (section 10(2)(c)). Where the District Coordination Officer fails to take action to authenticate or to pass an order denying authentication of a declaration within a period of 30 days, the declaration is deemed to be authenticated (section 10(4)). Anyone who, among other things, edits, prints, or publishes a newspaper in contravention of the Ordinance – for instance, without having made a declaration or without having a declaration authenticated – is liable to punishment involving a sanction of imprisonment (which may involve compulsory labour) for a term of up to six months (sections 5 and 28). ***Referring to paragraph 133 of the General Survey of 1979 on the abolition of forced labour, the Committee asks the Government in its next report to indicate in relation to the abovementioned provisions of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, the measures taken or envisaged to ensure, in accordance with Article 1(a) of the Convention, that no form of forced or compulsory labour (including labour exacted as a consequence of a sentence of imprisonment) may be imposed as a means of political coercion or as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee also asks the Government to provide information on the application in practice of sections 5, 10(2)(c), 28 and 30 of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, including the number of persons arrested and convicted under these provisions, as well as the particulars of any judicial decisions which may serve to define or clarify the effect of the abovementioned provisions. The Government is also requested to supply a copy of the text of any rules promulgated under section 44 of the Ordinance to implement it.***

9. As regards the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, the Committee notes the indications by the Government representative in the Conference Committee in June 2002 that the application of these statutes was extremely restrictive. The Committee also notes from the Annual Reports of 2003 and 2005 of the Government's Law and Justice Commission, as well as its Report No. 56, that the Commission, in response to a Supreme Court ruling, had approved and drafted legislative proposals for certain amendments to be made to the Security of Pakistan Act, 1952, and that proposed reforms to other

legislation, including the Political Parties Act, 1962, were under consideration. *The Committee hopes that the concerns of the Committee will be taken into consideration in the work of the Law and Justice Commission. More generally, the Committee hopes that the Government will soon take the necessary measures to bring the abovementioned provisions of the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, into conformity with the Convention, and that it will report on progress achieved. Pending action to amend these provisions, the Government is requested to supply updated information on their practical application, including the cases registered, the number of convictions, and copies of any relevant court decisions.*

10. The Committee notes that, in its latest report, the Government has indicated, with reference to the non-conformity with the Convention of the Pakistan Essential Services (Maintenance) Act, 1952, that “Pakistan is serving in the front line of the war against terrorism and in retaliation the unscrupulous elements off and on try to disrupt the supply chain of oil as well as natural gas to make stand still the whole economy of the country”. It notes the similar indication by the representative of the Government in the Conference Committee in June 2002, with reference to the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, that Pakistan “was in the forefront of the fight against terrorism and faced very difficult political circumstances”, and that under the present circumstances any change to the existing laws might not be feasible, particularly those related to the security of the country. The Committee observes that these laws, as well as the Merchant Shipping Act, 1923, have been the subject of comments by the Committee ever since the Government ratified the Convention in 1960, and that they have also been the subject of numerous discussions in the Conference Committee. The Committee would also like to point out that, if counter-terrorism legislation responds to the legitimate need to protect the security of the public against the use of violence, it can nevertheless become a means of political coercion and a means of punishing the peaceful exercise of civil rights and liberties, such as the freedom of expression and the right to organize. The Convention protects these rights and liberties against repression by means of sanctions involving compulsory work, and the limits which may be imposed on them by law need to be properly addressed.

11. *The Committee hopes that, as a matter of urgency, the Government will at long last take the necessary measures to bring the provisions of the national legislation mentioned above into conformity with the Convention, and that it will report on progress achieved.*

The use of forced or compulsory labour as a means of religious discrimination. 12. In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is subject to punishment with imprisonment (which may involve compulsory labour) for a term that may extend to three years. The Committee has noted the report submitted to the United Nations Commission on Human Rights in 1996 by the Special Rapporteur on the Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (document E/CN.4/1996/95/Add.1 of 2 January 1996), which indicates that, according to many non-governmental sources, the religious activities of the Ahmadi community are seriously restricted, and that many Ahmadis are reported to be prosecuted under section 298C of the Penal Code (paragraph 41). The Committee has also noted the conclusion of the Special Rapporteur that the State laws related to religious minorities are likely to favour or foster intolerance in society, and that the law applied specifically to the Ahmadi minority is particularly questionable.

13. The Committee has noted the Government’s repeated statements in its reports that religious discrimination does not exist and is forbidden under the Constitution, which guarantees equal citizenship and fundamental rights to minorities living in the country. The Government states that subject to law, public order and morality, the minorities have the right to profess, propagate their religion and establish, maintain and manage their religious institutions. In the Government’s view, the Penal Code imposes equal obligations on all citizens, whatever their religion, to respect the religious sentiments of others, and an act that impinges upon the religious sentiments of other citizens is punishable under the Penal Code. The Government indicates that religious rituals referred to in Ordinance No. XX are prohibited only if exercised in public, whereas if they are performed in private without causing provocation to others, they do not fall under the prohibition.

14. While noting this information, the Committee points out once again, referring also to the explanations provided in paragraphs 133 and 141 of its General Survey of 1979 on the abolition of forced labour, that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But where punishment involving compulsory labour is aimed at the peaceful expression of religious views, or where such punishment (for whatever offence) is meted out more severely, or even exclusively, to certain groups defined in social or religious terms, this falls within the scope of the Convention. *The Committee therefore reiterates that it firmly hopes the necessary measures will be taken in relation to sections 298B and 298C of the Penal Code, so as to ensure the observance of the Convention. Pending action to amend these provisions, the Committee requests that in its next report the Government provide updated and detailed factual information on the practical application of the provisions of sections 298B and 298C of the Penal Code, including a record of cases registered, the number of persons convicted, and copies of court decisions.*

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

Papua New Guinea

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)

The Committee notes with regret that the Government’s report contains no reply to previous comments. It is therefore bound to repeat its previous observation, which read as follows:

Article 1(c) and (d) of the Convention. Penal sanctions applicable to seafarers for various breaches of labour discipline. In comments it has been making since 1978, the Committee has been referring to certain provisions of the Seamen (Foreign) Act, 1952, under which a seafarer belonging to a foreign ship who deserts or commits certain other disciplinary offences is liable to imprisonment which involves an obligation to perform labour (section 2(1), (3), (4) and (5)). The Committee also referred to section 1 of the same Act and section 161 of the revised Merchant Shipping Act (chapter 242) (consolidated to No. 67 of 1996), which stipulate that foreign seafarers deserting their ship may be forcibly returned on board ship.

As the Committee repeatedly pointed out, referring also to the explanations in paragraph 179 of its General Survey of 2007 on the eradication of forced labour, sanctions of imprisonment (involving an obligation to perform labour) would only be

compatible with the Convention where they are clearly limited to acts endangering the safety of the ship or the life or health of the persons, but not where they relate more generally to breaches of labour discipline, such as desertion, absence without leave or disobedience; similarly, provisions under which seafarers may be forcibly returned on board ship are not compatible with the Convention.

The Committee notes the Government's indication in the report that numerous requests concerning the Committee's comments have been communicated to the Department of Transport, which is responsible for administering and applying the above legislation, with a view to amending these provisions. It also notes the Government's renewed commitment to review these provisions in connection with the overall revision of the labour legislation being undertaken with ILO technical assistance, as well as the Government's indication that it is hopeful the amendment of these provisions will take place in 2005–06.

While noting these indications, the Committee expresses firm hope that the above provisions of the Seamen (Foreign) Act and the Merchant Shipping Act will soon be brought into conformity with the Convention and asks the Government to report the progress achieved in this regard.

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

Peru

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. Forced labour by indigenous communities. In the observations that it has been making for many years, the Committee has referred to the existence of forced labour practices (slavery, debt bondage and serfdom) affecting members of indigenous communities, particularly in the Atalaya region in sectors such as agriculture, stock-raising and forestry. In its previous observation, the Committee requested information from the Government on the approval and implementation of the Plan of Action for the Eradication of Forced Labour.

Measures taken by the Government. The Committee notes the establishment of the National Commission to Combat Forced Labour, created by Presidential Decree No. 001-2007-TR, of 13 January 2007, the purpose of which is to act as the permanent coordination body for policies and action against forced labour in the various sectors at both the national and regional levels. Under the presidency of the Minister of Labour and Employment Promotion, the Commission is composed, among other members, of representatives of the Ministries of Labour, Health, Education, Agriculture and of employers' and workers' organizations. The Committee notes with interest that Presidential Decree No. 009-2007-TR approved the National Plan to Combat Forced Labour (hereinafter, the "National Plan"), in the context of which the medium- and long-term policies are intended to address structural issues (the conditions of vulnerability of the victims) and the adoption of short-term coordinating measures to resolve specific instances of forced labour. The measures envisaged in the National Plan include: legislative action to specifically criminalize forced labour and to repress such practices; measures to strengthen and train the inspection services; undertaking investigations in sectors in which there are indications of situations of forced labour; developing a communication strategy to inform the population concerning the problem of forced labour and the computerized processing of complaints of cases of forced labour.

Legislative measures. The Committee notes that one of the objectives of the National Plan (component III) is "the existence of legislation in conformity with international standards respecting freedom of work and rules which give legal guarantees for action against forced labour".

The Committee notes the action that has been envisaged in the National Plan and hopes that the Government will provide information on the progress achieved in relation to:

- *the formulation and harmonization of the legislation to combat the issue of forced labour;*
- *the formulation of a draft text to regulate private employment agencies and systems for the training of the labour force, focusing on the prevention of forced labour, and their integration into the mandate of the labour inspectorate;*
- *the preparation of a study on the viability of establishing standards for work in specific economic activities in which there are indications of forced labour;*
- *providing ex officio legal defence services free of charge for citizens who have been victims of forced labour, with the criminal prosecution of persons who have actively committed the crime of forced labour.*

Inspection. The Committee notes the major role of labour inspection in combating forced labour and that the action envisaged in the National Plan for institutional strengthening in the field of inspection, includes:

- the creation of mobile inspection units in geographical areas that are difficult to access in which forced labour situations have been identified;
- the establishment of machinery to receive complaints and forward them to the corresponding services;
- the inclusion of a module on forced labour in training plans for the staff of the labour inspection system;
- the inclusion of the subject of fundamental labour rights in the curriculum for the police school.

The Committee notes that, among the first actions planned, a bi-national workshop for Peru and Brazil is to be held in the city of Pucallpa-Ucayali, with the participation of specialists from the Brazilian mobile inspection unit. The

principal objective of the workshop is to undertake practical action in the region of Ucayali to combat forced labour in the illegal felling of wood. ***The Committee requests the Government to provide information on the conclusions formulated at the bi-national seminar for Peru and Brazil and on the other action envisaged in the National Plan in relation to inspection services.***

Research and statistics. Among the measures envisaged to identify the groups affected and the number of victims, the National Plan includes:

- undertaking research on forced labour in specific sectors in which there are indications of situations of forced labour, such as nut harvesting in Madre de Dios, domestic work, fishing and artisanal mining, agriculture and various sectors of production throughout the Peruvian Amazon;
- undertaking regular diagnostic exercises to evaluate the existence or identify evidence of forced labour and its gender dimensions in general terms.

With regard to domestic work under conditions of forced labour, the Committee notes the comments of the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), forwarded to the Government in September 2006. In its comments, the ITUC alleges that elements of forced labour are found in the domestic work sector. Women form a majority of that sector and they live and work in the household of the employer. Employers often keep their identity documents and this makes it impossible for them to leave their jobs. In many cases, they do not receive any remuneration because they are indebted to their employer, who deducts from their wages food, housing, medical fees and the value of any damage caused by such workers, who have to continue working without wages to cover the costs.

The Committee hopes that the Government will provide information on the investigations that have been carried out in the sectors envisaged in the National Plan, and particularly on the situation of domestic work and the ITUC's allegations.

Article 25. Penalties for the exaction of forced labour. In its previous observation, the Committee requested information on the number of complaints of cases of forced labour, the progress made in the investigation of these cases, and particularly the percentage of complaints which have given rise to prosecutions and the number of convictions obtained.

In its report, the Government indicates that there is no specific legislation addressing the issue of forced labour in an integral manner and that the State will therefore have to update and harmonize the criminal, labour and civil legislation on this subject. Furthermore, the National Plan envisages the establishment of machinery for complaints and the Ministry of Labour and non-governmental organizations are currently creating computer systems for this purpose. The Government adds that it has no information on prosecutions and convictions for forced labour.

The Committee recalls that, under the terms of *Article 25* of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence and that it shall be an obligation on any Member ratifying the Convention to ensure that penalties imposed by law are really adequate and are strictly enforced. The Committee observes that the lack of specific provisions in criminal law to repress and penalize forced labour prevents effect from being given to this provision of the Convention with the consequence that those responsible for the exaction of forced labour enjoy impunity. Furthermore, the measures envisaged in the National Plan for the establishment of complaints procedures will not be effective as there is no legal basis to incriminate practices of forced labour.

The Committee hopes that the Government will rapidly take the necessary measures to specifically criminalize and repress practices of forced labour in criminal law. In the meantime, the Committee requests the Government to provide information on the complaints procedures that have been established and, where appropriate, the complaints that have been made under the current provisions of the national legislation.

The Committee welcomes the action which the Government has taken with a view to the eradication of forced labour. The measures envisaged, while constituting an important first step, will need to be strengthened and lead to systematic action that is commensurate with the scope and gravity of the problem. The direction taken by the National Plan should allow this objective to be achieved. ***The Committee hopes that each of the components of the National Plan of Action to Combat Forced Labour will be implemented effectively and that the Government will be able to provide information in its next report on the progress made and the results achieved.***

Russian Federation

Forced Labour Convention, 1930 (No. 29) (ratification: 1956)

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Referring to its earlier comments, the Committee has noted with interest the information provided by the Government concerning measures taken to prevent, suppress and punish trafficking in persons for the purpose of exploitation. It has noted, in particular, the adoption of the Federal Act No. 162-FZ, of 8 December 2003, which introduced amendments to the Criminal Code (insertion of the new sections 127.1 (trafficking in human beings) and 127.2 (exploitation of slave labour)), which define crimes related to trafficking and slave-like practices and provide for severe sanctions of imprisonment. It has also noted the information on

the implementation in the Russian Federation of the Organization for Security and Co-operation in Europe (OSCE) Plan of Action to combat trafficking in persons, of the European Union project “Prevention of human trafficking in the Russian Federation” conducted in collaboration with the International Organization for Migration (IOM) and the programme of cooperation between Member States of the Commonwealth of Independent States (CIS) on combating human trafficking for 2007–2010, as well as the information on bilateral cooperation with neighbouring countries in this field. The Committee has noted statistical information concerning persecution of the offences of human trafficking under section 127.1 of the Criminal Code, as well as the information on the court decisions and other information on the law enforcement provided in the report.

As regards the elaboration of a draft Law on Combating Trafficking in Human Beings which should provide for a system of bodies to combat trafficking and contain provisions concerning prevention of trafficking, as well as protection and rehabilitation of victims, to which the Government referred in its previous report, the Committee notes the Government’s indication that the draft text has been finalized and submitted to the State Duma of the Russian Federation.

The Committee would appreciate it if the Government would continue to provide information on the application in practice of section 127.1 of the Criminal Code, supplying sample copies of the relevant court decisions and indicating the penalties imposed on perpetrators, as well as information on the practical measures taken or envisaged to combat trafficking in human beings with a view to eliminating it. Please also keep the ILO informed on progress in the adoption of the draft Law on Combating Trafficking in Human Beings and provide a copy thereof, once it has been adopted.

Sierra Leone

Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

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

Articles 1(1) and 2(1) of the Convention. Compulsory cultivation. Over many years, the Committee has been referring to section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on “natives”. On numerous occasions, it requested the Government to repeal or amend this provision. The Committee also noted the Government’s statement that the abovementioned section is not in conformity with article 9 of the Constitution and would be held unenforceable.

The Committee takes due note of the Government’s repeated indication that section 8(h) is not applicable in practice and that information on any amendment of this section would be communicated to the ILO in the near future.

As the Government has repeatedly indicated since 1964 that this legislation would be amended, the Committee reiterates firm hope that the necessary measures will at last be taken in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice. It requests the Government to provide, in its next report, information on the progress made in this regard.

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

Sudan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1970)

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

Article 1(a) and (d) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views and for having participated in strikes. For a number of years, the Committee has been referring to certain provisions of the Penal Code and the Labour Code, under which penalties of imprisonment (involving an obligation to work under the Prison Regulations, Chapter IX, section 94, and the 1997 Regulations concerning the organization of work in prisons, Chapter XIII, section 38(6)) may be imposed in circumstances falling within the scope of the Convention.

The Committee has noted the adoption in 2005 of the Interim National Constitution, which contains the Bill of Rights promoting human rights and fundamental freedoms. It has noted that the declaration of emergency was lifted in July 2005 as a result of signing of the Comprehensive Peace Agreement. The Committee has also noted the Government’s indication in its report that a draft labour law has been finalized and prepared for submission to the competent authorities for adoption. ***The Committee asks the Government to supply a copy of the new law, as soon as it is adopted. It also asks the Government once again to supply copies of the legislation in force concerning freedom of association, assembly, and expression of political opinion.***

The Committee takes note of the situation regarding human rights in Sudan as described in Decision 2/115 of the UN Human Rights Council concerning Darfur, of 28 November 2006, in the report on the situation of human rights in Darfur prepared by the group of experts mandated by the Human Rights Council resolution 4/8 presided by the Special Rapporteur on the situation of human rights in Sudan (A/HRC/5/6, of 8 June 2007) and in the statement issued by the Special Rapporteur on the situation of human rights in Sudan, of 6 August 2007. In its Decision 2/115 referred to above, the UN Human Rights Council noted with concern the seriousness of the human rights and humanitarian situation in Darfur and called on all parties to put an immediate end to the ongoing violations of human rights and international humanitarian law. In her statement referred to above, the Special Rapporteur pointed out that, despite the potential for democratic transition and optimism created by the Interim National Constitution and the Bill of Rights, violations of civil and political rights continue, including limitations on freedom of

expression. She welcomed the Government's acknowledgement of the seriousness of the situation and strongly encouraged it to take action without delay to improve it, so that people can fully enjoy their human rights and fundamental freedoms.

As the Committee repeatedly pointed out, it observes the importance for the effective respect of the Convention of the legal guarantees regarding freedom of assembly, expression, demonstration and association, and the direct effect which restriction of these rights, both in law and in practice, can have on the application of the Convention.

The Committee previously noted the Government's indication in its report that, according to the Prison Regulations of 1999, there is no compulsory labour in prisons and work is optional for prisoners. ***It requests the Government once again to supply a copy of the 1999 Prison Regulations with its next report, so as to enable the Committee to ascertain whether national legislation is compatible with the Convention.***

The Committee is addressing a more detailed request on the above matters directly to the Government.

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

United Republic of Tanzania

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

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

Article 1(a), (b) and (c) of the Convention. Penalties involving compulsory labour as a punishment for expressing political views, for failure to engage in socially useful work and for various breaches of labour discipline. For many years, the Committee has been referring to certain provisions of the Penal Code, the Newspaper Act, the Merchant Shipping Act and the Local Government (District Authorities) Act, under which penalties involving compulsory labour may be imposed in circumstances falling within the scope of the Convention. The Committee also asked the Government to provide information on the amendment or repeal of the provisions of various legal instruments, to which it referred in its comments under Convention No. 29, likewise ratified by the United Republic of Tanzania, and which are contrary to *Article 1(b)* of this Convention.

The Committee noted the Government's statements in its 2003 and 2004 reports that the Committee's views and comments made on the provisions of the above laws which are incompatible with the Convention had been duly taken into account, and that the identified laws had been addressed by the Task Force of the Labour Law Reform with a view to making appropriate recommendations to the Government. As regards the abovementioned Merchant Shipping Act, the Government indicated in its 2002 report that the International Maritime Organization (IMO) had prepared proposals for the amendment of the Act, which had been submitted to the Government.

The Committee reiterates firm hope that the necessary action will be taken in the near future in order to repeal all provisions incompatible with the Convention, and that the Government will soon be able to report on progress made in this regard.

The Committee is again addressing a more detailed request on the above matters directly to the Government.

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

Thailand

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)

Article 1(c) of the Convention. Sanctions involving compulsory labour as a means of labour discipline. In its earlier comments, the Committee referred to sections 131–133 of the Labour Relations Act B.E. 2518 (1975), under which penalties of imprisonment (involving compulsory labour) may be imposed on any employee who violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18, 22–24, 29 and 35(4) of the Labour Relations Act. The Committee pointed out that sections 131–133 of the Labour Relations Act were incompatible with the Convention, which prohibits the use of compulsory labour as a means of labour discipline.

The Committee has noted the Government's statement that the above provisions have been applied in practice only in a few cases. It has also noted the Government's indication in its 2006 report that the Ministry of Labour is planning to conduct a study on the conformity of the Labour Relations Act B.E. 2518 (1975) with the Convention and that the Committee on the national policy for legal reform has been established, with the Prime Minister as the Chairperson.

While having noted this information, the Committee expresses the firm hope that the necessary measures will soon be taken with a view to bringing the above provisions of the Labour Relations Act B.E. 2518 (1975) into conformity with the Convention, either by repealing sanctions involving compulsory labour or by limiting their scope to acts endangering the life or health of persons.

Article 1(d). Sanctions involving compulsory labour as a punishment for having participated in strikes. 1. The Committee previously referred to the following provisions of the Labour Relations Act B.E. 2518 (1975), under which penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes:

- (i) section 140 read in conjunction with section 35(2), if the minister orders the strikers to return to work, being of the opinion that the strike may affect the national economy or cause hardship to the public or endanger national security or be contrary to public order;

- (ii) section 139 read in conjunction with section 34(5), if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the minister under section 23(1), (2), (6) or (8) or by the Labour Relations Committee under section 24.

The Committee has noted the Government's statement that the provisions of section 140 are applied only in a situation where the strike may affect the national economy or endanger national security or be contrary to public order, and that they have been applied in practice only in a few cases. *Having also noted the Government's indications in its 2006 report concerning a study to be conducted by the Ministry of Labour on the conformity of the Labour Relations Act B.E. 2518 (1975) with the Convention and the setting up of the Committee on the national policy for legal reform, the Committee reiterates its hope that the necessary measures will soon be taken with a view to bringing the above provisions of the Labour Relations Act into conformity with the Convention, by ensuring that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike.*

2. Over a number of years, the Committee has been referring to section 117 of the Criminal Code, under which participation in any strike with the purpose of changing the laws of the State, coercing the Government or intimidating the people is punishable with imprisonment (involving compulsory labour). The Committee has noted the Government's repeated statement in its reports that section 117 is essential for national peace and security and does not deprive workers of their labour rights or of the right to strike under the labour law, having no objective to impose any sanctions against workers who participate in strikes pursuing economic and social objectives affecting their occupational interests. The Committee also noted previously the Government's indication that this section had never been applied in practice. *While having noted these indications, the Committee refers to the explanations provided in paragraph 188 of its 2007 General Survey on the eradication of forced labour and reiterates its hope that the necessary measures will be taken, on the occasion of the next revision of the Criminal Code, to amend section 117 in such a way that it would be clear from the text itself that strikes pursuing economic and social objectives affecting the workers' occupational interests are removed from the scope of sanctions under this section, in order to bring this provision into conformity with the Convention and the indicated practice.*

3. In its earlier comments, the Committee referred to certain provisions under which workers of state enterprises were prohibited from striking, this prohibition being enforceable with sanctions of imprisonment (involving compulsory labour). The Committee noted, in particular, that the State Enterprise Labour Relations Act B.E. 2543 (2000) prohibits strikes in state enterprises (section 33), violation of this prohibition being punishable with imprisonment (involving compulsory labour) for a term of up to one year; this penalty is doubled in the case of a person who instigates this offence (section 77).

While having noted the Government's statement in its 2006 report concerning the role of state enterprises for the economic and social development of the country and the living standards of the population, the Committee recalls that a blanket prohibition of strikes in all state-owned enterprises, if enforced with penalties involving compulsory labour, is incompatible with the Convention. *Having also noted the Government's indications in its report concerning a study to be conducted by the Ministry of Labour on the conformity of the State Enterprise Labour Relations Act B.E. 2543 (2000) with the Convention, the Committee reiterates its firm hope that the necessary measures will soon be taken with a view to amending the above provisions of the State Enterprise Labour Relations Act, so that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike, in order to bring the legislation into conformity with the Convention. It asks the Government to provide, in its next report, information on progress made in this regard.*

Uganda

Forced Labour Convention, 1930 (No. 29) (ratification: 1963)

The Committee has noted the Government's report, as well as the discussion which took place in the Conference Committee on the Application of Standards in June 2006.

Articles 1(1), 2(1) and 25 of the Convention. Abductions of children and forced labour practices in connection with armed conflict. In its earlier comments, the Committee expressed concern about numerous cases of abductions of thousands of children, in connection with armed conflict in the northern part of the country, for the purpose of exploitation of their labour. Abducted children were forced to provide work and services as guards, soldiers and concubines, such abductions being connected with killings, beatings and rape of these children. The Committee observed that continuing existence and scope of the practices of abductions and the exaction of forced labour constitute gross violations of the Convention, since the victims are forced to perform labour for which they have not offered themselves voluntarily, under extremely harsh conditions combined with ill treatment which may include torture and death, as well as sexual exploitation. The Committee therefore urged the Government to take effective and prompt action in order to eliminate these practices and to ensure that, in accordance with *Article 25* of the Convention, penal sanctions are imposed on persons convicted of having exacted forced labour.

The Committee recalls that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182). In so far as Article 3(a) of Convention No. 182 provides that the worst forms of child labour include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or

compulsory labour”, the Committee is of the view that the problem of the forced labour of children may be examined more specifically under Convention No. 182. The protection of children is enhanced by the fact that Convention No. 182 requires States which ratify it to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee accordingly asks the Government to refer to its 2007 comments on the application of Convention No. 182.***

Articles 1(1) and 2(1). 1. *Legislation concerning compulsory placement of unemployed persons on agricultural enterprises in rural areas.* For a number of years, the Committee has been referring to section 2(1) of the Community Farm Settlement Decree, 1975, under which any unemployed able-bodied person may be settled on any farm settlement and required to render service; section 15 of the Decree makes it an offence punishable with a fine and imprisonment for any person to fail or refuse to live on any farm settlement or to desert or leave such settlement without authorization. The Committee previously noted the Government’s indication in its report that the abovementioned Decree was in the process of being repealed under the laws of Uganda revision exercise by the Uganda Law Reform Commission. The Committee has also noted from the statement of the Government representative before the Conference Committee on the Application of Standards in June 2006, that the 1975 Decree is a “dead law” which is not applied in practice, and that the current Parliament intends to repeal it. ***While having noted these indications, the Committee expresses the firm hope that the Community Farm Settlement Decree, 1975, will be repealed in the near future, in order to bring the legislation into conformity with the Convention and the indicated practice. It asks the Government to supply a copy of the repealing text, as soon as it is adopted.***

2. *Freedom of career military officers to leave their service.* The Committee previously noted the Government’s indication that the Armed Forces (Conditions of Service) (Officers) Regulations, 1969, were replaced by the National Resistance Army (Conditions of Service) (Officers) Regulations, No. 6 of 1993 (now the Uganda Peoples’ Defence Forces (Conditions of Service) (Officers) Regulations). The Committee has noted that section 28(1) of these Regulations contains a provision (which is similar to a corresponding provision of the repealed Regulations) under which the Board may permit officers to resign their commission in writing at any stage during their service. The Committee has noted the Government’s repeated indication in its reports, which was also confirmed by the Government representative in his statement before the Conference Committee in June 2006, that the officer applying for the resignation must give his/her reasons for it, and the Board will consider these reasons and, if it finds them fit, will grant a permission to resign.

The Committee observes that it follows from the wording of section 28(1) that the application to resign may be either accepted or refused. It refers to the explanations provided in paragraphs 46 and 96–97 of its 2007 General Survey on the eradication of forced labour, where it pointed out that career military servicemen who have voluntarily entered into an engagement cannot be deprived of the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service. ***The Committee therefore expresses the firm hope that the necessary measures will be taken with a view to amending section 28(1) of the above Regulations, so as to bring it into conformity with the Convention. Pending such amendment, the Committee again requests the Government to provide information on the application of section 28(1) in practice, indicating in particular the criteria applied by the Board in accepting or rejecting a resignation, as well as the number of resignations accepted and refused.***

3. *Military service of persons enrolled below the age of 18 years.* The Committee previously noted the Government’s indication in its report that the Armed Forces (Conditions of Service) (Men) Regulations, 1969, which provided that the term of service of persons enrolled below the age of 18 years might be extended until they are 30 years old, was repealed by the National Resistance Army (Conditions of Service) (Men) Regulations No. 7 of 1993. The Government indicated that section 5(4) of these Regulations prohibits a person below the age of 18 years or above 30 years to be employed in the armed forces. ***While having noted these indications, the Committee again requests the Government to supply a copy of Regulations No. 7, 1993, with its next report.***

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

The Committee notes with *satisfaction* that the Trade Disputes (Arbitration and Settlement) Act, 1964, which contained provisions under which workers employed in “essential services” may be prohibited from terminating their contract of service, has been repealed by the Labour Disputes (Arbitration and Settlement) Act, 2006 (section 44(1)). Section 34(1) of the new Act expressly provides that an individual employee (employed in “essential services”) shall not be prohibited from giving notice of termination of employment at any time under the Employment Act, 2006.

Article 1(a) of the Convention. *Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* For a number of years, the Committee has been referring to the following legislation:

- (i) 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;
- (ii) sections 54(2)(c), 55, 56 and 56A of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus render any speech, publication or activity on behalf of, or in support of, such combination illegal and punishable with imprisonment (involving an obligation to perform labour).

As the Committee repeatedly pointed out, any penal sanctions involving an obligation to perform prison labour are contrary to the Convention when imposed on persons convicted for expressing political views or views opposed to the established political system, or having contravened a widely discretionary administrative decision depriving them of the right to publish their views or suspending or dissolving certain associations (see, for example, paragraphs 152–166 of its 2007 General Survey on the eradication of forced labour).

The Committee expresses the firm hope that the necessary measures will at last be taken to repeal or amend the abovementioned provisions of the Public Order and Security Act, No. 20 of 1967, and of the Penal Code, in order to bring the legislation into conformity with the Convention, and that the Government will provide, in its next report, information on progress made in this regard.

The Committee is also addressing a request on certain other points directly to the Government.

United States

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1991)

Article 1(c) and (d) of the Convention. Sanctions involving compulsory labour for participation in strikes. In observations addressed to the Government since 2002, the Committee has noted that, under 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. The Committee has noted the *Compendium of Community Corrections Programs in North Carolina*, published by the North Carolina Sentencing and Policy Advisory Commission, which explains that the imposition of community punishment may include assignment to the state’s Community Service Work Program (CSWP): “The CSWP is an alternative to incarceration imposed as part of a community punishment or DWI sentence, or in some cases as the sole condition of unsupervised probation.” The report also states: “CSWP is a community punishment. It is also used as a sanctioning tool at every stage of the criminal justice system ... CSWP requires the offender to work for free for public or non-profit agencies in an area that will benefit the greater community.” The Committee has also noted that article 3 (Labor of Prisoners), section 148-26, of Chapter 148 (State Prison System) declares it to be 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.

The Committee notes from its latest report the Government’s repeated assertion that no North Carolina public employee has ever been, or is likely to be, prosecuted under the law in question, and the Committee’s concern remains “hypothetical”, and that “no measures need to be taken to change that state’s law”. *The Committee is bound to repeat its observation that the provisions of North Carolina law and policy discussed above contravene Article 1(d) of the Convention. Taking into account the Government’s assertions about the dormancy of the law in question, the Committee trusts it will be all the more cognizant of the need for measures to bring the state’s law into conformity with the Convention, and it urges the Government to do so without further delay.*

Uzbekistan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

Article 1(b) of the Convention. Mobilization and use of labour for purposes of economic development in agriculture (cotton production). The Committee previously noted the observations made by the Council of the Trade Unions Confederation of Uzbekistan, communicated by the Government with its 2004 report, which contained allegations concerning practices of a mobilization and use of labour for purposes of economic development in agriculture (cotton production), in which public sector workers, schoolchildren and university students are involved. It also notes a communication concerning the same subject, dated 17 October 2008, received from the International Organisation of Employers (IOE), which was sent to the Government on 4 November 2008, for any comments it might wish to make on the matters raised therein. The IOE alleges that, despite the existence of the legal framework against the use of forced labour, there are continued non-governmental organizations and media reports denouncing the systematic and persistent use of forced labour, including forced child labour, in the cotton fields of Uzbekistan.

The Committee notes the Government’s statements in its latest report, received in March 2008, that under no circumstances may employers use compulsory labour for the production or harvesting of agricultural products in Uzbekistan, and government officials cannot impose compulsory labour on the population for the profit of private employers. The Government also indicates that there are no legislative provisions governing this issue. The Committee notes, however, the adoption in September 2008 of a decree prohibiting the use of child labour in cotton plantations in Uzbekistan.

The Committee requests the Government to comment on the workers’ and employers’ observations referred to above, indicating, in particular, how the participation of the public sector workers, schoolchildren and university

students in the cotton harvest is organized, and what measures have been taken or envisaged to ensure the observance of the Convention, which expressly prohibits the use of forced or compulsory labour for purposes of economic development. Please also supply available statistics and copies of any relevant documents, reports, studies and enquiries.

The Committee is also addressing a request on certain other points directly to the Government.

Zambia

Forced Labour Convention, 1930 (No. 29) (ratification: 1964)

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. The Committee notes the information on measures taken to prevent and combat human trafficking provided by the Government in reply to its earlier comments. It notes, in particular, the Government's indications concerning the adoption of the Penal Code amendments criminalizing human trafficking and the development of the comprehensive piece of legislation which will take into account the provisions of the Palermo Protocol to combat trafficking. The Committee also notes the Government's indications concerning the elaboration of a draft National Anti-Human Trafficking Policy and the establishment of the Inter-Ministerial Task Force and the National Committee to address the problem of trafficking.

The Committee asks the Government to provide, in its next report, information on the application in practice of the National Plan of Action to combat trafficking, to which reference has been made in the report, as well as the information on practical activities of the Inter-Ministerial Task Force and the National Committee referred to above. Please also supply a copy of the National Anti-Human Trafficking Policy, as well as a copy of the new anti-trafficking legislation, as soon as it is adopted. As regards law enforcement, the Committee asks the Government to provide information on the application in practice of the new Penal Code provisions criminalizing human trafficking, to which reference has been made in the report, supplying sample copies of the relevant court decisions and indicating the penalties imposed.

The Committee is also addressing a request on certain other points directly to the Government.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 29** (Angola, Antigua and Barbuda, Armenia, Belarus, Belize, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Dominica, Egypt, Equatorial Guinea, Eritrea, France, Gabon, Georgia, Ghana, Guinea, Guinea-Bissau, Honduras, Islamic Republic of Iran, Ireland, Jamaica, Japan, Jordan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Malawi, Mauritius, Mongolia, Morocco, Mozambique, Namibia, Nepal, New Zealand, Nigeria, Papua New Guinea, Peru, Philippines, Portugal, Qatar, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Serbia, Slovakia, Solomon Islands, The former Yugoslav Republic of Macedonia, Togo, Tunisia, Uganda, United Arab Emirates, United Kingdom: Anguilla, Uzbekistan, Zambia, Zimbabwe); **Convention No. 105** (Afghanistan, Albania, Angola, Armenia, Bangladesh, Barbados, Belarus, Belize, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Chile, China: Hong Kong Special Administrative Region, Comoros, Congo, Czech Republic, Democratic Republic of the Congo, Dominica, Dominican Republic, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Hungary, Indonesia, Israel, Jordan, Kenya, Kiribati, Kyrgyzstan, Malawi, Mongolia, Morocco, Mozambique, Namibia, Oman, Pakistan, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Slovakia, South Africa, Sudan, Suriname, United Republic of Tanzania, Thailand, The former Yugoslav Republic of Macedonia, Togo, Uganda, United Arab Emirates, United States, Uzbekistan, Zimbabwe).

The Committee noted the information supplied by the following States in answer to a direct request with regard to **Convention No. 29** (Bahamas, China: Hong Kong Special Administrative Region, Cuba, Estonia, Iceland, Luxembourg).

Elimination of child labour and protection of children and young persons

General observation

Minimum Age Convention, 1973 (No. 138)

Introduction

The Committee has been examining detailed reports on Convention No. 138 and its associated Recommendation No. 146 over a number of years since the Convention came into force in 1976. The Committee also notes that a number of countries have only recently ratified the Convention. There have been a number of direct requests which have been addressed by the Committee to governments, requesting further information on commonly recurring themes. It appears to the Committee that there is lack of understanding by a number of governments as to the operation of the provisions of the Convention and Recommendation on the topic of light work, in particular the provisions regarding the age from which children may engage in light work, the nature of the work and the conditions in which it may be performed including the hours during which it may be undertaken in conformity with the Convention. In the light of this, the Committee makes this general observation in order to clarify the situation for the assistance of member States in the hope that this will result in an improved application of the Convention on employment of children in light work.

Objective of Convention No. 138

The Committee recalls that the principal objective of Convention No. 138 and Recommendation No. 146 is to achieve the effective abolition of child labour, while taking account of the national situations of member States. It also observes that the scope of these instruments is general and covers all economic sectors and all employment and work (General Survey, ILC, 67th Session, 1981, paragraph 56).

Preparatory work concerning light work (Article 7)

The preparatory work shows that differences of views emerged between member States during the drafting of the instruments (ILC, 57th Session, 1972, Report IV(2), pages 39–43 and ILC, 58th Session, 1973, Report IV(2), pages 19–21). While the majority of governments were in favour of a provision on light work, one government advocated greater flexibility of application, and several governments opposed the inclusion of a provision in the Convention permitting exemptions authorizing light work on the grounds that such a provision would restrict the scope of the Convention and would not lead to the complete abolition of child labour. The Committee notes that, despite these differences of views, the Committee on Minimum Age finally adopted a provision on light work. The Committee observes that, according to the preparatory work, *Article 7* of the Convention regarding light work, attempts to combine the measure of flexibility necessary to permit the wide application of the Convention (especially in view of its general scope) with the restrictions necessary to ensure adequate protection (ILC, 58th Session, 1973, Report IV(2), page 20). The Committee further notes that, as indicated during the preparatory work, where there are special and substantial problems of application, it would be possible for a government to invoke *Article 4* of the Convention, when it sends its first report, allowing it to exclude from the application of the Convention limited categories of employment or work in respect of which special and substantial problems of application arise, after due consultation and subject to the prescribed safeguards (ILC, 58th Session, 1973, Report IV(2), page 21).

Provisions of Convention No. 138 and Recommendation No. 146 governing light work

The Committee recalls that, under the terms of *Article 7, paragraph 1*, of the Convention, national laws or regulations may permit the employment or work of persons 13–15 years of age (or 12–14 years of age) on 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. It further recalls that, under the terms of *Article 7, paragraph 3*, of the Convention, the competent authority shall determine the activities in which employment or work may be permitted and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken. In this respect, the Committee draws the attention of governments to Paragraph 13(1) of Recommendation No. 146, under the terms of which, to give effect to *Article 7, paragraph 3*, of the Convention, special attention should be given to:

- (a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for work of equal value;
- (b) 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 (including the time needed for homework related thereto), for rest during the day and for leisure activities;
- (c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days;

- (d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults;
- (e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;
- (f) the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.

Age of admission to light work determined by national legislation

Over the past few years, the Committee has examined a very large number of detailed reports provided by States which have ratified the Convention recently, with the great majority of the comments being addressed to the governments concerned in the form of direct requests. In these comments, the Committee has been able to note the adoption of national legislation giving effect to *Article 7, paragraph 1*, of the Convention. The reports examined show that a large number of countries have determined the age of admission to light work and have laid down, in conformity with the provisions of the Convention, that these types of work shall not be likely to be harmful to the health or development of children, nor such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee has noted, in particular, that in countries that have specified a minimum age for admission to employment or work of 15 or 16 years, the age from which employment on light work may be authorized has been set at 13 years, while in those countries which have determined a minimum age for admission to employment of 14 years, the age for admission to light work is 12 years. These specifications are in compliance with the Convention. The Committee has also noted that while certain countries have not determined an age of admission to light work, it has observed that, in the great majority of these cases, this is because they have not regulated employment in these types of work. However, a certain number of countries have indicated that they will adopt measures in this respect.

Determination in national legislation of the types of light work and the conditions under which they are undertaken

With regard to *Article 7, paragraph 3*, of the Convention, examination of the reports received has enabled the Committee to observe that, while a small number of countries have determined the types of light work and established the hours of work during which and the conditions in which such employment may be undertaken, a fairly large number have still not adopted measures giving effect to the Convention on this point. The Committee, however, has noted that a number of countries have indicated that they would adopt legislative measures to apply this provision of the Convention. The Committee has also observed that the types of light work most frequently determined are as follows: (1) agricultural work, such as the preparation of seeds and crops, the maintenance of crops without the use of insecticides or herbicides, the harvesting of fruit, vegetables or flowers, picking and sorting in farms and herding; (2) forestry work and landscaping, including the planting of bushes and the maintenance of public gardens, without the use of insecticides or herbicides; (3) domestic work, such as kitchen help, household help or looking after children; and (4) the distribution of mail, newspapers, periodicals or publicity. The Committee has further noted that some countries have laid down the hours of work for light work, namely between two and four-and-a-half hours a day and between ten and 25 hours a week. Certain countries have also established that the time spent in school and on light work shall not exceed seven hours in the day, while others prohibit employment on light work during school term time. Furthermore, certain countries prohibit night work (between 8 p.m. and 6 a.m.) and work on Sundays and public holidays, while others provide for annual leave of up to four weeks a year.

In view of the above, the Committee requests all governments to indicate in future reports under the Convention the measures adopted or envisaged to give effect to Article 7 of the Convention and to specify the measures regulating employment in light work, including those determining types of light work and establishing hours of work and conditions of employment and work. Furthermore, as a number of governments have indicated that they will adopt measures to determine an age from which employment on light work may be authorized, the Committee requests those governments to indicate the measures adopted or envisaged in this respect.

Finally, in the case of those countries that have not regulated light work, the Committee requests the governments concerned to indicate whether, in practice, children undertake light work activities and, if so, the types of light work that they undertake. It also requests these governments to indicate the manner in which the protection afforded by Convention No. 138 and Recommendation No. 146 is ensured for children who undertake such activities in practice.

Albania

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the communication of the International Trade Union Confederation (ITUC) dated 29 August 2008.

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. In its previous comments, the Committee had observed the information provided by the Confederation of Trade Unions of Albania that there were children who fell victim to trafficking, sexual abuse and organized crime. It had also noted that,

according to the Rapid Assessment of Trafficking in Children for Labour and Sexual Exploitation in Albania, carried out under the supervision of the ILO–IPEC in 2003 (page 7), since the turn of the century, the reported number of children being trafficked across borders for labour and sexual exploitation had steadily increased in Albania. Moreover, according to the Government’s initial report to the Committee on the Rights of the Child (CRC/C/11/Add.27 of 5 July 2004, paragraphs 269–272), about 4,000 children had migrated unaccompanied by their parents (3,000 to Greece and 1,000 to Italy). These children were often exposed to numerous risks, including maltreatment, physical and sexual abuse and other illicit activities. The Committee had noted that section 128/b of the Penal Code, as amended by Law No. 9188 of 2004, prohibits the trafficking of minors for sexual exploitation, forced labour and slavery or any other form of exploitation. It had, therefore, observed that, although the trafficking of children for labour or sexual exploitation was prohibited by law, it remained an issue of concern in practice.

The Committee notes that, according to the Report of the UN Special Rapporteur on the sale of children, child prostitution and child pornography of 27 March 2006 (E/CN.4/2006/67/Add.2), although Albania has emerged since 2001 as a source country for persons trafficked for the purposes of sexual exploitation and forced labour, in recent years, due to the intervention of the Albanian and Greek authorities and the increased awareness of the population, trends indicate a decline in children who fall victim to trafficking for labour exploitation (paragraphs 10 and 15). It notes, *with interest*, that the Government adopted the National Strategy and Plan of Action for the Fight Against Child Trafficking and the Protection of Child Victims of Trafficking for the period 2005–07 (National Strategy and Plan of Action against Child Trafficking), which is part of the Albanian National Strategy and Action Plan for Combating Trafficking in Human Beings 2005–07. The National Strategy and Plan of Action against Child Trafficking, provided by the Government, focuses on:

- (a) preventing child trafficking;
- (b) enforcing the legal provisions prohibiting child trafficking;
- (c) providing child victims of trafficking with rehabilitative services and repatriating them to their countries of origin; and
- (d) coordinating anti-child trafficking actors at the national, international, governmental and non-governmental central and local levels.

In particular, measures to prevent child trafficking include:

- (a) law enforcement and border control aspects;
- (b) awareness raising on the risks of child trafficking and the importance of compulsory education;
- (c) setting up procedures to reintegrate into school or insert, in vocational training programmes, children who drop out of school and are at risk of being trafficked; and
- (d) training on the prevention of child trafficking for the police, prosecutors, educational and welfare personnel, at national and local levels.

With regard to the measures to enforce the legal provisions prohibiting child trafficking, these mainly concern the improvement of mechanisms of detection, prosecution and punishment of child traffickers. They include:

- (a) the exchange of information on suspected cases of child trafficking between law enforcement agencies and social services;
- (b) training of police officers, prosecutors and judges to deal with child trafficking prosecutions; and
- (c) implementing a witness protection approach towards child victims of trafficking.

The Committee requests the Government to provide information on the impact of the National Strategy and Plan of Action against Child Trafficking on eliminating the internal and cross-border trafficking of children under 18 years for labour and sexual exploitation. It also requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for trafficking children under 18 years of age for labour or commercial sexual exploitation, as a result of the National Strategy and Plan of Action against Child Trafficking.

Article 5. Monitoring mechanisms. Inter-Ministerial Committee for the Fight against Trafficking in Human Beings and Anti-Trafficking Office. The Committee had previously observed that an Inter-Ministerial Committee for the Fight against Trafficking in Human Beings began functioning in January 2002. It notes that this Inter-Ministerial Committee, together with the Child Trafficking Working Group and various ministries, was responsible for the monitoring and implementation of the National Strategy and Plan of Action against Child Trafficking.

Article 6. Programmes of action to eliminate the worst forms of child labour. National Strategy for Children. The Committee had previously observed that the National Strategy for Children (2001–05) defined the strategic objectives of the government policy and aimed at awareness raising with regard to the phenomenon of trafficking in children. It notes that, according to the Government report, the National Strategy for Children was extended for another five years (2005–10). It aims, amongst others, at combating child trafficking. ***The Committee requests the Government to provide information on the impact of the National Strategy for Children 2005–10 on eliminating the trafficking of children under 18 years of age for labour or commercial sexual exploitation.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Following its previous comments, the Committee notes **with interest** that the National Strategy and Plan of Action against Child Trafficking contains various measures to protect and rehabilitate child victims of trafficking and reintegrate them in their communities. These measures include:

- (a) improving the capacity of the National Reception Centre for Victims of Trafficking to receive and accommodate child victims of trafficking;
- (b) improving the professional level of social welfare staff responsible for the reception of child trafficking victims;
- (c) providing rehabilitative services, including education, vocational training, and health services to child victims of trafficking;
- (d) preparing child victims of trafficking to return to their families, if appropriate; and
- (e) regulating and funding the “Assisted Voluntary Return” procedures for child victims of trafficking in coordination with neighbouring countries and other European destination or transit countries for child trafficking (especially Greece and Italy).

The Committee also notes that, in the framework of the Albanian National Strategy and National Action Plan for Combating Trafficking in Human Beings a “Cooperation Agreement to Establish a National Referral Mechanism for the Enhanced Identification of and Assistance to Victims of Trafficking” was signed between various ministries, the National Reception Centre for Victims of Human Trafficking, various NGOs and the IOM in Tirana. This agreement provides for various measures to identify, protect and rehabilitate child victims of trafficking and reintegrate them in their communities. ***The Committee requests the Government to provide information on the number of children under 18 years of age who have been withdrawn from trafficking for labour and commercial sexual exploitation and reintegrated in their communities, following the implementation of the National Strategy and Plan of Action Against Child Trafficking 2005–07, as well as the Cooperation Agreement to Establish a National Referral Mechanism for the Enhanced Identification of and Assistance to Victims of Trafficking.***

Clause (d). Identifying and reaching out to children at special risk. Street children and child beggars. Following its previous comments, the Committee notes the ITUC’s allegations that research conducted in 2007 on child begging in the towns of Tirana, Elbasan and Korca in Albania and in Thessaloniki in Greece, where Albanian children are also known to beg, showed that significant numbers of Albanian boys and girls are affected by begging. The research suggests that begging, whether forced or not, starts at a young age, as early as 4 or 5 years. The ITUC also indicates that the research identified a number of interrelated causes of child begging in Albania, including poverty and discrimination. All of the child beggars interviewed during the research came from the Roma or Egyptian communities. The ITUC therefore recommends that practical steps be undertaken to address the root causes of begging, particularly discrimination on the grounds of ethnicity and poverty. The ITUC also urges the Government to provide an effective child protection safety net; assist children who work on the streets to overcome barriers to education and help them re-enter the school system; introduce and support programmes to reduce the poverty and inequality faced by Roma and Egyptian communities; and consider reducing the “demand” for child begging through discouraging people from giving to children who beg.

The Committee further notes that, according to the report of the UN Special Rapporteur on the sale of children, child prostitution and child pornography of 27 March 2006 (E/CN.4/2006/67/Add.2, paragraph 56, page 15), the most visible form of child labour in Albania is street work. Children working on the streets are mainly boys employed in small trade and services, transport and street construction. Girls are used for begging and washing cars. It notes that one of the target groups of the Strategic Framework for Action on Child Labour in Albania, developed in the framework of the ILO–IPEC Programme “Development of a national programme on elimination of child labour in Albania”, is children who work on the streets.

The Committee notes the Government’s information that exploitation of children in the streets of Albania has been favoured by the lack of a national mechanism for the protection of children, the poor enforcement of the right to education for all children and the insignificant punishment of child exploiters. In this regard, both the Government and the ITUC indicate that, in January 2008, the Criminal Code was amended to include the exploitation of children for begging as a separate criminal offence. Furthermore, in May 2008, the Ministry of Labour, Social Affairs and Equal Chances drafted a framework law for the protection of children’s rights which aims at regulating the national mechanism for child protection. The Government also indicates that, on 30 July 2008, Decision No. 1104 of the Council of Ministers endorsed the policy document on the “Custody of children in need”, which comprises an important platform for the application of new alternative services for children in need, including children forced into labour, by placing these children in foster families when the parents cannot exert their parental responsibilities. ***In this context, the Committee requests the Government to indicate how far the policy of criminalizing the exploitation of children for begging and the policy of finding foster families for children lead to the separation of Roma and Egyptian children from their families and prevents the reintegration of those children with their families.***

The Committee further notes that Children’s Rights Protection Units, established in nine municipalities, identify children who need protection, including street children and manage those situations with the assistance of a multidisciplinary team by conducting evaluations of the children identified and their families and coordinating the

protection of these cases. The Government also indicates that work has been done to strengthen the Community Advisory Groups in the Roma and Egyptian communities in order to prevent child exploitation and serve as referral systems for the protection of children. Finally, the Committee notes the Government's information that, since September 2007, all unregistered Roma children can attend schools across the country and that, in the meantime, a special strategy for Roma children has been drafted and is being implemented.

The Committee expresses its deep concern at the grave situation of children begging on the streets in Albania. It considers that children living or working on the streets are particularly exposed to the worst forms of child labour. ***The Committee requests the Government to provide information on the number of children found working in the streets and then rehabilitated and integrated as a result of the "Custody of children in need" programme, the Children's Rights Protection Units and the Community Advisory Groups. It also requests the Government to supply a copy of the special strategy for Roma children and to provide information on the impact of this strategy for Roma children from working in the streets. Finally, the Committee requests the Government to provide information on the infringements reported with regard to the new penal provision on the prohibition of the exploitation of children for begging as well as on the number of prosecutions, convictions and penalties applied.***

Article 8. International cooperation. Following its previous comments, the Committee notes that the National Strategy and Plan of Action against Child Trafficking provides for measures to cooperate at the international and regional levels in order to prevent child trafficking. These measures involve:

- (a) reviewing relevant bilateral law enforcement agreements between Albania and countries of the region for combating child trafficking;
- (b) negotiating new cooperation agreements with neighbouring countries with a view to detecting trafficked children and sharing data on child trafficking;
- (c) intensifying cross-border cooperation against trafficking with the border police of neighbouring countries; and
- (d) cooperating with the national child protection structures, international organizations and NGOs in countries of destination of trafficked children.

The Committee asks the Government to provide information on the impact of these measures on combating the cross-border trafficking of children for labour and sexual exploitation.

Part V of the report form. Application of the Convention in practice. Following its previous comments, the Committee notes that the National Strategy and Plan of Action against Child Trafficking 2005–07 provides for the creation of a comprehensive and coordinated system for collecting, analysing and disseminating data on child trafficking. ***In view of the recent creation of a comprehensive and coordinated system for collecting, analysing and disseminating data on child trafficking, the Committee requests the Government to provide a copy of available data on the trafficking of children under 18 years of age for labour and sexual exploitation.***

The Committee is also addressing a direct request to the Government concerning other points.

Algeria

Minimum Age Convention, 1973 (No. 138) (ratification: 1984)

Article 1 of the Convention. National policy. In its previous comments, the Committee noted that, in the context of the project on the national strategy for children, the administration responsible for the family had organized a strategic planning workshop for the protection of children in February 2007 in collaboration with UNICEF. Following the workshop, recommendations for the protection of children were formulated for the period between 2007 and 2015. The Committee also noted that the Government had initiated a Bill on the protection of children. It requested the Government to provide information on the implementation of the recommendations and on the results achieved, and asked the Government to provide a copy of the Act on the protection of children once it had been adopted. The Committee notes the Government's indication that the evaluation by the Follow-up and Evaluation Committee of the National Plan of Action for the Protection and Development of Children will be provided later. ***The Committee hopes that the Government will be in a position to provide with its next report the evaluation by the Follow-up Committee of the effect given to the recommendations made following the strategic planning workshop for the protection of children held in February 2007, and on the results achieved in terms of the progressive abolition of child labour. The Committee requests the Government to provide a copy of the Act on the protection of children once it has been adopted.***

Article 2, paragraph 1. Scope of Application. The Committee noted previously that Act No. 90-11 respecting conditions of work of 21 April 1990 does not apply to employment relations which are not governed by a contract, such as work done by children on their own account. According to the Government, the Act does not apply to persons working on their own account, who are covered by other regulations which determine the minimum age for admission to non-wage work. In this respect, the Government indicates that section 5 of Ordinance No. 75-59 of 26 September 1975 issuing the Code of Commerce (Code of Commerce) provides that any emancipated minor of either sex, aged 18 or above, who wishes to engage in commercial activity, may not commence commercial operations or be considered of majority age with regard to any commitments she/he enters into for commercial purposes unless the said minor has received prior

authorization from her/his father or mother or, in the absence of a father and mother, through a decision of the family council approved by a court of law. The Government added that, under this provision, regulations respecting admission to employment are of a general nature and apply to all forms of employment, whether waged or own account. The Committee noted that this provision of the Code of Commerce concerns emancipated minors of either sex, aged 18 or above, who wish to engage in a commercial activity. The situation to which the Committee referred concerns children under 18 years of age covered by the Convention who are engaged in an economic activity outside an employment relationship in the informal economy or on their own account. The Committee requested the Government to take the necessary measures to ensure that the protection afforded by the Convention is applied to children who are engaged in economic activity on their own account.

In its report, the Government indicates that, with regard to the age for admission to non-wage work, Algerian law prohibits access to employment for young persons under 18 years of age. In this respect, it refers once again to section 5 of the Code of Commerce, which provides that any emancipated minor of either sex, aged 18 or over, who wishes to engage in commercial activity, may not commence commercial operations or be considered of majority age with regard to the commitments entered into for commercial purposes unless the said person has received prior authorization from her/his father or mother or, in the absence of a father and mother, through a decision of the family council approved by a court of law. The Committee notes that commercial activities are defined in sections 2 and 3 of the Code of Commerce. Under the terms of section 2 of the Code, commercial activities include any purchase of movables for resale, either in their present state or after having worked or processed them. The Committee notes that these provisions of the Code of Commerce regulate the possibility for emancipated minors of either sex, aged 18 or above, to engage in a commercial activity in the formal economy. The Committee accordingly understands that work performed by a minor who is not emancipated on her or his own account or in the informal economy, for example as a small trader, is prohibited by the Code of Commerce. However, it notes that these provisions of the Code of Commerce do not regulate all the economic activities that a child under 16 years of age may carry on in the informal economy or on her or his own account and which are covered by the Convention, for example in the agricultural and domestic sectors. In this respect, the Committee notes that the Committee on the Rights of the Child, in its concluding observations to the Government's second periodic report of October 2005 (CRC/C/15/Add.269, paragraph 74), noted with concern that the minimum age for admission to employment (16 years) does not apply to children working in the informal economy (for example, agriculture and domestic service). The Committee on the Rights of the Child recommended the Government to take effective measures to prohibit the economic exploitation of children, particularly in the informal economy, where their exploitation is more prevalent.

The Committee therefore requests the Government to provide information on the application in practice of section 5 of the Code of Commerce, with an indication of the manner in which the application of this provision is supervised. The Committee also requests the Government to provide information on the manner in which children who are not bound by a subordinate employment relationship, such as those working on their own account or in the informal economy, benefit from the protection envisaged by the Convention. In this respect, it would be grateful if the Government would envisage the possibility of adopting measures to adapt and strengthen the labour inspection services so as to ensure such protection.

Article 3, paragraphs 1 and 2. Minimum age for admission to hazardous work and determination of these types of work. The Committee previously noted the information provided by the Government that a revision of the national labour legislation is in progress and that the issue of prohibiting the engagement of persons under 18 years of age in hazardous type of work will be taken into account. It also noted the Government's indication that a list of prohibited types of work would be established by regulation. The Committee notes the Government's indication that specific provisions such as to clarify any ambiguity on these matters are envisaged in the future Labour Code. ***The Committee expresses the firm hope that the revision of the Labour Code will be completed in the near future and that provisions giving full effect to Article 3, paragraphs 1 and 2, of the Convention, namely that the minimum age for admission to any type of hazardous employment or work shall not be under 18 years of age and that a list of these types of employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, will be adopted in the very near future. It requests the Government to provide information on any development in this respect.***

Part V of the report form. Application of the Convention in practice. With reference to its previous comments, the Committee notes the information provided by the Government that the labour inspection services drew up 184 notifications covering a total of 210 offences in 2006 and 2007. Of these, 77 were investigated by the competent jurisdictions and gave rise to penalties. ***The Committee requests the Government to provide information on the penalties imposed by the competent jurisdictions following these prosecutions. It also requests the Government to continue providing 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, extracts from the reports of the inspection services and details on the number and nature of the contraventions reported, and on the penalties imposed.***

Antigua and Barbuda

Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

Article 2, paragraph 1, of the Convention. Minimum age for admission to employment or work. In its previous comments, the Committee drew the Government's attention to the fact that the provisions of the national legislation respecting the minimum age for admission to employment or work were not in conformity with the age specified by the Government when ratifying the Convention. Indeed, although the Government had specified the minimum age of 16 years when ratifying the Convention, section E3 of the Labour Code of 1975 provides that no child shall be employed or shall work in a public or private agricultural or industrial undertaking or in any branch thereof, or on any ship, while the term "child", by virtue of section E2 of the Labour Code, means a person under the age of 14 years. The Committee has noted on several occasions that amendments to the Labour Code were under examination with a view to bringing the minimum age for admission to employment or work into conformity with the minimum age specified when ratifying the Convention and with the compulsory school-leaving age which, under section 43(1) of the Education Act of 1973, is 16 years of age. The Committee notes that in its most recent report, the Government indicates that the Labour Code is presently under review and that the comments of the Committee would be taken into account. **The Committee therefore once again requests the Government to take the necessary measures to amend section E2 of the Labour Code, so as to define a child as a person under the age of 16 years, which would bring the minimum age for admission to employment or work in the national legislation into conformity with the minimum age specified by the Government when ratifying the Convention. It requests the Government to provide information on progress made in amending the Labour Code.**

Article 3, paragraphs 1 and 2. Minimum age for admission to hazardous work and determination of these types of work. The Committee reminds the Government that *Article 3, paragraph 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, paragraph 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 noted the Government's indication that the Labour Code is presently under review and that the comments of the Committee would be taken into account. **The Committee requests the Government to provide information regarding progress towards the adoption of the amendments to the Labour Code, which would contain a list of activities and occupations to be prohibited to persons below 18 years of age, in accordance with Article 3, paragraphs 1 and 2, of the Convention. It also requests the Government to provide information on the consultations held with organizations of employers and workers concerned on this subject. Finally, the Committee asks the Government to provide a copy of the amendments to the Labour Code once they have been adopted.**

Article 4, paragraph 2. Exclusion of limited categories of employment or work. The Committee had previously noted that section E3 of the Labour Code provides that the prohibition upon the employment or work of children, that is persons under the age of 14 years (section E2), does not apply to any undertaking or ship on which only members of the same family are employed, to members of a recognized youth organization who are engaged collectively in such employment for the purposes of fund-raising for such an organization, nor to a child who is working together with adult members of his/her family on the same work and at the same time and place. **It once again requests the Government to indicate in future reports any changes in law and practice in respect of these excluded categories.**

Argentina

Minimum Age Convention, 1973 (No. 138) (ratification: 1996)

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee noted a study entitled "Childhood and adolescence: Work and other economic activities", carried out by ILO-IPEC, the National Statistics and Census Institute of Argentina and the Ministry of Labour, Employment and Social Security, published in 2006. According to this study, out of a total of 193,095 children aged between 5 and 13 years who were engaged in work when the study was undertaken in 2004, 116,990 worked for their parents or other family members, 61,074 worked on their own account, 11,694 worked for an employer and 3,337 were engaged in another activity. The study also demonstrated that the scale of child labour is greater in rural than in urban areas and that girls, particularly adolescent girls, are engaged in "intense domestic work". The sectors most concerned were commerce, agriculture, stock rearing, hotels, catering, construction, furniture manufacturing and domestic work. The Committee noted that a new National Plan for the Prevention and Elimination of Child Labour had been formulated.

The Committee notes *with interest* the detailed information provided by the Government on the measures taken to implement the National Plan for the Prevention and Elimination of Child Labour. It particularly took note of the following information:

- the signing of an agreement between the Ministry of Labour, Employment and Social Security and the Ministry of Education, Science and Technology with a view to implementing the National Programme for Educational

Integration, which provides for measures to enable boys and girls at work to leave their work and rejoin or remain within the school system, including remedial courses and economic assistance;

- the establishment of the network of enterprises against child labour on 27 June 2007;
- the increased participation of workers' organizations in efforts to combat child labour, which led to the signing of a Memorandum of Intent for the prevention and elimination of child labour in the agricultural sector on 12 June 2007;
- training workshops for labour inspectors and tobacco producers in Salta and Jujuy; and
- campaigns to make the population, teachers and health officials aware of child labour, especially in tobacco plantations.

The Committee also notes the Government's statement that monitoring centres for child labour will be set up in the country. The aim of these centres is to gather and analyse information on child labour, and promote cooperation between the players at government level and NGOs. The Committee also takes due note of the Government's statement that a survey on the work of boys, girls and young persons aged between 5 and 17 years of age in the provinces of Córdoba and Misiones was carried out at the end of 2006. The findings of this survey are currently being verified.

The Committee appreciates the measures made by the Government to abolish child labour, which demonstrate its political will to develop strategies to combat this problem. ***It requests the Government to continue its efforts to eliminate child labour. In this respect, the Committee requests the Government to continue providing information on the measures that will be adopted in the context of the National Plan for the Prevention and Elimination of Child Labour and on the results achieved. The Committee also invites the Government to send information on the application of the Convention in practice by giving, for example, statistical data on the employment of children and young people and extracts from reports of the inspection services. Finally, it requests the Government to provide a copy of the findings of the survey on the work of boys, girls and young persons aged between 5 and 17 years of age in the provinces of Córdoba and Misiones, once they have been verified.***

Article 2, paragraph 1. Scope of application. The Committee previously pointed out that the national legislation governing the admission of children to employment or work did not apply to non-contractual employment relations, such as work carried out by children on their own account. In this regard, the Government indicated that the activities undertaken by young persons outside the context of the law were not exercised on their own account, but as a survival strategy. The Committee noted that, according to the study entitled "Childhood and adolescence: Work and other economic activities", it was increasingly frequent for children under 14 years of age to be engaged in activities on their own account or for survival in the country. It stressed that children who carried out an economic activity without a contractual employment relationship, particularly on their own account or as part of a survival strategy, must benefit the protection afforded by the Convention.

The Committee notes ***with satisfaction*** that section 2(3), of Act No. 26.390 of 25 June 2008 on the prohibition of child labour and protection of young workers (Act on the prohibition of child labour and protection of young workers), provides that work involving children under 16 years of age is prohibited in all its forms, irrespective of whether or not there is a contractual employment relationship or whether or not the work is remunerated. It also notes that, under section 2(5), the labour inspection services must exercise their role to enforce this prohibition.

Article 2, paragraphs 2 and 5. Raising the minimum age for admission to employment or work. Referring to its previous comments, the Committee notes ***with interest*** that the Act on the prohibition of child labour and protection of young workers raises the minimum age of admission to employment or to work initially specified. Under sections 7 and 23 of this Act, the minimum age of admission to employment provided under section 189 of Act No. 20.744 on labour contracts (Act on labour contracts) is raised from 14 to 15 years, until 25 May 2010, and, after that date, the age will be raised from 15 to 16 years. The Committee also notes that the Act on the prohibition of child labour and protection of young workers also raises the minimum age of employment from 14 to 15 years, in an initial stage, and then from 15 to 16 years, in the following legislation: Legislative Decree No. 326/56 of 20 January 1956 on domestic service; Act No. 22.248 of 10 July 1989 on the national scheme of agricultural work (Act on the national scheme of agricultural work); Act No. 23.551 of 22 April 1988 on trade union associations; and Act No. 25.013 of 2 September 1998 on labour reform, including apprenticeship contracts. ***The Committee takes the opportunity to draw the Government's attention to the provisions of paragraph 2 of Article 2 of the Convention, which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office.***

Article 7. Light work. In its previous comments, the Committee had noted that neither section 189 of the Act on labour contracts nor section 107 of the Act on the national scheme of agricultural work established an age for admission to employment in the case of light work. The Committee notes ***with satisfaction*** that section 189bis(1) of the Act on labour contracts, as added by the Act on the prohibition of child labour and protection of young workers, established that young persons aged more than 14 years and less than 16 years may be employed in enterprises belonging to their father, mother or tutor, for a period not exceeding three hours per day and 15 hours per week, provided that these activities are not dangerous or harmful and prevent them from going to school. The family enterprises in which the minor is working must request authorization from the administrative labour authority in the district concerned. Under section 189bis(2), this

authorization cannot be requested if the family enterprise is economically dependent upon another enterprise. Furthermore, the Committee notes that section 107 of the Act on the national scheme of agricultural work, as amended by the Act on the prohibition of child labour and protection of young workers, provides the same regulation as that contained in section 189bis of the Act on labour contracts.

Austria

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes the Government's report. It also notes the comments made by the Federal Chamber of Labour (BAK).

Article 7. Light work. In its previous comments, the Committee had noted that, by virtue of section 5a(1) of the Employment of Children and Young People Act, 1987 (ECYPA), and section 110(3) of the Provincial Labour Act of 1984, children aged "12 years" may be employed, under certain conditions, in occasional light work in enterprises in which only members of the owner's family are employed, or in a private household. The Committee noted the Government's indication that an amendment in this regard was not specifically planned at the time, but will be put on the agenda of future negotiations between the social partners in agriculture and forestry. The Committee requested the Government to provide information on any developments made with regard to the raising of the minimum age for light work from 12 to 13 years. The Committee notes in the Government's report that there have been no negotiations for a long time on raising from 12 to 13 years the minimum age for carrying out light work. Nevertheless, this important subject remains on the table for negotiations. The Committee also notes that the BAK has not received any information on the possible raising of the minimum age for admission to light work in the ECYPA and the Agricultural Labour Act 1984. ***The Committee, reminding the Government that Article 7 of the Convention states that national laws or regulations may permit the employment or work of persons 13–15 years of age in light work, expresses the firm hope that the Government will do what is necessary, as soon as possible, to finally harmonize its national legislation with the Convention by raising the minimum age for light work from 12 to 13 years of age. It requests the Government to continue providing information on any developments made with regard to the raising of the minimum age for light work from 12 to 13 years.***

Part V of the report form. Practical application of the Convention. The Committee notes the Government's breakdown of the violations concerning the employment of children and young persons, both by economic sector and by federal province in 2006–07. In 2006, a total of four and 982 violations concerning children and young persons, respectively, were detected; in 2007, these numbers were five and 951, respectively. In both years, the vast majority of the violations detected were in the sectors of: hotels and restaurants; the repair of motor vehicles and consumer goods; and construction. In addition, the BAK states that other sectors where violations were detected are: flower arrangers and florists; bakers; and hairdressers. In 2006, 434 of all violations concerned rest breaks, rest time, night rest periods, rest on Sundays and public holidays and weekly working hours; in 2007, the number of these violations was 414. The other violations detected concerned: the keeping of registers of children and young persons; prohibited and restricted work; and maximum working hours. ***The Committee requests the Government to continue providing information on the manner in which the Convention is applied, including, for example, statistical data on the employment of children and young persons and information on the number and nature of violations detected involving children and young persons.***

Azerbaijan

Minimum Age Convention, 1973 (No. 138) (ratification: 1992)

The Committee notes with regret that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

Article 2, paragraph 1, of the Convention. 1. *Minimum age for admission to employment or work.* The Committee had recalled that the minimum age of 16 years was specified under *Article 2, paragraph 1*, of the Convention as regards Azerbaijan. It had noted with regret that the new Labour Code, in section 42(3), allows a person who has reached the age of 15 to be part of an employment contract; section 249(1) of the same Code specifies that "persons who are under the age of 15 shall not be employed under any circumstances". Moreover, the Individual Contracts of Employment Agreement Act, section 12(2), sets the minimum age for concluding an employment contract at 14 years. The Committee once again points out that the Convention allows and encourages the raising of the minimum age but does not permit lowering of the minimum age once specified. ***Therefore, the Committee once again asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under Article 2 of the Convention, to ensure that access to employment of children of 14 and 15 years of age may be allowed exceptionally, only for work that meets the criteria set out in Article 7 of the Convention.***

2. *Scope of application.* The Committee had previously taken note of section 7(2) of the new Labour Code, which rules that "labour relations shall be established upon the execution of a written employment contract", and section 4(1) declaring that "this Code applies to all enterprises, establishments, organizations as well as workplaces where an employment agreement exists". ***Recalling that Convention No. 138 requires the fixing of a minimum age for all types of***

work or employment and not only for work under an employment contract, the Committee again asks the Government to supply information on the measures taken or envisaged to ensure the application of the Convention to all types of work outside an employment relationship, such as self-employment.

Article 3, paragraph 2. Determination of types of hazardous work. The Committee noted the Government's indication that a list of arduous and hazardous industries or occupations where the employment of persons under 18 years of age is prohibited was approved by Decision No. 58 of the Cabinet of Ministers of the Republic of Azerbaijan on 24 March 2000. ***The Committee once again requests the Government to provide a copy of the text.***

Article 7. Light work. The Committee had previously noted that section 249(2) of the new Labour Code allows youths who have reached the age of 14 to work after school hours in light duty work, which poses no hazard to their health, and upon the written consent of their parents. It noted the Government's indication that according to section 91(2) employees up to 16 years of age shall not work more than 24 hours per week, that they shall be granted no less than 42 calendar days of vacation per year (section 119(1)) and that vacation shall be granted at the time of convenience for them (section 133(3)). It also noted that employees under 18 years shall undertake a medical examination before being admitted to work (section 252 of the Labour Code). Moreover, the Committee noted that under section 254 of the Labour Code, a person younger than 18 years of age shall not work at night (i.e. 8 p.m. to 7 a.m. according to section 254(2)), perform overtime, work on weekends, days off or public holidays or be sent on assignments. However, the Committee reminded the Government that under *Article 7, paragraph 3*, the competent authority shall determine the activities in which employment or work may be permitted as light work. ***The Committee once again requests the Government to supply further information on the types of light work that are permitted for persons who have attained 14 years of age.***

Article 9, paragraph 1. Penalties. The Committee had previously noted the Government's statement in its 2000 report that sections 136–138, 167 and 168 of the Penal Code regulate sanctions for violations of the labour law. The Committee however notes that sections 136–138 of the Penal Code deal with illegal artificial fertilization, sale–purchase of body organs and the illegal implementation of biomedical research on a person; and sections 167 and 168 deal with religious activities. ***The Committee therefore requests the Government to indicate which of the provisions in its national legislation regulate sanctions for violations of the labour law and to supply a copy of the same.***

Part V of the report form. Practical application of the Convention. ***The Committee once again asks the Government to supply data to give a general appreciation of the manner in which the Convention is applied, for instance, statistical data on the employment of children and young persons, extracts from the report inspection services, and information on the number and nature of contraventions reported.***

The Committee is also addressing a request directly to the Government on another point.

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

Bangladesh

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. In its previous comments, the Committee had noted that sections 5(1) and 6(1) of the Suppression of Violence against Women and Children Act (SVWCA) prohibit the sale and trafficking of women (irrespective of their age) and children for purposes of prostitution or immoral acts. It had noted that, by virtue of section 2(k) of the SVWCA, as amended in 2003, a “child” means a person under 16 years of age. It had observed, consequently, that the SVWCA does not prohibit the sale and trafficking of boys between 16 and 18 years of age. It had reminded the Government that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of both boys and girls under 18 is prohibited. The Committee notes the Government's information that it will take the necessary steps to amend the SVWCA in order to ensure that the sale and trafficking of all children under 18 years of age is prohibited. In this regard, the Committee once again reminds the Government that, under *Article 1* of the Convention, immediate and effective measures to prohibit this worst form of child labour must be taken as a matter of urgency. ***Accordingly, the Committee urges the Government to take immediate and effective measures to ensure that the amendments to the SVWCA, according to which the sale and trafficking of all children under 18 will be prohibited, are adopted in the very near future. It requests the Government to provide information on the progress made.***

Article 5. Monitoring mechanisms. The Committee had previously noted that the anti-trafficking unit, established within the Ministry of Home Affairs, and the Criminal Investigation Department (CID) deal with child trafficking issues. It had noted the Government's information that the police and other law enforcement agencies, as well as local governmental organizations, are involved in the fight against trafficking. It had further noted that although a lack of resources hinders investigations, Bangladesh has expanded anti-trafficking police units to every district to encourage victims to testify against traffickers and to compile data on trafficking. The Committee had noted that, in response to inadequately trained police and prosecutors, the Government has worked with legal experts to provide specialized training to prosecutors and, with the International Organization for Migration, to develop a trafficking course for the national police academy and for immigration officials. The Committee notes that, according to a trafficking in persons report of

2008 (trafficking report of 2008), available on the website of the High-Commissioner for Refugees (www.unhcr.org), airport authorities screen travellers to identify and stop potential victims and traffickers before they leave the country. The Committee notes that, in its concluding observations of 5 July 2007, in consideration of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Committee on the Rights of the Child encouraged the Government to continue its efforts to strengthen its judicial and police cooperation activities at the international level for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children (CRC/C/OPSC/BDG/CO/1, paragraph 44). **The Committee accordingly requests the Government to continue its efforts in strengthening the role of the CID, the police and the Anti-Child Trafficking Unit, in order to enable them to combat the trafficking of children for labour and sexual exploitation. It requests the Government to provide information in this respect.**

Article 6. Programmes of action to eliminate the worst forms of child labour. In its previous comments, the Committee had noted the International Trade Union Confederation's (ITUC) indication that women and children are trafficked from Bangladesh to India, Pakistan and countries in the Middle East where they are forced to work as prostitutes, factory workers or camel jockeys. The Committee had noted that the two-year Subregional Programme to Combat Trafficking in Children for Sexual and Exploitative Employment (TICSA) in Bangladesh, Nepal and Sri Lanka was renewed in 2002 and expanded to Pakistan, Thailand and Indonesia (TICSA-II). It had noted the Government's statement that it has enacted different laws and adopted various developmental projects in collaboration with international agencies in order to prevent trafficking, especially through advocacy programmes, workshops and public awareness campaigns. It had finally noted the Government's statement that the rate of trafficking in children and women has reduced considerably because of the measures adopted and the enforcement of the provisions of laws.

The Committee notes that the TICSA-II project in Bangladesh has ended. It notes *with interest* that, according to the technical progress report for TICSA-II of 20 April 2006 (TPR for TICSA-II), in the framework of the project, 156 camel jockeys returned to Bangladesh from the UAE and are in the process of rehabilitation at the Bangladesh National Lawyers' Association shelter home and at the Dhaka Ahsania Mission. Furthermore, in the framework of TICSA-II, 6,924 services, including non-formal education, formal schooling, vocational training and legal assistance, were provided to girls and 4,343 services were provided to boys. The TPR for TICSA-II also indicates that, in Bangladesh, 28 children were withdrawn from exploitative work through the provision of educational services or training opportunities and 4,173 children were prevented from such work. The Committee further notes that, in its concluding observations, the Committee on the Rights of the Child takes note of the initiative started with the "One Stop Crisis Centres" for victims and of the fact that the Ministry of Women and Children Affairs (MOWCA) set-up a Subcommittee on recovery and rehabilitation (CRC/C/OPSC/BDG/CO/1, paragraph 34). Moreover, the Committee notes that the TPR for TICSA-II indicates that the National Anti-Trafficking Strategic Plan of Action (NATSPA) is still pending approval. The Committee finally notes that in the framework of the ILO-IPEC *Time-bound Programme (TBP)*, one of the major components of the *TBP* is the implementation of programmes to combat the unconditional worst forms of child labour, including child trafficking for labour and sexual exploitation. **The Committee requests the Government to provide information on the progress made in adopting the NATSPA and in elaborating the child trafficking intervention component in the framework of the TBP. It also requests the Government to provide information on the impact of these programmes once implemented, particularly in terms of the number of children prevented from being the victims of trafficking and the number of child victims removed from this worst form of child labour. It also requests the Government to provide information on the number of child victims of trafficking who were rehabilitated and socially integrated through the "One Stop Crisis Centres" and the Subcommittee on recovery and rehabilitation.**

Article 7, paragraph 1. Penalties. The Committee had previously noted that section 6(1) of the SVWCA provides for sufficiently effective and dissuasive penalties of imprisonment and fines for the sale and trafficking of children. It had noted the Government's information that there are at least 33 tribunals where special judges are appointed to deal with cases of trafficking. However, despite successes in the punishment of traffickers, public corruption is still widespread, the court system is slow and traffickers are often charged with lesser crimes, such as crossing borders without proper documentation.

The Committee notes that, according to the trafficking report of 2008, Government efforts to criminally address trafficking improved in some areas. The Government opened 123 investigations, made 106 arrests and initiated 101 prosecutions of sex trafficking offences. However, the trafficking report of 2008 indicates that the Government reported 20 trafficking convictions in 2007, 23 fewer than the previous year. Life imprisonment sentences were imposed on 18 of the convicted traffickers and the remaining two convicted traffickers received sentences of 14 and ten years' imprisonment. The Committee notes that, in its concluding observations, the Committee on the Rights of the Child expressed its concern at the inadequate implementation of existing laws and recommended that the Government take all the necessary measures to ensure that the existing legislation is adequately implemented (CRC/C/OPSC/BDG/CO/1, paragraphs 8–9). **The Committee therefore urges the Government to take the necessary measures to ensure that persons who traffic in children are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, the Committee once again requests the Government to continue providing information on the number and nature of infringements reported, prosecutions, convictions and penal sanctions applied.**

Article 7, paragraph 2. Effective and time-bound measures. Clause (d). Identifying and reaching to children at special risk. Child domestic workers. In its previous comments, the Committee had noted that, according to the World Confederation of Labour (WCL), child domestics worked in conditions that resemble servitude. It had noted the Government's statement, in reply to the comments made by the WCL, that forced labour is prohibited by virtue of article 34 of the Constitution and that child domestics were usually well-treated and were not subject to forced or bonded labour. The Committee had noted that, in Dhaka City alone, there were an estimated 300,000 child domestic workers. It had noted the Government's statement that the recent study conducted by the ILO in 2006 on the conditions of domestic servants in Bangladesh under the *TBP* revealed that more than 90 per cent of domestic servants expressed satisfaction with their jobs and employers and did not want to leave their jobs. The Committee had noted the Government's statement that in Bangladesh child domestic workers cannot be considered as being involved in the worst forms of child labour. The Committee had nevertheless considered that child domestic workers often fall prey to exploitation, which can take various forms.

In this regard, the Committee notes that, according to the *TBP*, child domestics constitute a *high-risk* group. They are outside the normal reach of labour controls and are scattered and isolated within the households in which they work. This isolation, together with the children's dependency on their employers, lays the ground for potential abuse and exploitation. One of the key issues distinguishing domestic labour from other types of child labour is the 24-hour nature of the job. Employers expect the children to do domestic work at any time of day or night, whenever needed. The long hours, low or no wages, poor food, overwork and hazards implicit in the working conditions affect the children's physical health. The Committee notes the Government's statement that it has elaborated some guidelines to protect child domestic workers from the worst forms of child labour. The Government also indicates that it is expected that some specific policies will be made concerning the working conditions of child domestic workers. ***The Committee requests the Government to provide more concrete information on the guidelines to protect child domestic workers and on their impact on protecting child domestic workers from the worst forms of child labour. It also requests the Government to provide information on the policies it intends to adopt concerning the working conditions of child domestic workers. In this regard, the Committee expresses the firm hope that these policies will ensure that child domestic workers under 18 years of age do not perform any type of the worst forms of child labour.***

Part V of the report form. Application of the Convention in practice. The Committee notes that, in its concluding observations, the Committee on the Rights of the Child expressed regret that data on the extent of the sale of children, child prostitution and child pornography and on the number of children involved in these activities is very limited, mainly due to the absence of a comprehensive data collection system (CRC/C/OPSC/BGD/CO/1, paragraph 6). The Committee notes, however, that according to the technical progress report of 22 February 2007 for the *TBP*, the Bangladesh Bureau of Statistics conducted 13 research studies on different thematic areas, including internal and cross-border trafficking, in the framework of the *TBP* preparatory phase. ***The Committee requests the Government to provide statistical data on the trafficking of children collected through the research study on internal and cross-border trafficking.***

The Committee is also addressing a request directly to the Government concerning other points.

Bolivia

Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1973)

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

Article 2, paragraph 1, of the Convention. Medical examination for fitness for employment. The Committee noted Decision No. 001 of 11 May 2004, issued by the Ministers of Labour and of Health and Sports (SEDES), section 1 of which provides that the Ministry of Health and Sports, through its ministries and municipal authorities, shall allocate the necessary and adequate medical personnel so that, in coordination with the Ministry of Labour, free medical examinations are carried out of the fitness for employment of working boys, girls and young persons in the industrial and agricultural sectors and for own account work, in urban and rural areas, in application of section 137(1)(b) of the Code on Boys, Girls and Young Persons of 1999. In this respect, the Committee noted section 137(1)(b) of the Code on Boys, Girls and Young Persons of 1999, under the terms of which young workers shall periodically undergo medical examination. Noting that the medical examinations envisaged under section 1 of Decision No. 001 of 11 May 2004 appear to refer solely to the periodical medical examinations of young persons to be carried out during employment, the Committee reminded the Government that, in accordance with *Article 2, paragraph 1, of the Convention*, no young persons under 18 years of age shall be admitted to employment unless they have been found to be fit for work by a thorough medical examination. Furthermore, the Committee noted the Government's indication that the Ministry of Labour, with the technical assistance of the Bolivian Standardization and Quality Institute (IBNORCA), has formulated regulations under the General Occupational Safety, Health and Welfare Act on work by young persons in industry, commerce, mining and agriculture. These regulations are due to come into force shortly. ***The Committee therefore once again requests the Government to provide information on the progress achieved in this regard and, on the establishment of thorough medical examination before admission to employment.***

With regard to the frequency of the periodical medical examinations (*Article 3, paragraphs 2 and 3*), the medical examinations required until the age of 21 years in occupations which involve high health risks (*Article 4*) and the adoption of appropriate measures for the vocational guidance and physical and vocational rehabilitation of young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations (*Article 6*), the Committee noted the Government's indication that these subjects have not yet been covered. Nevertheless, the Government indicated that these and

other matters envisaged by the Convention would be defined in the regulations on work by young persons issued under the General Occupational Health, Safety and Welfare Act. *The Committee therefore hopes that these regulations will be adopted in the near future to give effect to these provisions of the Convention. It once again requests the Government to supply a copy of these regulations as soon as adopted.*

Part V of the report form. Application in practice. The Committee noted that, due to economic constraints, there are certain shortcomings in the application of this Convention, particularly in the capitals of remote departments, such as Cobija and Trinidad, and in rural areas. Nevertheless, the Government was adopting measures, in accordance with the possibilities available to it, so that all young persons who work in the country will progressively be covered by the protection afforded by the Convention. The Committee noted the Government's statement with interest. *It once again requests it to continue providing information on the progress achieved in the application of the Convention in practice in the country. The Committee also once again requests the Government to provide, if such statistics are available, information concerning the number of children and young persons who are engaged in work and have undergone the periodical medical examinations envisaged in the Convention; extracts from the reports of the inspection services relating to any infringements reported and the penalties imposed; and any other information illustrating the application of the Convention in practice.*

Work by young persons in agriculture. Even though the Convention does not cover agricultural work, the Committee noted with interest the draft Presidential Decree regulating the exercise of and compliance with rights and obligations arising out of agricultural employment. Section 28(IV) provides that, before being admitted to employment, young persons shall undergo a free medical examination of fitness for work, which shall be repeated periodically. This provision also requires employers to maintain at the disposal of labour inspectors the corresponding medical certificate of fitness for employment. The Committee considered that this provision reflects the principle set out in *Articles 2, 3 and 7* of the Convention with regard to agricultural work. In this respect, the Committee noted that the draft Presidential Decree is currently in the process of being approved by the Economic Policy Analysis Unit (UDAPE), which is a Government technical body responsible for preparing a preliminary report on the relevance of the approval of any legal provision by the Cabinet of Ministers. *The Committee once again asks the Government to include provisions in the above draft relating to the intervals at which medical examinations shall be carried out (Article 3, paragraph 2, of the Convention).*

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

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1973)

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

Article 7, paragraph 2, of the Convention. With regard to the methods of identification or other methods of supervision to be adopted for ensuring the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried on in the streets, the Committee requests the Government to take into consideration, when taking the legislative or regulatory measures on the basis of the analysis of the results obtained from the VALORA Plan, the indications contained in Recommendation No. 79 on the medical examination of young persons particularly Paragraph 14 on methods of supervision.

Moreover, the Committee invites the Government to refer to its comments under Convention No. 77.

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

Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

Article 6 of the Convention. Apprenticeship. In its previous comments, the Committee noted that under sections 28 and 58 of the General Labour Act, children under 14 years of age may work as apprentices, whether paid or unpaid. It also noted that sections 137 and 138 of the 1999 Code regulate apprenticeship but specify no minimum age for admission to apprenticeship. The Committee asked the Government to provide information on the measures taken or envisaged to ensure that no one under 14 years of age is engaged in an apprenticeship.

In its report, the Government indicates that labour inspectors are responsible for implementing measures to ensure that children under 14 years of age are not engaged in apprenticeships. They have a form prescribed by certain provisions of the national legislation governing the supervision of work. Furthermore, four labour inspectors have received training and are specialized in child labour issues. The Committee acknowledges that measures to reinforce the labour inspection services are essential in combating child labour. However, for their work, labour inspectors need a basis in law consistent with the Convention enabling them to ensure that children are protected against conditions of work liable to jeopardize their health or their development. The abovementioned provisions of the national legislation governing the age of admission to apprenticeship are not consistent with the Convention. The Committee reminds the Government that, according to *Article 6*, the Convention does not apply to work done in enterprises by persons of *at least 14 years of age* when it is carried out in the context of a programme of education, training or vocational guidance, in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned.

The Committee accordingly asks the Government to take the necessary steps to amend the provisions of the national legislation that regulate the age of admission to apprenticeship so as to provide that no one under 14 years of age is engaged in an apprenticeship, as required by Article 6 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: 2003)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Debt bondage and forced or compulsory labour. Child labour in sugar cane and brazil nut harvesting. In its previous comments, the Committee took note of a communication from the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), indicating that child labour in the sugar cane and brazil nut sectors is a practice similar to slavery because the children have no alternative but to work with their parents, so like their parents they are subject to a system of debt bondage. Furthermore, although their work is neither recognized nor remunerated, they have joint liability with their parents for the debt and are compelled to work to help their parents to repay it.

In its comments, the ITUC stated that more than 10,000 children work with their parents in the sugar harvest in Bolivia. Of these, around 7,000 work in Santa Cruz, half of whom are between 9 and 13 years of age, and 3,000 work in Tarija. They perform a variety of tasks. For example, boys work with the men in cutting sugar cane and girls and young children work with the women in gathering, stripping and bundling the cane. The children work in difficult conditions and their hours are very long – more than 12 hours a day, starting at 5 a.m. They suffer from respiratory ailments and wound themselves working with machetes. As to brazil nut harvesting, the ITUC stated that children start at age 7 to help their parents in the plantations, assisting with picking and processing the fruit. At harvest time, the children work in the jungle alongside their parents. The work they do is hazardous because they use machetes to crack the nuts and extract the kernels. Moreover, they have to walk for hours to find the trees bearing nuts. Work begins at around 3 a.m. or even 2 a.m. and ends at midday. In some places the children work after school or during the night between 10 p.m. and 6 a.m.

The Committee took note of a study *Enganche y Servidumbre por Deudas en Bolivia* (Entrapment and Debt Bondage in Bolivia), published by the Office in January 2005, which reports such practices. According to the study, the situation of tens of thousands of indigenous agricultural workers in Bolivia is one of debt bondage, with some of them subjected to permanent or semi-permanent forced labour. The study also reports that these practices are to be found not only in the Chaco region but also in the areas of Santa Cruz and Tarija (sugar harvesting) and the northern Amazon area (brazil nut harvesting).

The Committee notes the Government's information on Bolivia's legislation covering slavery or similar practices. Its notes, however, that although the legislation appears to be consistent with the Convention on this point, work by children under 18 years of age in conditions of debt bondage or forced labour is a problem in practice. The Committee expresses its deep concern at the situation of these children. It reminds the Government that under *Article 3(a)* of the Convention, all forms of slavery or similar practices such as debt bondage and forced or compulsory labour are considered to be among the worst forms of child labour and that pursuant to *Article 1*, immediate and effective measures must be taken to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee urges the Government to take the necessary steps to ensure, as a matter of urgency, that the persons using the labour of children under 18 years of age in the sugar cane and brazil nut harvesting industry in conditions of debt bondage or forced labour, are prosecuted and that effective and dissuasive sanctions are applied to them. It requests the Government in this connection on the effect given to the provisions that apply to these worst forms of child labour, including statistics on the number and nature of offences reported, the investigations held, prosecutions, and the sentences and penal sanctions applied.***

Clause (d). Hazardous work. Children working in mines. In its comments, the ITUC stated that in the departments of Ururo, Potosi and La Paz, more than 3,800 children work in the tin, zinc, silver and gold mines. As a rule, the older boys work with their fathers in the mines, whereas the younger children help to transport rocks and tools and to gather rocks. Children working in the rivers of the gold mines are engaged in extracting and washing gold deposits. The rivers are contaminated with mercury, sulphur and other chemicals used in mining. Furthermore, because they are small, children aged 8 to 12 years are sent into certain narrow parts of the mine where an adult would not be able to pass through. They also work in extracting ore and preparing and exploding dynamite. Sometimes, in mines where there are no wagons to shift heavy ore, the children have to carry it on their shoulders to the ore processing area. In the first stage of processing, the children have to handle a tool – a very heavy stone that can weigh up to 60 kilos, which they balance with the help of a metal plank on smaller stones. In the second phase, they have to recover the remaining ore, which is mixed with chemicals, and are in danger of getting burnt and inhaling toxic gases.

The Committee notes that section 134 of the Code on Children and Young People contains a detailed list of types of hazardous work prohibited for young people, some of which are related to the work done by children in mines including the transport of heavy loads, the handling or inhaling of toxic products and the handling of dangerous tools or explosives. The Committee expresses concern at the use of child labour in hazardous work in mines. It reminds the Government that, according to *Article 3(d)* of the Convention, hazardous work is among the worst forms of child labour. ***The Committee requests the Government to take the necessary steps as a matter of urgency to ensure that no child under 18 years of age shall engage in hazardous work in mining. It also requests the Government to provide information on the application in practice of the legislation governing hazardous work, including statistics on the number and nature of offences reported, the investigations held, prosecutions, the sentences and penalties applied.***

Article 5. Monitoring mechanisms. The Committee takes due note of the information sent by the Government to the effect that two inspectors specializing in child labour have been assigned to the regions of Santa Cruz and Tarija-Bermejo

to conduct inspections in the sugar cane industry. **The Committee requests the Government to provide information on the results of those inspections particularly as regards the protection of children working in the sugar cane industry.**

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in worst forms of child labour and removing them therefrom. 1. Debt bondage and forced and compulsory labour. Child labour in the sugar cane and brazil nut harvesting industry. With reference to its previous comments, the Committee notes **with interest** the information from the Government to the effect that ten education centres have been set up in six camps in the municipality of Bermejo that accommodate families who work harvesting sugar cane. These centres have benefited 300 children. It further notes that an education strategy has been put into effect by the Ministry of Labour and the *Fundación Hombres Nuevos*, in collaboration with UNICEF, in ten municipalities in the sugar cane area of Santa Cruz. More than 3,000 girls and boys and their families, and 60 teachers from education units are to benefit from this strategy. One outcome expected is a 50 to 80 per cent increase in the school attendance rate.

The Committee also notes the adoption of the Three Year Plan for the Gradual Elimination of Child Labour (2006–08) (“Three Year Plan 2006–08”), which aims to implement effective and sustainable measures to improve implementation of the National Plan on the Gradual Elimination of Child Labour (2000–10) (“PNEPTI 2000–10”), including the elimination of the worst forms of child labour in the sugar cane industry. **The Committee strongly encourages the Government to step up its efforts and to take time-bound measures, particularly in implementing the Three Year Plan 2006–08 and PNEPTI 2000–10 to: (a) prevent children from being placed in debt bondage or forced labour in the sugar cane and brazil nut harvesting industry; and (b) provide the necessary and appropriate direct assistance for the removal of children from these worst forms of child labour. It requests the Government to provide information on the results obtained. Finally, it requests the Government to send information on the measures taken to ensure the rehabilitation of these children.**

2. *Child labour in mines.* With reference to its previous comments, the Committee notes **with interest** the detailed information sent by the Government on the measures taken under the various programmes of action to eliminate child labour in mines. It notes in particular the awareness-raising and educational measures and economic alternatives provided for the families of children working in mines. It further notes **with interest** that 20 per cent of children who participated in the vocational training programme have stopped working in mines and that 80 per cent of those remaining work fewer hours. It notes that the Three Year Plan 2006–08 and PNEPTI 2000–10 have both set the elimination of child labour in mines as one of their objectives. **The Committee strongly encourages the Government to pursue its efforts and asks it to take time-bound measures, in particular under the Three Year Plan 2006–08 and PNEPTI 2000–10 to provide for necessary and appropriate direct assistance to ensure the rehabilitation and social integration of the children concerned. The Committee requests the Government to provide information on the results obtained.**

Clause (d). Identifying and reaching out to children at special risk. Indigenous children. The Committee noted previously the information from the Government to the effect that in the large estates of the Chaco region, families of the Bolivian Guarani communities are subjected to debt bondage. As a result of this practice, the children of the families are in the same situation. It further noted that a national action plan to eliminate forced labour was to be adopted. It took into account the problems of the families of Guarani communities who are subjected to debt bondage, and specific measures were to be taken for the children under 18 years of age who are also in debt bondage. The Committee notes that the plan has not yet been adopted. It nonetheless takes due note of the Government’s information that it has adopted a Provisional Interministerial Plan 2007–08 for the Guarani people. The Committee observes that the children of indigenous peoples often fall victim to exploitation, which can take many forms, and are at risk of falling into the worst forms of child labour. **It requests the Government to provide information on the time-bound measures taken under the Provisional Interministerial Plan 2007–08 for the Guarani people, in order to prevent the children of these people falling into debt bondage or forced or compulsory labour. The Committee also requests the Government to provide a copy of the National Plan for the Elimination of Forced Labour as soon as it is adopted.**

The Committee is also addressing a direct request to the Government concerning other points.

Bulgaria

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 5 of the Convention. Monitoring mechanisms. Social assistance service. The Committee previously noted the Government’s information that the Social Assistance Agency (SAA) is an important party to the agreement towards the implementation of the National Strategy for Protection of the Rights of Children on the Street. The Committee further noted that the SAA conducts monthly monitoring of the activities of the Child Protection Departments with regard to child beggars and street children, and that the SAA helps the Child Protection Departments in identifying unaccompanied children abroad or child victims of trafficking. The Committee notes **with interest** in the Government’s report that, in late 2005, on a proposal from the State Agency for Child Protection (SACP) and with the cooperation of the International Organization for Migration, a coordination mechanism for referring and servicing cases of unaccompanied Bulgarian children and child victims of trafficking on their return from abroad was adopted. From the introduction in November 2005 of this coordination mechanism until July 2007, the SACP has worked on some 230 cases of unaccompanied Bulgarian children or child victims of trafficking from abroad, with the number of referent cases for the entire 2007 year

being 102. From the start of 2008 until the date of the Government's report, the SACP has been working on 30 new such cases. The Committee further notes that in June 2008, the Agreement on monitoring child labour (Agreement), of April 2003, was renewed between the SACP and the General Labour Inspectorate – Executive Agency and the SAA has now also joined this agreement. The Agreement was drafted in accordance with the adopted ILO principles, the requirements of the European Agency on the Protection of Young People at Work and the Memorandum of Understanding between the Bulgarian Government and the ILO. Its principle objective is, through the creation of appropriate mechanisms for coordination and cooperation between the three institutions and other acceding parties, to increase the effectiveness of the activities of all partners from the governmental and non-governmental sector, as well of the social partners, on the monitoring of child labour. The top priorities of the Agreement are: (a) building a culture for preventing the involvement of children in the worst forms of child labour; (b) the mutual exchange of information on the issues of children's rights and the use of child labour; (c) the development of a legal basis for protecting the labour of children up to 18 years of age; and (d) the creation of a system for monitoring child labour on the whole territory of the country. The parties to the Agreement reported that the use of child labour in Bulgaria has been decreasing progressively, though still remains a challenge mostly in the small and medium-sized enterprises, as well as in the sectors of the informal economy and domestic farms. The parties further agreed to periodically revise the Agreement. ***The Committee requests the Government to continue providing information on the number of unaccompanied children and child victims of trafficking identified and registered by the SAA or the SACP, the measures taken to protect such children and the results achieved.***

Article 6. Programmes of action to eliminate the worst forms of child labour. National Action Plan against the Commercial Sexual Exploitation of Children. In its previous comments, the Committee noted the Government's information that the main objective of the National Action Plan is to adopt effective measures against sexual exploitation leading to the elimination of child pornography, prostitution, sexual bondage, sexual tourism, trafficking and trading of children, and providing rehabilitative measures for child victims of such exploitation. The Committee notes in the Government's report that the main priorities of the SAA since its inception are the prevention of: violence; the worst forms of child labour; trafficking; and the sexual exploitation of children. The Committee notes ***with interest*** the following measures taken by the SACP. The SACP commenced development of a specialized web site on counteracting the commercial sexual exploitation of children. The main purpose of the web site is to provide thorough information on the problems of sexual and labour exploitation such as: national legislation; international standards; national documents; and practices. The web site also has a form for submitting information, through which 450 cases of children's rights violations were forwarded and for which actions are being taken immediately on carrying out inspections and, if needed, in referring the cases to the competent authorities. In 2007, the SACP has worked on 203 such received cases and, in the period from January to July 2008, 174 such cases were submitted, of which 150 are new. The Committee also notes in the Government's report that, since 2006, the SACP is a member of the public council under the telephone hotline for the fight against illegal and damaging content in the Bulgarian Internet space and, as such, receives information from the public concerning materials of a pornographic nature or concerning violence to children. Furthermore, on 11 May 2005, the Ethic Code for the prevention of trafficking and sexual exploitation of children in the field of tourism was signed by the SACP, the Animus Association, as well as representatives of the country's tourist industry. The aim of the Ethic Code, which is available on the SACP web site, is to introduce a new approach to fighting child trafficking by motivating the private sector, especially the representatives of the tourist industry, to introduce measures for the prevention of the sexual exploitation of children by Bulgarian and foreign tourists. Finally, the Committee notes the development of a National Telephone Hotline for Children, in November 2007, by the SACP and the Bulgarian representation of UNICEF. It provides crisis intervention, consultation, specialized information on children's rights, and redirects to suitable providers of services and child protection units and social protection units. ***The Committee requests the Government to provide information in its next report on the impact of these various measures in preventing and eliminating the commercial sexual exploitation of children.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Social investment for children. In its previous comments, the Committee noted the Government's information that, with the aim to enhance access to education for all children, including those from families with low incomes, the Government adopted amendments to the Family Benefits for Children Act (FACA), according to which a new type of allowance depending on the school attendance of children was introduced. "Social investment for children" for their upbringing, education, socialization and health care was also introduced by the FACA. The Committee requested the Government to provide information on the number of children who benefited from this programme. The Committee notes in the Government's report that, in the first six months of 2008, the monthly average of assistance, in the form of social investments under section 7 of the FACA, was provided to 423 families with 562 children, in the average monthly amount of 8,105 Bulgarian leva (BGN). For the same period of 2007, the assistance provided was to 328 families with 430 children and an average of BGN6,407 per month. The assistance granted covers total or partial expenses for things including: fees for crèches or kindergartens; canteen food; clothing and footwear; and school supplies. Monthly assistance also exists under section 8 of the FACA in the form of social investments for children. ***The Committee requests the Government to continue providing information on the number of children who benefited from programmes such as the "social investment for children" programme.***

Clause (b). Necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Child victims of trafficking. The Committee notes in the Government's report that there are five crisis centres in the country. In the period from 2007 to July 2008, approximately 100 children have passed through these centres, which provide a complex of social services aimed at satisfying the daily needs and preparing the social integration of child victims of violence and trafficking. Starting 1 January 2007, the crisis centres fell under state jurisdiction and thus started receiving financing from the state budget. This, in part, amounted to a significant increase of the standards of social services offered, including those by the crisis centres and centres for work with street children. The Committee notes that the basic services provided by the crisis centres are: food and shelter; satisfying health needs; psychological support; life and social skills; participation of the child in a school form of education; and preparation for reintegration into the family or, if impossible, taking an adequate protection measure. The placement of the children in the crisis centres, which have a capacity to accept up to ten children each, is done by the child protection units, under the applicable legal provisions, for a term of up to six months, subject to the individual child's necessities. After their stay in the crisis centres, the children are directed to other services and are actively monitored by child protection units in order to provide adequate support and to prevent a repetition of the same events to them, or other members of their family. The Committee notes *with interest* that child protection units have carried out monitoring and provided assistance in 35 cases in 2006, 37 cases in 2007, 31 cases in the first quarter of 2008 and in 32 cases in the second quarter of 2008. **The Committee requests the Government to continue providing information on the number of child victims of trafficking withdrawn from the worst forms of child labour and rehabilitated by the crisis centres.**

Clause (d). Identify and reach out to children at special risk. Street children. The Committee previously noted that, within the framework of the National Strategy for Protection of the Rights of Children on the Street for 2003–05, an agreement between the SACP, the Ministry of the Interior, and the SAA was signed to regulate the application of the measures for protecting child beggars. The Committee further noted that an action plan for work with begging children was developed and executed in five districts. The Committee notes in the Government's report that an important part of the activities of child protection units is work with street children. The first priority is given to working with the family in assessing the parents' capacity to take care of their children and supporting parents in raising and educating children. The emphasis is put on the individual particularities of the children, as per the methods approved by the SAA and the SACP, and is directed towards preventing children from finding themselves on the streets by developing social services in support of the family. There are currently nine functioning centres working with street children, whose methods, conditions and manners of providing services are approved by the SAA and the SACP who, together in turn, establish minimum services, activities and quality requirements, as well as material supplies, staffing and organization of activities for the centres. Furthermore, there is currently a total capacity of 89 places in five children's shelters, which are viewed as a last resort protection measure and are only called upon after exhausting all other options within the family environment. Finally, the Committee notes *with interest* that child protection units have mobile teams, comprised of police authorities, representatives of non-governmental organizations and local commissions, surveying the streets in order to identify street children. In the first half of 2008, 1,535 child protection unit mobile teams were operational and for the same time period, 61 newly registered cases of begging children were discovered. As of June 2008, 743 children were in the register of children in need of special protection. **The Committee requests the Government to continue providing information on the impact of these measures on protecting street children and child beggars from the worst forms of child labour and the results achieved.**

The Committee is also addressing a direct request to the Government concerning other points.

Burkina Faso

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3, clause (a), and Article 7, paragraph 1, of the Convention. Sale and trafficking of children and sanctions. In its previous comments, the Committee noted that there is a high level of trafficking of children for labour exploitation both within the country and as a source of child labour for other countries. The Committee also noted with interest that, since the adoption and implementation of Act No. 038-2003/AN of 27 May 2003 defining and repressing the trafficking of children (Act No. 038-2003/AN of 27 May 2003), 31 cases of trafficking had been prosecuted in the 19 higher courts and 18 individuals had been sentenced to terms of imprisonment ranging from one to three years.

The Committee notes *with interest* the adoption of Decree No. 2008-332/PRES of 19 June 2008 promulgating Act No. 029-2008/AN of 15 May 2008 on combating trafficking in persons and similar practices (Act on combating trafficking in persons and similar practices). Under section 26 of this Act, Act No. 038-2003/AN of 27 May 2003 is repealed. The Committee takes due note that sections 3 and 4 of the Act on combating trafficking in persons and similar practices provides for terms of imprisonment ranging from five to 20 years.

The Committee notes the information provided by the Government that it has continued and stepped up its efforts to combat the trafficking of children. It also notes the several court decisions handed down by the High Court between 2004 and 2007. The Committee notes that the individuals who have been prosecuted for the trafficking of children were found guilty and sentenced to terms of imprisonment ranging from two to 24 months, sometimes accompanied by a fine, and were ordered to pay costs. The Committee notes, however, that of the seven prison sentences handed down, six were

suspended; one person was sentenced to two months' imprisonment and another to a fine of 50,000 CFA francs. The Committee reminds the Government that the trafficking of children is a serious crime and that, under *Article 7, paragraph 1*, of the Convention, the Government is obliged to take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect the Convention, including *the application* of sufficiently effective and dissuasive penal sanctions. ***The Committee requests the Government to take the necessary measures to ensure that the penalties imposed on individuals found guilty of trafficking of children are sufficiently effective and dissuasive and that they are applied in practice. It requests the Government to provide information in this regard. The Committee also requests the Government to continue providing information on the application in practice of the Act on combating trafficking in persons and similar practices, including in particular, statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions imposed.***

Article 7, paragraph 2. Effective and time-bound measures. Clause(b). Direct assistance for the removal of children from the worst forms of labour. 1. Sale and trafficking of children. The Committee previously took due note of the information provided concerning the implementation in the country of the ILO–IPEC Programme on Combating Trafficking in Children for Labour Exploitation in West and Central Africa (LUTRENA) and noted, in particular, that 632 children had benefited from the project and from educational support. It requested the Government to continue providing information on the measures taken in the context of the implementation of the LUTRENA programme. The Committee notes *with interest* the information provided by the Government that 716 children have been intercepted and returned to their families with the support of the social, technical and financial partners, including the vigilance committees. It also notes the Government's indication that, to ensure better care for victims of trafficking and their reintegration into their families, transit centres have been equipped with facilities in the three provinces of Fada, Pama and Diapaga. The Committee also notes that financial assistance is given to families of child victims of trafficking for income-generating activities and the children are placed in workshops and various vocational training centres or reintegrated into the school system. Furthermore, the Wend Zodo reception centre has been renovated and four literacy centres have been equipped with facilities. Finally, the Committee notes that the country is participating in phase V of the LUTRENA programme. The Committee takes due note of the measures taken by the Government to remove children from sale and trafficking and to ensure their rehabilitation and social integration, which it regards as a manifestation of its political will to eliminate this worst form of child labour. ***The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the time-bound measures taken in the context of the implementation of phase V of the LUTRENA programme to remove child victims from sale and trafficking by indicating, in particular, the number of children who have actually been removed from this worst form of labour, and on the specific rehabilitation and social integration measures taken for these children.***

2. Project for small-scale gold mines in West Africa. In its previous comments, the Committee noted that Burkina Faso is participating in the ILO–IPEC project entitled “Prevention and elimination of child labour in artisanal gold mining in West Africa (2005-2008)” (the ILO–IPEC project on artisanal gold mining), the objective of which is to remove children from gold mines, while establishing structures to prevent child labour and to support local activities, particularly those aimed at enhancing the safety and boosting the income of adults working in the mines. The Committee noted that, according to the information contained in the 2007 ILO–IPEC activity report on the project in small-scale gold mines, more than 240 children had been prevented from being employed in hazardous work in gold mines and were receiving a school education.

The Committee notes *with interest* the detailed information provided by the Government concerning the ILO–IPEC project on artisanal gold mining which has been implemented on the gold-bearing site of Gorol Kadjè in Séno and the gold-bearing site of Zinguima in Bam. It notes, in particular, that two small schooling programmes have been implemented which have allowed the schooling of 248 children, including 130 girls, namely 93 children on the Zinguima site in Bam by the NGO Coalition in Burkina Faso for Children's Rights (COBUFADE) and 155 children on the Gorol Kadjè site in Séno by the NGO Action for the Promotion of Children's Rights in Burkina Faso (APRODEB). Overall, 657 children have been removed from the worst forms of labour in gold washing and have benefited from pre-school and school services, support in the form of school equipment, school clothing and afternoon snacks, and medical care. Furthermore, 16 groups of villagers have been created for income-generating activities in animal fattening, trading, dyeing and soap manufacture, including six groups of women and two groups of girls.

The Committee notes that two ILO–IPEC programmes are currently being implemented in the country, namely a programme on the rehabilitation and integration of child gold washers on the gold-bearing site of Gorol Kadjè through education and vocational training, and another which concerns support for the schooling of 310 children and the integration of 90 child workers, the protection of 120 child workers in the context of three young person clubs, support for income-generating activities for 90 mothers of gold-washing children and the mobilization of the community on the Zinguima site. Finally, the Committee notes that a basic study on child labour in gold washing in Zinguima and Gorol Kadjè is being carried out in the country. ***The Committee requests the Government to continue its efforts to remove children from the worst forms of child labour in small-scale gold mines. It also requests it to continue providing information on the time-bound measures taken, particularly in the context of the implementation of the two ILO–IPEC programmes currently under way in the country, to provide the necessary and appropriate direct assistance for the removal of children from this worst form of child labour and for their rehabilitation and social integration.***

Furthermore, the Committee requests the Government to provide information on the basic study on child labour in gold washing in Ziniguima and Gorol Kadjè as soon as it has been completed.

Clause (e). Taking account of the special situation of girls. The Committee previously noted that, according to ILO-IPEC information on the LUTRENA programme, internal trafficking, which accounts for 70 per cent of cases, mainly concerns girls who are engaged in domestic labour or working as street vendors in the country's major cities. It noted that girls, particularly those employed in domestic work, are often victims of exploitation, which takes on very diverse forms, and it is difficult to monitor their conditions of employment because of the unauthorized nature of this work. The Committee requested the Government to provide information on the measures taken in the context of the LUTRENA programme to protect girls against labour and sexual exploitation. The Committee notes the information provided by the Government concerning the measures it has taken in the context of the ILO-IPEC project on artisanal gold mining to take into account the situation of girls, in particular through financial assistance for income-generating activities and their insertion into training centres to learn a trade or their reintegration into the school system. The Committee notes, however, that no information is provided with regard to the measures taken in the context of the LUTRENA programme. **The Committee therefore requests the Government to provide information on the time-bound measures taken in the context of the implementation of phase V of the LUTRENA programme to protect girls from the worst forms of child labour, including, in particular, the number of girl victims of sale and trafficking for labour or sexual exploitation who have actually been removed from this worst form.**

Article 8. International cooperation and assistance. 1. Regional cooperation. The Committee previously noted that the Government has signed bilateral cooperation agreements on the cross-border trafficking of children with the Republic of Mali and multilateral cooperation agreements on combating the trafficking of children in West Africa. It requested the Government to provide information on the implementation of these agreements. The Committee notes the Government's indication that statistics will be provided as soon as they are available. **The Committee expresses the hope that the Government will be able to provide information in its next report and once again requests it to indicate whether the information exchanges with the other signatory countries have made it possible to: (1) apprehend and arrest persons operating in networks engaged in the trafficking of children; and (2) detect and intercept child victims of trafficking in the border areas.**

2. Poverty elimination. In its previous comments, the Committee noted the draft Decent Work Country Programme for Burkina Faso. It noted that the problems connected with child labour form part of the priorities of this country programme, including child labour in rural areas and in mines, and that the Government intends to take measures aimed at eliminating child labour in the context of poverty reduction. The Committee notes that the Government does not provide any information on this matter. **Noting once again that poverty reduction programmes contribute to breaking the poverty cycle, which is essential for the elimination of the worst forms of child labour, the Committee requests the Government to provide information on the measures taken in the context of the implementation of the Decent Work Country Programme to eliminate the worst forms of child labour, particularly as regards the actual reduction of poverty among child victims of sale and trafficking and those who carry out hazardous work in mines and quarries.**

Furthermore, the Committee is also addressing a direct request to the Government concerning other points.

Burundi

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

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

Article 2, paragraph 1, of the Convention. Scope of application. In its previous comments, the Committee noted the indication by the International Trade Union Confederation (ITUC) that child labour constitutes a serious problem in Burundi, particularly in agriculture and informal activities in urban areas. It also noted the statement by the Government that the socio-political crisis experienced by the country had aggravated the situation of children, some of whom were obliged to perform work "illegally" to support their families, very frequently in the informal economy and in agriculture. The Committee noted that section 3 of the Labour Code, in conjunction with section 14, prohibits work by young persons under 16 years of age in public and private enterprises, including farms, where such work is carried out on behalf of and under the supervision of an employer.

In its report, the Government confirms that the country's regulations do not apply to the informal sector, which consequently escapes any control. Nevertheless, the question of extending the application of the labour legislation to this sector is to be discussed in a tripartite context on the occasion of the revision of the Labour Code and its implementing texts. The Committee reminds the Government that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship, including own-account work. **It expresses the firm hope that the Government will take the necessary measures to extend the scope of application of the Convention to work performed outside an employment relationship, particularly in the informal economy and in agriculture. The Committee requests the Government to provide information in this respect.**

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee previously noted the ITUC's indications that the war had weakened the education system due to the destruction of many schools and the death or abduction of a large number of teachers. According to the ITUC, the school attendance rate is lower and the illiteracy rate higher for girls. The Committee further noted that, according to a report of the International Bureau of Education (UNESCO) of 2004 relating to data on education, Legislative Decree No. 1/025 of 13 July 1989 reorganizing education in Burundi does not provide for free and compulsory primary education. Entry into primary education is around the age of 7 or 8 years and lasts six years. Children

therefore complete primary education around the age of 13 or 14 years and then have to pass a competition to enter secondary education. The Committee further noted that in 1996 the Government had prepared a Global Plan of Action for Education designed to improve the education system, among other measures, by reducing inequalities and disparities in access to education and achieving a gross school attendance rate of 100 per cent by the year 2010.

The Committee takes due note of the information provided by the Government in its report with regard to the various measures adopted in the field of education. It notes that, under article 53(2) of the Constitution of 2005, the State is under the obligation to organize public education and promote access to such education. It further notes that basic education is free of charge and that the number of children attending school tripled during the 2006 school year. In 2007, primary schools will be constructed and other mobile and temporary schools will be established. Furthermore, coordination units for girls' education have been established and over 1,000 teachers recruited. *The Committee encourages the Government to pursue its efforts in the field of education and to provide information on the impact of the above measures in terms of increasing the school attendance rate and reducing the drop-out rate, with special attention to the situation of girls. It also requests the Government to indicate the age of completion of compulsory schooling and the provisions of the national legislation which determine this age.*

The Committee is also addressing a direct request to the Government concerning other points.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

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

Article 3 of the Convention. Worst forms of child labour. Clause (a). Forced recruitment of children for use in armed conflict. In its comments under Convention No. 29, the Committee noted previously that the Committee on the Rights of the Child, in its concluding observations on the initial report of the Government (CRC/C/15/Add.133, October 2000), expressed concern at the use of children by the State as soldiers or helpers in camps or in obtaining information. The Committee on the Rights of the Child also expressed concern at the low minimum age for recruitment to the armed forces and at the widespread recruitment of children by opposition armed forces and the sexual exploitation of children by members of the armed forces. Moreover, the Committee of Experts noted that in March 2003 the International Trade Union Confederation (ITUC) made comments on the application of the Convention confirming the use of child soldiers by the armed forces.

The Committee noted that, in its comments, the COSYBU indicates that armed conflicts persist, maintained by the *Partie pour la libération du peuple Hutu/Forces nationales pour la libération* of Agathon Rwaswa (PALIPEHUTU/FNL) and that children continue to be enrolled. It also noted the information provided by the Government in reply to COSYBU's comments according to which, following the signature of the Arusha Peace and Reconciliation Agreement in August 2000 and the Comprehensive Ceasefire Agreement signed with the *Conseil national pour la défense de la démocratie/Forces pour la défense de la démocratie* (CNDD/FDD) of Pierre Nkurunziza, the phenomenon of children being used in armed conflict has almost ended and the integration of these children into social and economic life is continuing. The Government adds that the forced recruitment of children for use in armed conflict is the worst form of child labour observed most commonly in Burundi. However, considering the relative calm that is being experienced over most of the national territory, it has launched the implementation of a vast programme for the demobilization and reintegration of former combatants through three organizations, namely: the National Commission for Demobilization, Reinsertion and Reintegration (CNDRR), the National Structure for Child Soldiers (SEN) and the ILO-IPEC project on the "Prevention and reintegration of children involved in armed conflicts: An interregional programme". Furthermore, according to the Government, all children have been demobilized except those used by the armed movement FNL (*Front national de libération*) of Agathon Rwaswa, which has not yet laid down its arms.

The Committee noted that, in his Report on Children and Armed Conflicts in Burundi of 27 October 2006 (S/2006/851), the United Nations Secretary-General indicates that, despite the substantial progress achieved in addressing the grave violations of children's rights, violations are still occurring and the competent authorities have not always conducted criminal investigations nor punished those responsible. During the period from August 2005 to September 2006, the United Nations Operation in Burundi (UNOB) identified over 300 cases of child victims of grave violations, perpetrated mainly by members of the FNL and FND troops, including the murder and mutilation of children, serious sexual violence and the recruitment and use of children in armed groups and forces, with an increase of this latter violation being noted (paragraph 25). The Secretary-General adds that the authorities have not yet adopted national legislation to criminalize the recruitment and use of child soldiers (paragraph 36). Furthermore, according to the information contained in the Report of the Secretary-General of 27 October 2006, a ceasefire agreement was signed between the Government and Agathon Rwaswa's FNL, the last active rebel movement, on 7 September 2006 (paragraph 5). Nevertheless, in his ninth report on the United Nations Operation in Burundi of 18 December 2006 (S/2006/994), the Secretary-General indicates that the implementation of the Comprehensive Ceasefire Agreement has remained stalled since its signature (paragraphs 1 and 2).

The Committee noted that, in the information provided under Convention No. 29, the Government indicates that the minimum age for enrolment in the armed forces of Burundi *has been increased from 16 to 18 years*. It also noted that, according to the information contained on the Internet site of the Special Representative of the Secretary-General for Children and Armed Conflict (www.un.org/children/conflict/english/home6.html), following her visit to the country, the Government of Burundi has made progress in the protection of children affected by conflict. In this respect, the Committee noted that the Penal Code has been amended to bring its provisions into harmony with the international instruments on human rights ratified by Burundi and that the proposed changes include provisions relating to the protection of children and against war crimes. The Penal Code now provides that the recruitment of children *under 16 years of age* in armed conflicts constitutes a war crime. The Committee reminds the Government that under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children *under 18 years of age* for use in armed conflict is considered to be one of the worst forms of child labour. *It therefore requests the Government to take measures as a matter of urgency to amend the national legislation and prohibit the forced recruitment of young persons under 18 years of age for use in armed conflict, either in the national armed forces or in rebel groups, and to provide information in this respect.*

The Committee noted that, despite the measures adopted by the Government, the forced recruitment of children for use in armed conflicts still occurs and that the situation in Burundi remains fragile. It expressed great concern at the current situation, particularly since the persistence of this worst form of child labour gives rise to other violations of the rights of the child, such as the murder and mutilation of children and sexual violence. *In this respect, the Committee refers to the Report of the Secretary-General on Children and Armed Conflict in Burundi and requests the Government to take all the necessary measures to*

continue negotiations with a view to reaching a definitive peace agreement, putting an end unconditionally to the recruitment of children and undertaking the immediate and complete demobilization of all children. Finally, with reference to the Security Council which, in resolution 1612 of 26 July 2005, recalls "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children", the Committee urges the Government to ensure that sufficiently effective and dissuasive penalties are imposed on persons found guilty of enrolling or using young persons under 18 years of age in armed conflict.

Clause (b). Use, procuring or offering of children for prostitution. In its communication, the COSYBU indicated that the extreme poverty of the population encourages parents to allow their children to engage in prostitution. In its report, the Government indicated that cases of the use of children for prostitution have been reported in the popular districts of the municipality of Bujumbura (Bwiza and Buyenzi). However, the juvenile police reacted rapidly and eradicated this phenomenon, with penalties being imposed on persons who recruited children for prostitution. The Committee noted that, in the report of 19 September 2006 of the United Nations independent expert on the situation of human rights in Burundi (A/61/360), the Secretary-General indicated that more and more children are victims of sexual violence (paragraph 82). The Committee noted that sections 372 and 373 of the Penal Code penalize the use, procuring or offering of children who are minors for prostitution, even with their consent. The Committee 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. ***It requests the Government to renew its efforts to implement these provisions effectively in practice and to ensure the protection of young persons under 18 years of age against prostitution. The Committee requests the Government to provide information in this respect, including reports on the number of convictions. It also requests the Government to indicate whether the national legislation contains provisions criminalizing the client in the event of prostitution.***

Clause (c). Use, procuring or offering of children for illicit activities. Street children. In its communication, the COSYBU indicated that the extreme poverty of the population drives parents to allow their children to engage in begging. In his Report on Children and Armed Conflict in Burundi of 27 October 2006 (S/2006/851), the Secretary-General indicated that UNOB and its partner child protection agencies have received information on the recruitment of from three to ten male children per month, including street children in Bujumbura Mairie Province (paragraph 2 5). As the national legislation does not appear to regulate this activity, the Committee expresses grave concern at the increase in street children who are exposed to numerous risks, including being used or recruited for armed conflict or other illicit activities. It reminds the Government that, in accordance with *Article 1* of the Convention, it is under the obligation to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee requests the Government to take the necessary measures to protect street children and to prohibit in the national legislation the use, procuring or offering of children for illicit activities. It also requests the Government to establish penalties for this purpose.***

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these worst forms and providing for their rehabilitation and social integration. 1. Child soldiers. The Committee noted with interest that the Government is participating in the ILO-IPEC interregional project on the prevention and reintegration of children involved in armed conflict, which also includes the Congo, Rwanda, the Democratic Republic of the Congo, the Philippines, Sri Lanka and Colombia. The objective of the programme is to prevent the recruitment of children in armed conflict, facilitate their removal and ensure their social integration. The Committee noted the detailed information provided by the Government in its report on the measures that it has taken with organizations to prevent the recruitment of children in armed conflict or to remove them from this worst form of child labour. It noted that, in the context of the ILO-IPEC interregional project, over 15 programmes of action have been implemented and that around 1,440 children have been demobilized in the areas covered by the project. The Committee further noted that, in his ninth report on the United Nations Operation in Burundi of 18 December 2006 (S/2006/994), the Secretary-General indicates that, since November 2003, the United Nations project for the demobilization, reintegration and prevention of the recruitment of children associated with armed forces and groups has freed and reintegrated 3,015 children (paragraph 27). It further noted that the National Structure for Child Soldiers is a project for the demobilization, reintegration and prevention of the recruitment of child soldiers which has been in operation since 2003. In the context of this programme, 1,932 children had been demobilized.

The Committee noted that the Ministry of National Solidarity, Human Rights and Gender has signed a memorandum of understanding with the Executive Secretariat of the NCDRR. In the context of this agreement, measures are adopted at different levels to raise the awareness of the various target groups with regard to the problem of recruitment (members of military forces, combatants, parents, young persons, the civil administration, civil society, NGOs and politicians) and to institutionalize training on the rights and protection of the child in armed conflicts within the training structures of the national army. Furthermore, children who had been demobilized and were exposed to the risk of being recruited once again are monitored. The Committee encouraged the Government to continue collaborating with the various bodies involved in the process of disarmament, demobilization and reintegration with a view to removing children from armed forces and groups. ***It requests the Government to provide information on the impact of the measures adopted in the context of the implementation of the ILO-IPEC interregional programme on the prevention and reintegration of children involved in armed conflict with a view to preventing children from being enrolled in armed conflict and to remove them from this worst form of child labour. The Committee also requests the Government to provide information on the time-bound measures adopted for the rehabilitation and social integration of children who are in practice removed from armed forces or groups.***

2. Sexual exploitation. Considering that a number of children are the victims of sexual exploitation as noted under Article 3(b), the Committee requests the Government to take the necessary measures to remove young persons under 18 years of age from prostitution. It also requests the Government to envisage measures to ensure the rehabilitation and social integration of children removed from this worst form of child labour.

Clause (c). Ensuring access to free basic education and vocational training for all children removed from the worst forms of child labour. The Committee took note of the information provided by the Government to the effect that, during the 2004–05 school year, a total of 485 former child soldiers were reintegrated into primary school, 99 were oriented towards secondary school, 79 in technical training centres and 74 in training from craft workers. ***It once again strongly encourages the Government to pursue its efforts to provide access to basic education or vocational training to children removed from armed conflict. The Committee requests the Government to continue providing information on this subject.***

Clause (d). Children at special risk. Street children. The Committee noted that in his report of 23 September 2005 (E/CN.4/2006/109), the United Nations independent expert on the human rights situation in Burundi indicates that the situation of children in the country remains extremely worrying. Children are affected not only by the continuing conflict, but also by the deteriorating economic situation (paragraph 55). According to some estimates, there are over 3,000 street children in the country.

It also noted that, in the report of 19 September 2006 of the independent expert on the situation of human rights in Burundi (A/61/360), the Secretary-General indicates that the phenomenon of street children is on the rise in Bujumbura and that a programme aimed at curbing the trend has been elaborated and includes aspects relating to prevention, assistance and reintegration (paragraph 79). **Recalling that street children are particularly exposed to the worst forms of child labour, the Committee once again encourages the Government to pursue its efforts to protect them from these worst forms. It also requests the Government to provide information on the measures adopted in the context of the programme to bring an end to this phenomenon, particularly with regard to measures for their rehabilitation and social integration.**

The Committee is also addressing a direct request to the Government concerning other points.

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

Cameroon

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes the communication from the General Confederation of Labour – Liberty of Cameroon (CGTL) dated 17 October 2008 as well as the Government's report.

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee noted that, according to ILO statistical data on Cameroon for the year 2000, some 442,000 children aged between 10 and 14 years were economically active, of whom 241,000 were boys and 201,000 were girls. It also noted that the ILO–IPEC regional programme to eliminate child labour in cocoa plantations in West Africa (WACAP) had resulted in the identification of over 5,000 children and the integration of around 1,300 children.

The Committee notes the comment by the CGTL that the national plan to combat child labour has never been formally adopted. The Committee notes the information from the Government that inter-ministerial consultations are being held to update and finalize the national plan to combat child labour. Furthermore, the Committee notes that an ILO–IPEC action programme entitled “Survey and development of a database on child labour” began in March 2007. According to the summary of this programme, the premature entry of children into the labour market remains a worrying phenomenon in Cameroon because of, among other reasons, the conditions of poverty of its population. For example, a basic survey on child labour in commercial agriculture was conducted in 2004 in the major cocoa-producing areas, particularly among children below the age of 18 working on cocoa farms. The study reveals that 30 per cent of children below the age of 14 in Cameroon are involved in cocoa production activities. However, the summary of the ILO–IPEC programme indicates that there is a lack of statistical data on the problem of child labour in Cameroon and that most statistical sources were not designed to deal specifically with this issue. As a result, the Government, through the National Institute of Statistics (INS), conducted a modular survey on child labour in 2007 with a view to carrying out a more in-depth and nationwide survey. The ILO–IPEC programme also aims subsequently to build national capacity to conduct surveys on child labour at regular intervals. **The Committee once again expresses its concern at the situation of children under 14 years of age who are compelled to work in Cameroon, particularly in cocoa-production activities, and requests the Government to step up efforts to improve this situation. Taking into account the information on the extent of child labour in Cameroon, the Committee firmly hopes that the Government will adopt the national plan to combat child labour in the near future and requests it to provide information on the progress made in this regard. It also requests the Government to provide the statistics gathered following the survey conducted in 2007 within the framework of the ILO–IPEC programme on the development of a database on child labour in Cameroon.**

Article 2, paragraph 1. Minimum age for admission to employment or work. In its previous comments, the Committee noted that, according to ILO statistical data on Cameroon for the year 2000, a high number of children under 14 years of age were economically active in one way or another. The Committee therefore asked the Government to envisage adopting measures to establish provisions determining what constitutes light work, in accordance with *Article 7, paragraphs 1 and 4*, of the Convention. The Committee notes the information from the Government that there are no exemptions to the minimum age of 14 years for admission to work for light work in accordance with *Article 7* of the Convention and that this minimum age remains without exclusions. The Committee notes, however, that, according to the statistics provided by UNICEF for the years 2000–06, 31 per cent of children aged between 5 and 14 years in Cameroon were working, indicating that the number of children working under the age of 14 remains high. **Consequently, the Committee urges the Government to take the necessary measures to ensure that no children under 14 years of age are admitted to work or employment.**

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee previously noted the Government's indication that the minimum age for admission to employment was set at 14 years because this age corresponds to the end of the period of compulsory schooling in Cameroon. However, the Committee noted that, according to information provided by UNESCO, the age of entry into primary school is 6 years, but the leaving age varies between 11 and 14 years. Furthermore, it noted that Act. No. 98/004 of 14 April 1998 establishing the framework for education in Cameroon does not specify the age of completion of compulsory schooling. In light of this, the Committee noted that children under the age of 14, who are therefore younger than the minimum age for admission to employment or work, may not actually be attending school.

The Committee notes that, in its comments, the CGTL indicates that there are no legal or regulatory provisions establishing the age of compulsory schooling. The Committee also notes that, according to the 2006 Multiple Indicator Cluster Survey conducted by the INS in collaboration with UNICEF, around 44 per cent of children of the legal age for entry into the first year of primary school, i.e. 6 years, are actually enrolled in school. Furthermore, the survey reveals that the net primary school attendance rate is 64 per cent for 6 year olds and that it gradually increases with age to reach 90 per cent for 11 year olds. Furthermore, 35 per cent of children of secondary school age are still in primary school. The Committee also notes that only 38 per cent of children aged between 12 and 18 are enrolled in secondary or higher education. The Committee notes the Government's indication that information on school attendance and drop-out rates will be sent to the Office at a later stage. **Noting that the Government does not indicate the age of completion of compulsory schooling and considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures to set the age of completion of compulsory schooling at 14 years in the near future. The Committee also requests the Government to redouble its efforts to improve the operation of the education system, in particular by increasing school enrolment and attendance rates among children under 14 years of age at secondary level. It requests the Government to provide information on the progress made in this regard. Finally, the Committee also requests the Government to provide additional information available to it on school attendance and drop-out rates as soon as possible.**

Article 3, paragraph 2. Determination of types of hazardous employment or work. In its previous comments, the Committee noted that Order No. 17 on child labour of 27 May 1969 contains a list of work prohibited to children under the age of 18. It noted that this Order was adopted over 30 years ago.

The Committee notes that the CGTL indicates in its comments that Order No. 17 was adopted after consultation with the only trade union at the time, prior to adoption of the Convention. The CGTL also indicates that no consultations have been held more recently with organizations of employers and workers to determine types of hazardous work. In this regard, the Committee once again draws the Government's attention to the provisions of paragraph 10(2) of the Minimum Age Recommendation, 1973 (No. 146), which requests governments to re-examine periodically and revise as necessary the list of types of employment or work referred to in *Article 3* of the Convention, particularly in the light of advancing scientific and technical knowledge. The Committee observes that, under *Article 3, paragraph 2*, of the Convention, these types of employment or work shall be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned. **The Committee requests the Government to take measures to revise the list of work prohibited to children under the age of 18, after consultation with the organizations of employers and workers concerned.**

Article 5. Limitation of the scope of application of the Convention. In its previous comments, the Committee noted that the Government had initially limited the scope of application of the Convention to those branches of economic activity or types of enterprise contained in *Article 5, paragraph 3*, of the Convention, namely mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers. The Committee notes the information from the Government that work in the informal sector is within the remit of labour inspectors and that this sector is difficult to supervise. **The Committee requests the Government to take the necessary measures to strengthen labour inspection in the informal sector. It once again requests it to provide information on the general situation with regard to the employment or work of children and young persons in those branches of activity which are excluded from the scope of the Convention, taking into account the fact that a substantial number of children work in the informal sector in the country.**

Article 6. Apprenticeship and vocational training. Referring to its previous comments, the Committee notes that section 4 of Decree No. 69/DF/287 of 30 July 1969 on apprenticeship contracts provides that a person must be at least 14 years of age to be hired on an apprenticeship contract. Furthermore, the Committee notes that, under section 1(3) of Act No. 76/12 of 8 July 1976 organizing rapid vocational training, rapid vocational training centres are open to candidates over the age of 18. The Committee also notes the information from the Government that, before the adoption of any regulatory text, employers' and workers' organizations are consulted within the framework of the National Labour Advisory Committee.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

The Committee takes note of the communication of 17 October 2008 from the General Confederation of Labour – Liberty of Cameroon (CGTL) and the Government's report.

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances. In its previous comments, the Committee noted that Cameroon's legislation appeared not to contain provisions prohibiting the use, procuring or offering of children under 18 years of age for the production of pornography or pornographic performances. It noted that a Child Protection Code was to be enacted and would take account of child pornography. The Committee notes the information sent by the Government to the effect that it undertakes to send the abovementioned Code to the Office as soon as it is adopted. **The Committee expresses the firm hope that the Child Protection Code will prohibit the use, procuring or offering of a child under 18**

years of age for the production of pornography or pornographic performances. It asks the Government to take the necessary steps to ensure that the Code is adopted in the near future and to provide a copy of it as soon as it is adopted.

Clause (c). Use, procuring or offering of a child for illicit activities. The Committee noted previously the Government statement that Act No. 2005/015 of 20 December 2005 to combat the trafficking of children applies to the use, procuring or offering of children under 18 years of age for illicit activities. The Committee notes that the Government indicates more particularly that section 2(d) of this Act covers the illicit activities about which the Committee has been expressing concern. The Committee notes that section 2(d) of the Act states that the exploitation of children “shall cover at least the exploitation and procuring of children or all other forms of sexual exploitation, the exploitation of children’s labour or forced services, slavery or practices similar to slavery, servitude or the removal of organs”. The Committee reminds the Government that, according to *Article 3(c)* of the Convention, the use, procuring or offering of a child for illicit activities is among the worst forms of child labour and so must be expressly prohibited by the national legislation. ***The Committee requests the Government to take the necessary steps to prohibit by law the use, procuring or offering of children under 18 years of age for illicit activities, in particular for the production and trafficking of drugs or for begging.***

Clause (d). Hazardous work. Self-employed workers. In its previous comments, the Committee noted that the Labour Code does not apply to children under 18 years of age who are engaged in hazardous work outside a contractual employment relationship. The Committee notes the information sent by the Government in its report that the Ministry of Social Affairs has set up provincial monitoring brigades to combat the use of children in hazardous work including children who work outside a contractual employment relationship. The Committee notes that according to the CGTL, the provincial brigades do not work side by side with labour inspectors or workers’ organizations. The CGTL indicates that it plans to find out how the brigades operate. ***The Committee once again requests the Government to provide more detailed information on the operation of the provincial brigades, particularly in terms of the number of children who have been found working outside a contractual employment relationship.***

Article 4, paragraphs 1 and 3. Determining hazardous types of work or employment and periodic review. In its previous comments, the Committee noted that Order No. 17 on child labour, issued on 27 May 1969, provides for a list of jobs prohibited for children under 18 years of age.

The Committee notes that the CGTL states in its comments that Order No. 17 was issued following consultation with the only trade union that existed at the time, before the Convention was adopted. It further indicates that no more recent consultations have been organized with employers’ and workers’ organizations for the purpose of determining hazardous types of work.

The Committee observes that Order No. 17 was adopted more than 30 years ago. It draws the Government’s attention to *Article 4, paragraph 3*, of the Convention, which calls on the Government to examine and review periodically the list of the types of work or employment referred to in *Article 3(d)*, of the Convention, in consultation with the employers’ and workers’ organizations concerned. ***The Committee requests the Government to take steps to review the list of jobs which are prohibited for children under 18 years of age after consultation of the employers’ and workers’ organizations concerned.***

Article 5. Monitoring mechanisms. 1. Sale and trafficking of children. (i) Monitoring system. In its previous comments, the Committee noted that the synthesis reports on the ILO–IPEC subregional project to combat the trafficking of children in West and Central Africa (LUTRENA) issued in March and September 2006, show that a system for monitoring child trafficking has been set up in the country. It also noted that a vice squad has been established at BCN-Interpol in Yaoundé to combat the trafficking, exploitation and abuse of children.

The Committee notes that, according to the CGTL, no extracts have been produced from reports or documents pertaining to the operation of the vice squad. The Committee notes the Government’s statement that as well as the monitoring carried out by the vice squad, a number has been made available to encourage the public to report such abuse anonymously and that BCN-Interpol has set up a round-the-clock answering service to receive these calls. The Government further indicates that three contact officers are on permanent standby to carry out investigations. The Committee further notes that according to the report on the ILO–IPEC project “Combating the trafficking of children for the purpose of exploiting their labour by reinforcing the national legislation on trafficking and the relevant institutional capacity to secure effective application of the law”, which covers the period from 1 September 2006 to 28 February 2007, six vigilance committees were established with the aim of involving the communities in observation and surveillance work. Special training has been devised to build the capacity of the members of these committees. ***The Committee again asks the Government to provide information on the running of the vice squad, including extracts of reports or documents. The Committee also requests the Government to provide information on the number of child victims of trafficking who have been identified by the call-in system set up by BCN-Interpol and by the vigilance committees and who have been rehabilitated and integrated in society.***

(ii) *Police.* The Committee notes from a document entitled “The role of the police in managing the trafficking, smuggling and domestic exploitation of children”, the Cameroon police has focused its work on prevention, punishment and rehabilitation so as to combat child trafficking effectively in accordance with the Act to combat child trafficking. To this end, in the area of prevention, the police is engaged in raising public awareness through the media and in the

surveillance of public places and of borders. Its law enforcement work consists in making the victims safe and gaining their trust, reporting the offence and gathering evidence, tracking down the perpetrators and their accomplices and bringing them before the appropriate judicial body. In the rehabilitation phase the police assist, inter alia, in repatriating the victims, returning them to their families if the latter are not implicated in the trafficking or else handing them over to appropriate institutions with a view to their social integration. ***The Committee requests the Government to provide information on the number of investigations conducted by the police and the number of offences reported under the Act to combat the trafficking of children.***

2. *System for monitoring child labour in plantations.* In its previous comments, the Committee noted that, under the ILO–IPEC regional programme to combat hazardous work and the exploitation of child labour in cocoa plantations and commercial agriculture in West and Central Africa (WACAP), a child labour monitoring system has been established. The Committee notes from WACAP’s synthesis report No. 4 on the child labour monitoring system that the system requires the participation of all strata of society from community to government level and aims in particular: to raise public awareness of the problem of child labour; to identify child workers engaged in agriculture and cocoa plantations and determine the risks to which they are exposed; to refer the children thus identified to institutions providing social protection services; to ensure that the children are withdrawn from work or, in the case of those allowed to work, that they are not exposed to any occupational risks. ***The Committee requests the Government to provide information on the number of children in cocoa plantations in Cameroon who have been identified by this monitoring system and withdrawn from work and subsequently referred to social protection institutions.***

Article 6. Programmes of action. 1. *National programme of action to eliminate the worst forms of child labour.* In its previous comments, the Committee noted that a national action programme for the elimination of the worst forms of child labour was to be formulated. It noted that a National Steering Committee has been established to implement the ILO–IPEC programmes. It expressed the hope that in the course of its work the steering committee would formulate a national action plan to abolish the worst forms of child labour.

The Committee notes that in its comments the CGTL expresses the hope that the National Steering Committee will formulate a policy and a national action plan to combat child labour. The Committee observes in this connection the Government’s statement that it has taken note of the Committee’s recommendations. ***The Committee therefore requests the Government to take steps to ensure that a national action plan is drawn up for the elimination of the worst forms of child labour and requests the Government to provide information on progress made in this respect. Moreover, it requests the Government to provide information on the operation of the National Steering Committee and the work it has undertaken to abolish the worst forms of child labour.***

2. *National policy to combat the trafficking of children for the purpose of exploiting their labour.* The Committee noted previously a study carried out by ILO–IPEC–LUTRENA in 2005 on the trafficking of children for the exploitation of their labour in Cameroon. It noted in particular that one of the study’s recommendations is that a national policy should be formulated to combat the trafficking of children for the exploitation of their labour. The Committee notes that the Government says nothing of this matter in its report. It further notes that Cameroon is no longer involved in the LUTRENA project. ***Consequently, the Committee urges the Government to take measures to ensure that a national policy to combat the trafficking of children for the purpose of exploiting their labour is adopted, and to provide information in this regard.***

Article 7, paragraph 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 therefrom. 1. *Sale and trafficking of children.* In its previous comments, the Committee noted that a study carried out by ILO–IPEC–LUTRENA on the trafficking of children for the purpose of labour exploitation in Cameroon recommended improving knowledge and understanding of the phenomenon of trafficking, changing public attitudes and encouraging greater mobilization of the authorities, civil society, trade unions and families.

The Committee notes that Cameroon is no longer involved in the LUTRENA project. It notes, however, from the synthesis report on the ILO–IPEC project on combating the trafficking of children for the purpose of labour exploitation by reinforcing the national legislation against trafficking and the relevant institutional capacity for effective application of the law, covering the period from 1 September 2006 to 28 February 2007, four action programmes have been implemented, two for the reintegration of child victims of trafficking and two for training and awareness raising. In the context of these action programmes, 161 children have been identified either as victims or at risk of trafficking and have been enrolled in primary school or vocational training programmes. Furthermore, two workshops have been organized to raise awareness among the communities and traditional chiefs. In all, the action programmes have assisted some 246 children and provided 678 educational or other services. The Committee also notes from the information sent by the Government that brochures about child trafficking and the rights of children were produced for the African Children’s Day, held on 16 June 2007. The Government also states that Decree No. 2001/109/PM of 20 March 2001 on the organization and running of public institutions to support socially maladjusted children provides for the creation of reception and transit centres and accommodation centres. As more and more centres open, children who have fallen victim to trafficking and exploitation will have access to temporary psycho-social support with a view to rehabilitation and social integration on a durable basis.

In this connection, the Committee notes that in its comments, the CGTL asserts that so far no reception and transit centres and no accommodation centres, as provided for in Decree No. 2001/109/PM of 20 March 2001, have been, or are being, created.

The Committee encourages the Government to pursue its efforts to implement measures for the establishment of awareness-raising campaigns and to provide information of their impact on preventing the trafficking of children. Furthermore, since the LUTRENA project has been completed in Cameroon, it asks the Government to provide information on the effective and time-bound measures taken or envisaged to: (a) prevent children from falling victim to trafficking; (b) provide the necessary and appropriate direct assistance for the removal of children from this worst form of child labour and for their rehabilitation and social integration, in particular through the establishment of the reception, transit and accommodation centres provided for in Decree No. 2001/109/PM of 20 March 2001. The Government is also asked to report on the progress made and the results obtained in this respect.

2. *Hazardous work and the exploitation of children's labour in cocoa plantations.* In its previous comments, the Committee noted that Cameroon was a participant in the WACAP project implemented under the ILO-IPEC regional programme, in which Côte d'Ivoire, Ghana, Guinea and Nigeria are also associated. The Committee notes from WACAP's synthesis report No. 3 on shared experiences (synthesis report No. 3) that, as a result the WACAP project, a total of 1,517 children have been withdrawn from, or prevented from engaging in, work on cocoa plantations in Cameroon, through the provision of education services (1,383) and other services (134). According to the same report, 55 communities have been affected by the WACAP project and 605 parents or guardians have directly benefited from it. The Committee notes that implementation of the WACAP project is now complete. However, according to synthesis report No. 3, in Cameroon the awareness-raising activities carried out under the WACAP project have prompted the Government to commit itself to combating this scourge. The synthesis report No. 3 also indicates that the States participating in the WACAP project have all identified measures to ensure follow-up of the work done during the project's implementation. Such measures include organizing seminars on child labour in cocoa plantations; ongoing involvement of communities in child labour issues using tools provided by the WACAP project; offering informal education opportunities to children withdrawn from labour in the cocoa plantations who are unready to enter the formal school system; consolidating and building on achievements resulting from the WACAP project. ***The Committee urges the Government to take effective and time-bound measures to ensure follow-up of the WACAP project and also to ensure that children are prevented from being employed in cocoa plantations and are actually withdrawn from such plantations. The Government is asked to provide information on measures taken in this respect.***

Clause (d). Children at special risk. 1. *Orphans and HIV/AIDS.* The Committee noted previously that, according to statistics produced by the Joint United Nations Programme on HIV/AIDS (UNAIDS) in 2004 and 2006, some 240,000 children have been orphaned as a result of HIV/AIDS in Cameroon. It noted the information communicated by the Government in its report that it had taken a number of measures to prevent transmission of the virus. The Committee also noted that the Ministry of Social Affairs, the Ministry of Health and various non-governmental organizations had implemented a project involving more than 21,000 children orphaned by HIV/AIDS and other children vulnerable to the virus. The Committee notes, however, that according to the UNAIDS 2008 Report on the global AIDS epidemic, the number of children orphaned because of the virus appears to have increased to 300,000 in 2007. ***Considering that children orphaned by HIV/AIDS are at increased risk from being engaged in the worst forms of child labour, the Committee requests the Government to redouble its efforts to ensure that children orphaned by HIV/AIDS are prevented from being engaged in the worst forms of child labour. It requests the Government to provide information on the results obtained.***

2. *Street children.* In its previous comments, the Committee noted the information sent by the Government to the effect that the Ministry of Social Affairs gives support to all non-governmental organizations working for prevention and for the rehabilitation and reintegration of street children who fall victim to violence and exploitation and provides them with assistance to facilitate the provision of care to these children. The Committee also noted that the Ministry of Social Affairs, in collaboration with the Belgian Red Cross, has set up centres for listening support, reception and social reintegration for street children in Yaoundé to enable them to return to their own families or be placed in foster families. The Committee further noted that in 2003 and 2004, more than 351 children were returned to their families. ***The Committee once again reminds the Government that street children are particularly exposed to the worst forms of child labour, and asks it to provide information on the number of children removed from the streets and rehabilitated as a result of the measures taken by the Ministry of Social Affairs.***

Article 8. International cooperation. 1. *Regional cooperation regarding the sale and trafficking of children.* The Committee noted previously that a synthesis report on the LUTRENA project issued in March 2006 showed that the Governments of Nigeria and Cameroon were discussing the possibility of concluding a bilateral cooperation agreement. ***The Committee notes that no information has been sent on this matter, and again asks the Government to indicate in its next report whether this agreement has been concluded.***

2. *Poverty reduction.* In its previous comments, the Committee noted that the Government had added education for children, especially girls, to its poverty reduction strategy paper (PRSP). It also noted the Government's statement that the projects established in the context of the PRSP contribute to combating poverty among parents and hence to decreasing the number of children who are economically exploited. The Committee notes the information sent by the Government to

the effect that the PRSP is undergoing revision. It also notes that a decent work country programme (DWCP) for Cameroon is being prepared. **Pointing out once again that poverty reduction programmes contribute to breaking the vicious circle of poverty, which is essential to the elimination of the worst forms of child labour, the Committee asks the Government to provide information on the measures taken in the course of implementing the PRSP and also the DWCP, if any, to eliminate the worst forms of child labour, and particularly to reduce poverty effectively among children who are the victims of sale and trafficking and those engaged in hazardous work in the cocoa plantations.**

Parts IV and V of the report form. Application of the Convention in practice. With reference to its previous comments, the Committee notes from synthesis report No. 2 of the WACAP project, which is on health and safety in the cocoa plantations, that the most hazardous of the jobs performed on Cameroon's cocoa plantations involve the use of pesticides, deforesting and the transport of heavy loads. The same report further indicates that the older they are, the more likely children are to use pesticides, 10 per cent of children aged 5–7 years are engaged in spraying pesticides in the cocoa plantations of Cameroon. The Committee further notes that an ILO–IPEC action programme entitled “Survey and development of a database on child labour” was launched in March 2007 under which the Government, through the National Statistics Institute (INS), conducted a module survey on child labour in 2007 with a view to carrying out a fuller survey nationwide. The ILO–IPEC programme aims ultimately to build the national capacity to carry out surveys on child labour at regular intervals. **The Committee requests the Government to provide the statistics compiled as a result of the survey conducted in 2007 under the ILO–IPEC programme on the development of a database on child labour in Cameroon, particularly as regards the worst forms of child labour, including the sale and trafficking of children for the purpose of exploiting their labour and child labour in the cocoa plantations.**

Central African Republic

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. The Committee previously noted the Government's indication that the Ministry of National Defence is responsible for recruitment to the armed forces of the Central African Republic and that age limits are observed in such recruitment. However, it noted that, according to UNICEF, children are the victims of forced recruitment in the Central African Republic.

The Committee notes that the Secretary-General of the United Nations, in his report of 21 December 2007 on children and armed conflict (A/62/609-S/2007/757, paragraphs 29–32), refers to many cases of the recruitment of children by the rebel group *Union des forces démocratiques pour le rassemblement* (UFDR), which controls parts of the north-east of the country. During UFDR attacks on the positions of the armed forces of the Central African Republic (FACA) and the French army in Birao in March 2007, former students of the Birao secondary school were identified among the rebels. Many of the children between the ages of 12 and 17 years who participated in these attacks lost their lives. Furthermore, according to the report, a UNICEF mission in June 2007 confirmed that there were approximately 400 to 500 children associated with the rebel groups of the *Armée pour la restauration de la République et la démocratie* (APRD) and the *Front démocratique du peuple centrafricain* (FDPC), which were participating in operations in the north-western region. The APRD and the FDPC are increasingly resorting to the forced recruitment of children in their areas of influence. United Nations partners have also reported that between Batangafo and Bokamgaye many young girls are forcibly taken as wives for rebels.

The Committee observes that the forced recruitment of children for use in armed conflict still occurs and that the situation in the country remains fragile. It notes in this respect that the national legislation does not appear to contain provisions prohibiting and penalizing the forced recruitment of young persons under 18 years of age for use in armed conflict. The Committee expresses deep concern at the current situation, particularly since the persistence of this worst form of child labour gives rise to other violations of the rights of the child, such as murder and sexual violence. It reminds the Government that, under the terms of *Article 3(a)* of the Convention, forced or compulsory recruitment of young persons 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 are under the obligation to take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. **The Committee requests the Government as a matter of urgency to adopt legislation prohibiting and penalizing the forced or compulsory recruitment of young persons under 18 years of age for use in armed conflict. It also requests the Government to take immediate and effective measures to bring an end to the practice of forced recruitment of young persons under 18 years of age by armed groups, particularly in the north-east and north-west of the country. With reference to the Security Council which, in resolution No. 1612 of 26 July 2005 recalls “The responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children”, the Committee urges the Government to take immediate measures to ensure that sufficiently effective and dissuasive penalties are imposed on persons found guilty of using young persons under 18 years of age in armed conflict. It requests the Government to provide information in this respect.**

Article 7, paragraph 2. Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and to ensure their access to free basic education and, wherever possible

and appropriate, vocational training. *Child soldiers.* In its previous comments, the Committee noted that, according to information from UNICEF, the Government, UFDR and UNICEF signed an agreement on 16 June 2007 to reintegrate children connected with armed groups in the north-east of the country. In this respect, it notes that, according to the report of the Secretary-General of the United Nations of 21 December 2007 on children and armed conflict (A/62/609-S/2007/757, paragraphs 29–32), in the context of an agreement signed on 16 June 2007, a first group of approximately 200 children were released. In April and May 2007, over 450 children associated with the UFDR, 75 per cent of whom were boys aged between 13 and 17 years, were demobilized. All these children have since been reintegrated into their families and communities. Some 10 per cent of the children were as young as 10 years old. According to the report, a last group of between 450 and 500 children are reported to have been released and to have returned to their communities since September 2007, although this information has not been verified. With regard to children associated with the APRD and FDPC rebel groups, which are both active in the north-western region, the report indicates that in March and June 2007 the APRD requested assistance from the United Nations country team to demobilize child soldiers. An informal dialogue has been commenced with the APRD to prevent the recruitment of children and to demobilize and reintegrate those that are in its ranks with a view to their reintegration into society. However, formal negotiations are hampered by the insecurity in the north-western region.

The Committee further notes that, according to the “UNICEF Humanitarian Action Report 2008”, the situation of children, particularly in the northern prefectures of the country, remains a matter of concern. The conflict has resulted in internal displacements, with over 610,000 women and children suffering from the conflict. The Committee also notes that UNICEF intends to improve access to basic education for 113,000 conflict-affected children, through an extensive back-to-school campaign across the country’s northern prefectures. UNICEF also intends to facilitate the reintegration of 1,000 child soldiers into their families and communities. The Committee notes the progress achieved in the country, particularly through the Government’s collaboration with UNICEF. However, it observes that the current situation of the country remains a cause of concern. ***The Committee therefore requests the Government to redouble its efforts and to continue its collaboration with UNICEF and other organizations with a view to improving the situation of child victims of forced recruitment who are used in armed conflict. It also hopes that the Government will negotiate an end to armed conflict so that all children used in armed conflict will be demobilized and reintegrated, particularly in the north-east and north-west of the country. The Committee further asks the Government to adopt time-bound measures to ensure that child soldiers removed from armed groups benefit from appropriate assistance for their rehabilitation and social integration, including their reintegration into the school system or into vocational training, as appropriate. It requests the Government to provide information in this respect.***

The Committee is also addressing a direct request to the Government concerning other points.

China

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 2, paragraph 3, of the Convention. 1. *Compulsory schooling.* The Committee had previously noted the allegation of the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), that educational opportunities for many of China’s children remain poor, especially in the rural areas and with regard to female students and minorities, and in some cases continue to decline, leading to continued or increased motives for child employment. Most crucially, the Committee had noted that the law fails to guarantee the funding for compulsory education, thus forcing or allowing many schools, particularly those in the impoverished rural regions, to go on collecting tuition fees or charge various miscellaneous fees to their students in the name of voluntary donations.

The Committee notes the Government’s detailed information regarding the several educational measures that are being implemented. Firstly, the Government indicates that it has adopted a development strategy that focuses on compulsory education in rural areas by allocating more financial resources for that purpose: the total expenditures on education in China topped 2.43 trillion yuan in the past five years (2003–07), which represents an increase of 1.26 times over the previous five-year period. The Government also indicates that towards the end of 2005, the State Council fully incorporated rural compulsory education into the scope of guaranteed public finance. In November 2007, the State Council deepened this financial reform by making more funds available for rural compulsory schooling. The main measures taken include:

- (a) providing free textbooks to all rural students of compulsory school age;
- (b) giving more subsidies to boarding school students from poor rural families to support their daily lives;
- (c) guaranteeing more funds for rural schoolhouse maintenance and renovation, more particularly in favour of schools in very difficult areas.

Accordingly, in 2007, all rural students of compulsory school age were exempted from tuition fees and were granted free textbooks. Boarding students from poor rural families had access to subsistence subsidies. As a result, 150 million students and 7.8 million boarding school students from poor families benefited from these measures. The Committee also notes that, according to the China country case study of 2007, prepared for the UNESCO Education for All Global Monitoring Report of 2008 (China country case study), several policies and programmes have been adopted to promote

good-quality schooling, including improving teaching and learning quality through the New National Curriculum Reform (2008/ED/EFA/MRT/PI/82, pages 18–19). Furthermore, the Government indicates that the Compulsory Education Law was amended in 2006 and calls for improved regulatory frameworks and financial support systems to promote a balanced development of free universal education. The law also clearly states that no miscellaneous fees should be charged. The Government indicates that the State Education Inspection and Supervision Group is in charge of monitoring the enforcement of the Compulsory Education Law and that, in this regard, state education inspectors were dispatched to more than 20 provinces.

The Committee notes the Government's information that, as a result of all these measures, recent years saw a rise in the level of universal education across the country. The Government indicates that, by the end of 2007, 25 provinces had fully achieved the nine-year universal compulsory education goal. Furthermore, in 2007, the net enrolment rate in primary schools reached 99.5 per cent, and the proportion of primary-school graduates continuing their studies onto junior middle school reached 99.4 per cent. The gross enrolment rate in junior middle school reached 99.4 per cent, the net enrolment rate being slightly lower. However, the Committee notes that, according to the China country case study, until recently, quality issues in education have not received proper recognition and well-structured inspection guidance on quality education is still in the early stages of development (2008/ED/EFA/MRT/PI/82, page 8). In this respect, the State Education Inspection Office consists of only 90 inspectors at the national level and some of them are retired officials and part-time inspectors.

The Committee is of the view that compulsory education is one of the most effective means of combating child labour and welcomes the important measures that are being taken by the Government to this end. ***The Committee strongly encourages the Government to take measures in order to considerably strengthen the mechanisms to monitor the enforcement of the Compulsory Education Law, more particularly the State Education Inspection Office, to ensure free compulsory education to all children and to supervise the quality of the education in both urban and rural areas. It requests the Government to provide information on the progress made in this regard.***

2. *Education for migrant children.* In its previous comments, the Committee had noted the ITUC's allegations that, according to the *hukou* system, or household registration, local governments only allocate their resources, such as education, to permanent residents. In other words, migrant workers' children, who travel with their parents to a city where they have no right to register as permanent residents, even if they were born in that city, are not allowed access to schooling provided by the local governments. The Committee had noted that since the mid-1990s, migrants have started to organize and run their own schools, but that there is no guarantee of the quality of teaching in these schools and they are not legitimate educational institutions.

The Committee notes the Government's information that it attaches great importance to the education of the children of migrant workers and that it has developed a variety of policy measures to ensure their equal access to compulsory education. In 2005, the Circular of the State Council on Further Reform of the Rural Compulsory Education Financing System was promulgated and explicitly provides that the policy in place for urban students would similarly apply to the children of migrant workers from rural areas. In March 2006, the State Council issued the document entitled, "Certain opinions on addressing issues concerning migrant workers", which aims to ensure equal access to compulsory schooling for the children of migrant workers and to offer specific policy measures, including incorporating the issue into local education plans and equal treatment of migrant students in terms of tuition and administration. The Government further indicates that, in June 2006, the Compulsory Education Law was revised to provide that, "Local governments shall provide equal access to compulsory education for the school-aged children living with their parents or guardians who are working or residing in places rather than their registered permanent residences". In this regard, all localities have established basic regimes to ensure access to equal compulsory education for migrant children. The Committee further notes the Government's information that it is revamping and expanding the existing public schools through multiple solutions, including encouraging public-funded primary and junior high schools to raise the proportion of admission for migrant children and investing in the expansion of existing public schools in the vicinity of migrant families to meet their needs for schooling. Moreover, localities in China have established the financial guarantee system, according to which educational outlays for schools are allocated by taking into consideration the number of migrant students involved. Finally, the Government indicates that it is making efforts to improve the quality of teaching for migrant children. Among others, a special task force was formed under the auspices of the Office of Migrant Workers of the State Council to take care of children of migrant workers left behind in rural areas. The task force carried out a massive amount of research and studies and has elaborated work initiatives to address the issue of the education of children of migrant workers, while the Ministry of Education contributed by accelerating the construction of boarding schools in rural areas. The Committee also notes the commentary of the All-China Federation of Trade Unions (ACFTU) contained in the Government's report, according to which, by the end of 2007, trade unions at various levels have cumulatively raised 2.41 billion yuan for education aid funds, which were used to financially support the schooling of 2,894 million students from poor families.

While taking note of this information, the Committee expresses its deep concern at the important number of children of migrant workers who are left behind by parents in the countryside. Indeed, according to the All-China Women's Federation's in-depth study of 2007, based on the 2005 bi-census, it is estimated that there are about 58 million children below 18 years of age left behind by parents in the countryside, accounting for 21 per cent of all children in China and 28 per cent of all rural children. The study also found that more than 40 million left-behind children are under 15 years of age

and that more than 30 million are aged between 6 and 15 years, making them vulnerable to becoming engaged in labour. ***Consequently, the Committee urges the Government to redouble its efforts to ensure that the children of migrant workers receive free basic education. It also requests the Government to provide information on the number of children of migrant workers who were effectively provided with compulsory education and prevented from child labour as a result of the several measures implemented by the Government.***

Article 3, paragraph 1. Hazardous work. The Committee had previously noted the situation of schoolchildren performing manual work at schools, including having to produce firecrackers to compensate for the shortage of funds for their schooling. It had noted the ITUC's allegations that it is both the nature of the work – explosives used – and the nature of production – unsafe buildings, clusters of workshops and low fire safety measures – that make firework production an extremely dangerous occupation. The Committee had noted that, on 30 June 2006, several ministries, including the Ministry of Education, issued the “Regulations on the Management of Safety in Middle Schools, Primary Schools and Kindergartens” (MEO23), which provide that schools are not allowed to organize pupils to take part in, or to rent school premises to hire other persons for the fabrication of, notably, hazardous activities such as fabricating fireworks or toxic chemicals.

The Committee notes the Government's information that, since the promulgation of MEO23, all the persons responsible for accidents of various types were subject to severe sanctions and, in serious cases, to criminal sanctions in accordance with the regulations. The Government also indicates that, in recent years, educational departments and schools, in close collaboration with departments of public security, safety supervision and health, have made efforts pursuant to the safety and security policies in place to promote safety in primary and middle schools as well as kindergartens. As a result, the number of safety-related accidents and casualties in schools and kindergartens has dropped significantly. The Government indicates that, according to the data submitted by localities, the death toll caused by various types of accidents involving pre-school, primary and secondary school students in 2006 and 2007 has declined by 9.24 per cent and 13.67 per cent respectively from the previous years. Furthermore, the Committee notes the Government's information that, since 2006, no child or young person under the age of 18 engaged in dangerous work in schools, such as in the fabrication of fireworks, was found. However, the Government indicates that the Ministry of Education does not possess statistical information on the cases of infringements of the MEO23 and the penal sanctions applied.

The Committee takes due note of this information. ***It requests the Government to pursue its efforts to strictly enforce the prohibition of hazardous work contained in the MEO23 in order to ensure that children and young persons under 18 years of age are not engaged in hazardous work inside schools, even where safety and security measures are in place. The Committee also requests the Government to provide information on the number and nature of infringements of the MEO23 detected by the competent ministry, as well as the penalties applied on persons responsible for accidents involving school children performing hazardous activities, such as firework production, in schools.***

Parts III and V of the report form. Labour inspectorate and application of the Convention in practice. In its previous comments, the Committee had noted the ITUC's allegations that the vast majority of Chinese factories and enterprises do not employ children. However, the ITUC indicated that some employers have sought child labour as the solution to reducing production overheads, although the extent of child labour remains difficult to assess, due to a lack of official reporting on cases and the lack of transparency in statistics. The ITUC indicated that child workers can make up some 20 per cent of the workforce in certain industries, such as the firework industry, brick kilns and glass-making factories and the toy production industry. The Committee had noted that, in 2005, on the basis of an extensive promotion of “Provisions on Labour Security Inspection”, various localities strengthened the work of labour security inspection and enforcement in a comprehensive way, efforts were focused on combating the illegal use of child labour and specific examinations on the implementation of the Regulations Banning Child Labour of 2002 were conducted.

However, the Committee notes the comments of the ACFTU contained in the Government's report that a handful of child labour cases still exist in China. In this regard, the ACFTU urges the Government to make more efforts with regard to law enforcement supervision. Moreover, the Committee notes that, in its concluding observations of 24 November 2005, the Committee on the Rights of the Child expressed concern about the limited public accessibility to reliable and comprehensive statistical data in China and recommended that the State party further strengthen its efforts to collect reliable and comprehensive statistical data (CRC/C/CHN/CO/2, paragraphs 22–23).

The Committee notes the Government's information that the issue of child labour is dealt with through the investigation of complaints, routine inspections, in-focus operations and annual labour inspection schemes. Since 2006, special campaigns were launched nationwide to supervise the status of labour law enforcement and crack down on illegal employment activities. Furthermore, a comprehensive administrative mechanism on the prohibition of child labour was established jointly by the Ministry of Human Resources and Social Security, Ministry of Public Security, Ministry of Education, the ACFTU, the Central Committee of the Communist Youth League of China and the All-China Women's Federation. The Committee also notes the Government's information that a labour supervisory framework, consisting of three-tiered organizations at the provincial, municipal and county levels, has been established. By the end of 2007, this labour supervisory framework consisted of 3,271 organs of labour security and inspection and employed 22,000 full-time labour inspectors. In addition, 28,000 inspectors from the regular system of security inspection were designated as part-time or concurrent labour inspectors in the labour supervisory framework. Furthermore, the Government indicates that, in 2008, the Ministry of Human Resources and Social Security established a specialized Labour Inspection Bureau to

provide leadership over labour inspection across China. Finally, the Committee notes that, within the framework of the ILO Decent Work Country Programme 2006–10, it is intended to enhance child labour prevention by, notably, improving cooperation in monitoring and inspections with unions' participation. **The Committee requests the Government to provide information on the number of children who were found working through these various labour inspection mechanisms, as well as extracts from the reports of inspection services. It also asks the Government to provide information on the number and nature of the contraventions reported and penalties imposed.**

The Committee is also addressing a direct request to the Government concerning other points.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

The Committee takes note of the Government's report. It also notes the detailed discussions that took place at the 96th session of the Conference Committee on the Application of Standards in June 2007 concerning the application by China of Convention No. 182.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children. In its previous comments, the Committee had noted that section 240 of the Criminal Law of 1997 prohibits the abducting and trafficking of women and children. It had noted the allegations of the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), that China is a source, transit and destination country for international human trafficking in women and children for sex exploitation and the entertainment industry. The Committee had noted with interest that the Government had taken a number of measures to combat trafficking, including major activities of cooperation with the ILO and public education campaigns in relation to some typical cases involving trafficking. It had also noted that two projects were implemented: the ILO–IPEC “Preventing trafficking in girls and young women for labour exploitation within China” project (CP-TING project), in collaboration with the All-China Women's Federation (ACWF), and the “Mekong Sub-regional Project to Combat Trafficking in Children and Women”, in which the Ministry of Public Security (MPS) took an active part.

The Committee notes the Government's statement that China continues to improve its policies and regulations concerning trafficking in women and children. First and foremost, it notes that, on 14 December 2007, the State Council approved a new National Plan of Action against Trafficking in Women and Children. The National Plan acknowledges the need to address all aspects of trafficking (policy, prevention, prosecution and protection) and signals a conceptual shift from “combating trafficking” to “anti-trafficking”. The Committee further notes that, according to the technical progress report of December 2007 for the CP-TING project, the MPS set up an anti-trafficking office at the beginning of July 2007 in order to promote legislative work and strengthen the combating of all kinds of trafficking. According to that technical report, the direct assistance provided in the framework of the CP-TING project benefited, among others, 250 migrant girls who had dropped out of school or were about to drop out and who were helped to continue their education; 10,000 migrant girls and young women who just arrived in target cities and received information on trafficking prevention; and 107,000 girls through awareness-raising activities. Furthermore, a National Anti-Trafficking Children's Forum hosted by the ACWF was held in Beijing in coordination with the ILO in which more than 20,000 children participated. The Committee also notes the Government's statement that public security organs have further enhanced efforts in building an anti-trafficking mechanism by elaborating the “Working Regulations for Public Security Organs on Combating the Abduction and Trafficking of Women and Children”, which specifies the roles and functions of various departments of public security and police forces and standardizes the procedures of operation for prevention, intervention, investigation and repatriation in child trafficking cases.

The Committee takes due note of this information. However, the Committee notes that, in the technical report for the CP-TING project, it is indicated that at the National Anti-Trafficking Children's Forum, Yin Jianzhong, an anti-trafficking official from the Investigative Bureau of the MPS stated that, at present, the phenomenon of trafficking for the purposes of forced physical labour and prostitution is worsening. Indeed, according to the Worker members at the Conference Committee on the Application of Standards, recent internal migration in China was the largest in human history. In 2005, there were 140 million migrants, with 40 million in the Guangdong province alone. **The Committee therefore requests the Government to redouble its efforts to ensure that children under 18 years are prevented from being engaged in trafficking for labour and sexual exploitation. It requests the Government to provide information on the impact of the National Plan in this regard, and the results achieved.**

2. *Forced labour.* The Committee had previously observed that China's prison system comprises Laogai camps (reform through labour) and Laojiao (re-education through labour and juvenile criminal camps). The Committee had noted that the records indicate that all prisoners, including persons under 18, are subject to hard labour. It had noted the ITUC's allegations that, although Chinese criminal law calls for separate places for minors, in practice, due to limited spaces available, many minors are incarcerated with the adult population. The ITUC indicated that China has several procedures inside the criminal justice system which deal with minors. Pursuant to these procedures, children may be sent to special “work-study” schools, or to labour camp re-education programmes, through “custody and education” schemes.

(i) Forced labour at “work-study” schools

The Committee had noted that the ITUC indicated that the work-study schools are designed to reform children through work and study. Notwithstanding that the system forms a part of the compulsory nine years of education, this model has also become the basis of a form of school-run factories under the programme of “Diligent Work and

Economical Study” (qingong jianxue) which allows for the exploitation of child labour. The Committee had also noted that, in its concluding observations of 13 May 2005, the Committee on Economic, Social and Cultural Rights considered that the “Diligent Work and Economical Study” programme constitutes exploitative child labour, in contradiction with the provisions of Convention No. 182 (E/C.12/1/Add.107, paragraph 23).

(ii) Forced labour in re-education through labour camps – “custody and education”

The Committee had also noted the ITUC’s allegation that children between 13 and 16 years can be sent to custody and re-education programmes by the local public security bureaux without recourse to the criminal justice system. The ITUC also stated that children working in re-education through labour camps have little safeguards against overwork and poor conditions. Moreover, the Committee had noted that, in its concluding observations of 13 May 2005, the Committee on Economic, Social and Cultural Rights stated that it was gravely concerned about the use of forced labour as a corrective measure, without charge, trial, or review, under the “Re-education through labour” (laodong jiaoyang) programme (E/C.12/1/Add.107, paragraph 22).

(iii) Forced labour through school-related or contracted work programmes

The Committee had further noted that the ITUC referred to the phenomenon of many schools which force children to work in order to make up school budgets. Under the work study programmes, pupils are obliged to work to “learn a skill”, but often they are put to perform regular work in labour intensive unskilled positions for longer periods of time where they do not learn any skill. In parts of the country, children are found to be working, during school hours, in assembling fireworks, beadwork, or other cottage industry-type production, as well as harvesting the yearly cotton harvest. Teachers and children reported that they were pressured to meet daily quotas and face possible fines if they fail to meet them.

The Committee notes that, at the Conference Committee on the Application of Standards, the Worker and Employer members expressed deep concern at the phenomena of re-education through labour and school-run factories operated in work-study schools where children are sent and detained without due process. More specifically, the Worker members recalled that, in fact, local security bureaux send children aged 13 to 16 to custody and re-education programmes without recourse to the criminal justice system. The Worker members further expressed their concern about the system in which schoolchildren are forced to work to make up school budgets, including factory and agricultural work with arduous long hours of picking cotton, quotas to be filled and fines for missed targets. The Committee notes that the Conference Committee on the Application of Standards emphasized the seriousness of such violations of Convention No. 182 and urged the Government to take measures, as a matter of urgency, to ensure that children are not subjected to forced labour in any situation and to provide information on developments in this respect in its next report to the Committee of Experts.

The Committee notes the Government’s statement that, under China’s Prison Law, juvenile delinquent rehabilitation institutions are established for young delinquents under the age of 18 who meet the conditions of re-education through labour. Since 2006, the juvenile rehabilitation institutions strengthened their efforts in education by increasingly conducting teaching in classroom format, enhancing training in vocational skills and emphasizing supervision of law enforcement. The Government indicates that under the relevant legislation, such as the Criminal Law, Prison Law and Law on the protection of minors, any form of forced labour involving juvenile delinquents is banned. To give effect to the provisions of the Prison Law, the Ministry of Justice promulgated the Regulations on the administration of juvenile delinquent rehabilitation institutions, according to which children under the age of 16 are afforded special protection and are exempted from participation in productive labour. The Government indicates that juvenile delinquents follow work-study programmes to learn skills which are low in labour intensity, such as flower arrangement and embroidery. In 2007, the Ministry of Justice issued the Platform on re-education and reform of prisoners, section 26 of which provides that “Labour for juvenile delinquents shall focus primarily on study of knowledge and acquisition of skills; the duration of labour shall not exceed four hours per day or 20 hours per week.” The Committee also notes the Government’s information that the Provisional Rules of the State Council on work-study programmes for middle and primary schools prohibit hard work and heavy labour for middle and primary school students in the work-study process. The Government adds that the types of work performed by the students are all within their capacities and primarily centre around social work and community services.

While taking note of this information, the Committee shares the concern expressed by the Conference Committee on the Application of Standards about the situation of children under 18 performing forced labour either in work-study programmes, as part of re-educational and reformative measures or through school-related programmes. This concern is further reinforced by the fact that the Regulations on the administration of juvenile delinquent rehabilitation institutions only exempt children under 16 years of age from productive labour. The Committee reminds the Government that, by virtue of *Article 3(a)* of the Convention, forced labour is considered to be a worst form of child labour in which children under 18 years of age may not be engaged. ***The Committee therefore once again urges the Government to take immediate measures to ensure that children under 18 years of age are not forced to work, whether in the framework of re-educational or reformative measures or at school, or in any other situation, and to provide information on the progress made in this regard. The Committee also urges the Government to take measures to ensure that the Regulations on the administration of juvenile delinquent rehabilitation institutions exempt children between 16 and 18 years from productive labour.***

Article 5. Monitoring mechanisms. Labour inspectorate. The Committee had previously noted that the labour inspectorate is responsible for monitoring the implementation of the provisions concerning child labour. It had noted the ITUC's allegations that children are reportedly employed in some hazardous types of work, such as the firework industry, brick kilns and glass-making industries. The ITUC had observed that, given the shortage of labour inspectors, the chances of discovering children illegally working were slim. Therefore, although China does possess national legislation banning child labour and its worst forms, there remains a serious gap between legislation and implementation and monitoring. The Committee had noted the comments of the All-China Federation of Trade Unions (ACFTU) that the present system of laws and regulations on the prohibition of the use of child labour is sound and complete, but that the illegal use of child labour still exists.

The Committee notes that the Conference Committee on the Application of Standards welcomed the expanded authority of the labour inspectorate in enforcing the law. However, the Worker members noted that the labour inspectorate required increased capacity and access to all workplaces, including the informal economy, where trafficked children are more likely to work.

The Committee notes the Government's information that a labour supervisory framework, consisting of three-tiered organizations at the provincial, municipal and county levels, has been established. By the end of 2007, this labour supervisory framework consisted of 3,271 organs of labour security and inspection and employed 22,000 full-time labour inspectors. In addition, 28,000 inspectors from the regular system of security inspection were designated as part-time or concurrent labour inspectors in the labour supervisory framework. Furthermore, the Government indicates that, in 2008, the Ministry of Human Resources and Social Security established a specialized Labour Inspection Bureau to provide leadership over labour inspection across China. The Government indicates that the departments of labour inspection have worked hard to fulfil their duties, including:

- (a) supervising the recruitment activities of employers in a more vigorous manner;
- (b) regularly checking for child labour by means of routine or ad hoc inspections, written requests, in-focus examinations, investigation of complaints and verification of cases reported by informants;
- (c) raising awareness about labour legislation and rules in order to improve law enforcement.

The Government indicates that, in June 2007, the case of the illegal employment of children in brick factories in Shanxi was exposed. The competent authority in Shanxi carried out province-wide investigations in enterprises: more than 86,000 employers were subject to inspections, involving 1.92 million employees. As a result, 13 illicit brick yards without business licenses were found exploiting 15 child labourers in violation of the law. The perpetrators were prosecuted and eight of them were sentenced to prison terms ranging from one to three years. The Committee finally notes the Government's information that it is studying and elaborating an integrated mechanism to further improve the monitoring of labour regulations and employment practices in the rural areas of China. ***The Committee strongly encourages the Government to continue to strengthen the capacity and reach of the labour inspectorate. In this regard, it requests the Government to provide information on progress made in the elaboration of the integrated mechanism to improve monitoring in the rural areas of China. It also requests the Government to supply, with its next report, extracts of the inspection reports specifying the extent and nature of violations detected involving children and young persons engaged in the worst forms of child labour, both in the formal and the informal sectors.***

Article 7, paragraph 1. Penalties. 1. Trafficking. The Committee had previously noted that the Criminal Law provides for sufficiently effective and dissuasive penalties for the violation of the provisions prohibiting the sale and trafficking of children (section 240). It had noted the ITUC's allegation that despite strong efforts by the Chinese authorities to stem the problem in areas severely affected by trafficking in women and children, grass roots authorities have generally failed to take effective action. For the ITUC, the problem lies primarily in the implementation of the law and not in the legislation itself. The Committee had noted the statistics provided by the Government on the number of prosecutions in cases of trafficking in children in the years 2004–06 which, according to the Government has sent shockwaves through the criminal elements trafficking women and children.

The Committee notes from the Government's report that, from June 2006 through June 2008, the Office of the Public Prosecutor prosecuted several criminal cases and suspects of trafficking in children: 2,173 persons in 988 cases were prosecuted for abducting and trafficking children; 53 persons in 12 cases were prosecuted for buying abducted children; 401 persons in 277 cases were prosecuted for abducting children; and one person was prosecuted for assembling a crowd to impede the rescue of bought women and children. During the same period, Chinese courts have sentenced 4,289 criminals for these crimes: 314 criminals were sentenced for abducting children.

However, the Committee notes that, at the Conference Committee on the Application of Standards, the Worker members indicated that, with such rapid economic and demographic change in China, the trafficking challenge has grown and that law enforcement, particularly concerning trafficking, requires effective inter-agency cooperation between the various public authorities. In this regard, while reports indicated political will in central government in tackling trafficking, evidence reflected a lack of enforcement at the local level. The Worker members also expressed deep concern at reports of poor local enforcement and collusion between local authorities, the police and bar and nightclub owners in the recruitment of Tibetan sex workers. ***The Committee urges the Government to continue to take measures to ensure that persons engaged in the trafficking of children for labour and sexual exploitation are prosecuted and that***

sufficiently effective and dissuasive penalties are imposed, at the local level. It requests the Government to provide information on the progress made in this regard and to continue providing information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

2. *Forced labour.* The Committee had previously noted that, according to section 244 of the Criminal Law, the persons who are directly responsible for the offence of forced labour shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined. It had noted that, according to this provision, a person committing the offence of forced labour, may be sentenced to a fine only. The Committee had considered that the penalties provided for in section 244 of the Criminal Law for the offence of forced labour are not sufficiently dissuasive to the extent that the penalty applied may merely consist of a fine. It had reminded the Government that, by virtue of *Article 7, paragraph 1*, of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of the penal sanction of imprisonment. The Committee notes with regret the lack of information in the Government's report on this point. *It urges the Government to take the necessary measures to ensure the application of the penalty of imprisonment for an offence as serious as one involving forced labour, to ensure that persons who force children under 18 years of age to work are prosecuted and that effective and dissuasive penalties are applied, as a matter of urgency.*

Article 7, paragraph 2. Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Beggars and homeless children. The Committee had previously noted the ITUC's allegation that, from August 2003 through the end of June 2004, police picked up 80,000 child beggars nationwide, but that the number of child beggars may be much higher. It had noted that the village of Gongxiao has had professional beggars for decades, but began to use disabled children as a means of producing a greater return. The Committee had noted the Government's information that the "Opinions on strengthening the work on adolescent vagrants", jointly issued by 18 departments, spells out the duties of various departments and organs in combating the phenomenon of child begging and protecting and rehabilitating homeless or begging minors.

The Committee notes the Government's information on the several measures it has taken to protect children from begging. Among other things, the Government indicates that relief and protection institutions all over the country pay much attention to protecting the rights and safety of minors in difficult situations, including vagrant children, by providing daily life care, education, skill development, employment assistance, psychological counselling and behaviour correction. There are presently 1,351 relief stations and 152 relief and protection centres for homeless children in China. Since 2003, the cumulative number of child vagrants relieved has amounted to 588,000. The Committee further notes that, in November 2006, the MPS issued the "Work Programme on Special Operations against Crimes of Forcing and Alluring Minors into Vagrancy and Begging as well as Crimes of Forcing and Abducting Deaf and Dumb Youth for Illegal Activities", which was implemented by police organs all over the country during the period of late December 2006 to August 2007. In the framework of these operations, where police forces consisted of 260,000 persons, some 110,000 places in key regions were raided, 3,600 cases of various types were investigated, more than 5,000 criminals were arrested and over 8,000 minors were rescued. The Government also indicates that section 17 of the amendments to the Criminal Law of 29 June 2006 provides for a new clause in the Criminal Law which prohibits any person from organizing, by means of violence and coercion, disabled persons or minors under 14 years of age, to beg.

The Committee takes note of this information. *However, it observes, like the Conference Committee on the Application of Standards, that large numbers of child beggars still exist and requests the Government to continue its efforts to protect homeless children and child beggars from the worst forms of child labour and to provide for their rehabilitation and social integration. The Committee requests the Government to continue providing information on the progress made in this regard, and the results achieved.*

Article 8. International cooperation. Trafficking. Following its previous comments, the Committee notes the Government's information that, since 2006, under Phase II of the ILO-IPEC project "Reducing labour exploitation of children and women: Combating trafficking in the Greater Mekong Sub-region", Chinese trainees have actively participated in the anti-trafficking programme in a school of Khon Kaen, Thailand. The Committee also notes the Government's statement that China has enhanced cooperation in international anti-trafficking programmes and has vigorously promoted international anti-trafficking judicial and police collaboration. Furthermore, in December 2007, the MPS, in collaboration with the Office of Women and Children Affairs Committee of the State Council, Ministry of Foreign Affairs and Ministry of Commerce, successfully organized the second Ministerial Consultation and fifth Senior Official Meeting of the Mekong Subregion on combating abducting and trafficking in women and children. The conference culminated in the Joint Declaration of the "Mekong Sub-regional Cooperation in the Anti-trafficking Process", by ministers from the countries of China, Cambodia, Laos, Myanmar, Vietnam and Thailand. The Government also indicates that, to cope with rising crimes in transnational human trafficking at the border areas, the public security organs in China have strengthened law enforcement cooperation with neighbouring countries, resulting in substantial achievements. Joint special operations against abduction and trafficking were carried out in 2006, during which 13 criminal gangs were disbanded, 73 cases of trafficking of foreign women and children were solved, 95 suspects were arrested (47 of foreign nationality) and 193 abducted foreign women and children were rescued. Moreover, three liaison offices were established along the China-Vietnam border area and one along the China-Myanmar border area, which

facilitated cooperation in the exchange of information, repatriation of victims and transfer of suspects. The Committee further notes that China formally launched the China-Myanmar Anti-trafficking Cooperation Programme (2007–10), building on the continued China-Vietnam Anti-trafficking Cooperation Programme. The Committee notes that, at the Conference Committee on the Application of Standards, the Worker members, given the commitment they heard from the Government, urged it to study and ratify the Protocol to prevent, suppress and punish trafficking in persons, especially women and children (the Palermo Protocol) and to examine the new European Convention on Action against Trafficking in Human Beings, which stresses the rights of victims. *The Committee accordingly encourages the Government to consider ratifying the Palermo Protocol and to examine the European Convention against Trafficking in Human Beings. It also requests the Government to continue providing information on the impact of international and regional anti-trafficking agreements and programmes, and of cooperation in law enforcement, in combating the trafficking of children, and the results achieved.*

The Committee is also addressing a direct request to the Government concerning other points.

Colombia

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Forced recruitment of children for use in armed conflict. The Committee notes that section 13 of Act No. 418 of 1997, as amended by section 2 of Act No. 548 of 1999, prohibits the enlistment of minors under 18 years of age into the armed forces. However, it notes that no penalties are laid down for violations of this prohibition. It also notes that, under section 14 of Act No. 418 of 1997, anyone who recruits minors under 18 years of age with a view to incorporating them into insurgent or self-defence groups, encourages them or allows them to join these groups or, to that end, provides them with military training, shall be liable to prosecution.

The Committee notes that, according to the report of the United Nations Secretary-General on children and armed conflict of 21 December 2007 (A/62/609-S/2007/757, paragraphs 113–120), the Government of Colombia, through the Colombian Family Welfare Institute (ICBF), has made efforts to prevent the recruitment of children and, where applicable, reintegrate them into their communities. However, according to the report, the Colombian Revolutionary Armed Forces (FARC) continue to recruit and use children. Cases have been reported in the departments of Cauca, Antioquia, Sucre, Bolivar, Cundinamarca, Guaviare, Meta and Nariño. In Corinto in the department of Cauca, members of the FARC frequently visit schools to persuade children to join their ranks. Furthermore, the National Liberation Army (ELN) continues to recruit children, even though it is currently in talks with the Government and the National Council for Peace has asked it to cease this practice and immediately release all children from its ranks.

The Committee also notes that, according to the report of the United Nations Secretary-General, children have been used by government armed forces for intelligence purposes despite official government policy to the contrary. On 6 March 2007, the Colombian Ministry of Defence issued Directive No. 30743, prohibiting all members of the armed forces from using children for intelligence activities, especially children recovered from illegal armed groups. However, the Ombudsman's Office (*Defensoría del Pueblo*) reported that in Cauca a child demobilized from the FARC was used by the XXIXth Brigade as an informant for the armed forces in a military operation. Children have reportedly been forced by the national army to carry equipment for them. Moreover, armed forces operating in certain regions are said to have children with food in exchange for cleaning and maintaining their weapons. The Ombudsman's Office continues to report children being held for unauthorized periods in police stations, army battalions or judicial police premises.

The report also refers to violations and abuses committed against children by new organized illegal armed groups. These groups, such as the *Aguilas Negras*, *Manos Negras*, *Organización Nueva Generación* or the *Rastrojos*, are extensively involved in criminal activities related especially to drug trafficking. In June 2007, the *Aguilas Negras* were reported to have forced children to join their ranks in Cartagena in the department of Bolivar. The other three groups mentioned above are also reported to have recruited and used children from Valle de Cauca, Bolivar (Cartagena) and Antioquia (Medellín).

Furthermore, the United Nations Secretary-General states in his report that the National Institute for Forensic Medicine certified that in the reporting period 37 children (13 girls and 24 boys) were killed and 34 children (four girls and 30 boys) were allegedly injured by government security forces. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), nine cases have been filed with the judicial police. Extra-judicial executions by some members of the government security forces have also been reported. Children have also been abducted, killed or injured by illegal armed groups. From October 2006 to May 2007, approximately 43 children were reported to have been held hostage and others killed. Rape and other forms of sexual violence and exploitation by illegal armed groups and some members of the state forces are also said to be continuing.

The Committee also notes that the Committee on the Rights of the Child (CRC), in its concluding observations on the third periodic report of Colombia of June 2006 (CRC/C/COL/CO/3, paragraphs 80 and 81), expressed its deep concern at the grave consequences of the internal armed conflict on children in Colombia, causing them serious physical and mental injury and denying them the enjoyment of their most basic rights. The CRC is concerned at: (a) the large-scale recruitment of children by illegal armed groups for combat purposes and also as sex slaves; (b) the use of children by the

army for intelligence purposes; and (c) the general lack of adequate transparency in consideration of aspects relating to children in the negotiations with illegal armed groups, resulting in ongoing impunity for those responsible for the recruitment of child soldiers. In order to improve the situation of children affected by the internal armed conflict, the CRC made various recommendations to the Government, including: (a) never to use children for military intelligence purposes, as this places them at the risk of reprisals from illegal armed groups; and (b) to take due account, in peace negotiations with illegal armed groups, that former child soldiers are victims and that the recruitment of children is a war crime for which these groups are accountable.

The Committee notes that, despite the measures taken by the Government and the prohibition on the forced or compulsory recruitment of children for use in armed conflict laid down by the national legislation, children are still being forced to join illegal armed groups or the armed forces. It is deeply concerned at the persistence of this practice, especially as it leads to other violations of the rights of children, such as abduction, murder or sexual violence. ***In this regard, the Committee requests the Government to take immediate and effective measures to put a stop in practice to the forced or compulsory recruitment of children for use in armed conflict and proceed with the full and immediate demobilization of all children. With reference to Security Council resolution 1612 of 26 July 2005, which recalls “the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children”, the Committee urges the Government to ensure that investigations and prosecutions of offenders are undertaken and that effective and deterrent penalties are imposed on any person found guilty of recruiting or using children under 18 years of age for the purpose of armed conflict. It requests the Government to supply information in this regard.***

Article 6. Programmes of action. The Committee notes the drawing up of the “National Strategy for preventing and eliminating the worst forms of child labour and protecting young workers (2008–15)”, involving various government bodies and employers’ and workers’ organizations. It also notes that the National Strategy aims to drastically reduce child labour between 2008 and 2015. National programmes and projects for the prevention and elimination of the worst forms of child labour will be formulated and implemented. They will be aimed at all young persons who are the victims of forced recruitment into the illegal armed groups. The objective will be to withdraw these children from this worst form of child labour and remove any risk of their returning to it by providing them with education and their families with social services. ***The Committee requests the Government to supply information on the implementation of national programmes and projects for the prevention and elimination of the forced recruitment of children into illegal armed groups adopted under the “National Strategy for preventing and eliminating the worst forms of child labour and protecting young workers (2008–15)”, and on the results achieved.***

Article 7, paragraph 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 notes that, according to the report of the United Nations Secretary-General on children and armed conflict of 21 December 2007 (A/62/609-S/2007/757, paragraphs 113 to 120), positive efforts have been made by the Government in the demobilization of combatants from the United Self-Defence Forces of Colombia (AUC). The report also states that 3,326 children previously associated with illegal armed groups have benefited, through the Colombian Family Welfare Institute, from the government initiative to prevent the recruitment of children by armed groups and reintegrate them into their communities.

The Committee also notes that the CRC, in its concluding observations of June 2006 (CRC/C/COL/CO/3, paragraphs 80 and 81), noted with satisfaction that educational kits have been distributed to schools in heavily affected conflict areas by the army, and that certain measures have been taken to improve the reintegration and rehabilitation of demobilized child soldiers. However, the CRC considers that a number of important measures for demobilized and captured child soldiers are still lacking and notes with concern that: (a) captured and demobilized child soldiers are subjected to interrogation and the armed forces do not comply with the 36-hour deadline established by law for handing them over to the civilian authorities; (b) children are used by the army for intelligence purposes; and (c) rehabilitation, social reintegration and compensation available for demobilized child soldiers are inadequate. The CRC made a number of recommendations to the Government, including that it should substantially increase the resources for rehabilitation, social reintegration and reparations available to demobilized child soldiers as well as for child victims of landmines.

The Committee notes that the Government has participated in the ILO–IPEC interregional programme on the prevention of child recruitment and the reintegration of children involved in armed conflict, which ended in 2007. According to the information available to the Office, more than 650 children have been prevented from becoming involved in the conflict and more than 560 have been removed from it. ***The Committee strongly encourages the Government to continue its efforts and take steps to remove children from armed conflict and ensure their rehabilitation and social integration. In this regard, it requests the Government to supply information on the number of children under 18 years of age who have been rehabilitated and reintegrated into their communities as a result of these measures.***

The Committee is also raising a number of other points in a direct request to the Government.

Congo

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or 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, paragraph 2. Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children. In its previous observations, the Committee noted the Government's statement acknowledging that the trafficking of children between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work is contrary to human rights. It also noted that the Government has taken certain measures to curb child trafficking, including: (a) the repatriation by the Consulate of Benin of children who have either been picked up by the national police or removed from families; and (b) the requirement at borders (airport) for minors (young person under 18 years of age) to have administrative authorization to leave the territory of Benin. The Committee asked the Government to provide information on the impact of the measures taken with regard to the rehabilitation and social integration of children following their withdrawal from labour. It notes that the Government's report does not contain any information on this subject. ***The Committee requests the Government once again to supply information on the time-bound measures taken to remove young persons under 18 years of age from this worst form of child labour and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the impact of these measures.***

Part V of the report form. Application of the Convention in practice. The Committee notes that, according to the concluding observations of the Committee on the Rights of the Child on the initial report of the Congo of October 2006 (CRC/C/COG/CO/1, paragraph 85), a study of the root causes and repercussions of trafficking is due to be conducted in the country. ***The Committee requests the Government to supply information on the results of this study and to supply a copy of it once it has been prepared.***

The Committee is also raising a number of other matters in a direct request to the Government.

Costa Rica

Minimum Age Convention, 1973 (No. 138) (ratification: 1976)

Referring to its previous comments, the Committee notes the information provided by the Government stating that the Bill on the employment of young persons is currently being examined by a special committee of the Social Affairs Commission of the Legislative Assembly, and the Bill prohibiting the performance of hazardous and unhealthy types of work by young workers by the Legislative Assembly. ***The Committee firmly hopes that both these Bills will be adopted in the near future and requests the Government to provide information on any progress made in this area.***

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee noted the statistics contained in the report on the results of the national study on work by children and young persons in Costa Rica, published in June 2003 by the National Statistical and Census Institute and the Ministry of Labour and Social Security, in collaboration with ILO-IPEC and the Statistical Information and Monitoring Programme on Child Labour (SIMPOC), according to which around 113,500 girls and boys between 5 and 17 years of age were working in Costa Rica. Of this number, around 49,200 children under 15 years of age were working. The Committee noted the Second National Action Plan for the prevention and elimination of child labour and the special protection of young workers (2005–10). Finally, it noted that Costa Rica is participating in the ILO-IPEC project entitled: "Elimination of child labour in Latin-America".

The Committee notes the measures adopted by the Government to abolish child labour. It notes in particular that the Second National Action Plan for the prevention and elimination of child labour and the special protection of young workers was reviewed and reformulated in 2007, so that it could be brought in line with the new government policies, especially the National Development Plan (2006–10). The Committee further notes that the National Childhood Foundation (PANI) has taken measures to implement the Second National Action Plan for the prevention and elimination of child labour and the special protection of young workers. For instance, the PANI has introduced a programme of inter-institutional inspection for the protection of human rights and rights at work in priority sectors. The aims of this programme are to make children and young persons aware of the repercussions of work and to train labour inspectors specialized in child labour. The Committee takes note of the statistics provided by the Government according to which, in

2007, the labour inspection services of the Central Office of San José detected 97 cases involving children in the Central Region, in San José, Heredia and an area of Cartago. The children were working in the commercial, services, industrial, agricultural, construction and transport sectors. The Committee also notes that a household survey will be carried out in 2009 and that some questions will focus on the work of children and young persons.

The Committee notes that, according to the information in an ILO–IPEC report of June 2008 on the third stage of the project entitled: “Elimination of child labour in Latin-America” (ILO–IPEC report of June 2008), poverty has declined by 5 per cent in the country; in the specific case of young persons, poverty has declined by 3.9 per cent. What is more, the Committee takes due note that, according to this report, there has been a slight reduction in the number of young persons working. The Committee nevertheless observes that the child labour statistics provided by the Government only concern the Central Region of Costa Rica and do not give an overall view of the problem in the country. ***The Committee requests the Government to provide information on the impact of the measures taken to abolish child labour, in the context of the Second National Action Plan for the prevention and elimination of child labour and the special protection of young workers, the National Development Plan (2006–10) and the ILO–IPEC project on the elimination of child labour in Latin America. It requests the Government to provide information on any progress achieved. The Committee also invites the Government to continue providing information on the application of the Convention in practice by giving, for example, statistical data on the employment of children and young persons, extracts from reports of the inspection services, in particular inspections carried out in the sectors mentioned above. Finally, it asks the Government to provide the findings of the household survey that will be carried out in 2009.***

Article 2, paragraph 1. Minimum age for admission to employment or work. In its previous comments, the Committee noted a contradiction between, on the one hand, section 89 of the Labour Code, which established a minimum age for admission to employment of 12 years and, on the other, sections 78 and 92 of the Code of Children and Young Persons which set this minimum age at 15 years, in accordance with the minimum age specified when the Convention was ratified. The Government pointed out that, in the legal system in Costa Rica, the principle whereby the standard contained in a special law has priority over that contained in a general law applies. Furthermore, there is also the principle that the most favourable standard, providing optimum conditions, must be implemented. In the present case, therefore, the Code of Children and Young Persons has precedence over the Labour Code. While noting this information, the Committee observed that, in view of the child labour statistics involving children under 15 years of age in the country, the provisions of the Labour Code should be brought in line with those of the Code of Children and Young Persons. The Committee takes note of the Government’s indication that it undertakes to consider this matter when reviewing the labour legislation. ***The Committee expresses the hopes that, when undertaking a future revision of the labour legislation, the Government will take the necessary measures in this respect.***

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee notes that, according to UNICEF’s 2006 statistics, the primary school net attendance rate is 89 per cent among girls and 87 per cent among boys; at secondary school level, the rates are 65 per cent among girls and 59 per cent among boys. The Committee takes note of the information in the ILO–IPEC report of June 2008 on the project to eliminate child labour in Latin-America, which states that the programme “Let’s Advance Together” (*Avancemos*), setting out to ensure the lasting reintegration of young persons in the formal education system, has been implemented.

The Committee takes due note of the primary school net attendance rates. It nevertheless expresses its concern at the somewhat low net attendance rates at secondary school level. ***Believing that compulsory education is one of the most effective ways of combating child labour, the Committee strongly urges the Government to take measures to improve the functioning of the country’s education system. In this respect, it requests the Government to provide information on the measures taken, particularly in the context of the programme “Let’s Advance Together”, to increase the school net attendance rates, particularly at secondary school level, and to prevent children under 15 years of age from working. It further requests the Government to submit information on the progress achieved.***

Côte d'Ivoire

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

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

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Sale and trafficking of children. Informal sector. In its comments under Convention No. 29, the Committee referred to allegations of the trafficking of children for economic exploitation and a widespread practice under which migrant workers, including children, particularly from Mali and Burkina Faso, are forced to work in plantations, particularly cocoa plantations, against their will.

The Committee noted that section 370 of the Penal Code provides that any person who, by means of fraud or violence, abducts minors from where they have been placed by those in authority or under whose direction they have been consigned shall be liable to sanctions. If the abducted minor is under 15 years of age, the maximum penalty is imposed. It also noted that under section 371 of the Penal Code, the abduction or attempted abduction of a young person under 18 years of age is an offence. However, this provision is not applicable in cases where the abducted minor marries the person responsible for the abduction, unless the marriage is annulled. The Committee noted that, in the absence of specific legislation prohibiting the trafficking of children, these two provisions of the Labour Code constitute legal tools to combat the trafficking of children in Côte d’Ivoire. However, it noted that, according to the study carried out by ILO–IPEC–LUTRENA in 2005 on the trafficking of children for

their exploitation in work in the informal sector in Abidjan, Côte d'Ivoire, these provisions are ill adapted to combating the trafficking of children for economic exploitation as they only cover cases of the abduction of minors, whereas the internal or transborder trafficking of children in Côte d'Ivoire is based on traditional networks for the placement of children and therefore occurs with the consent of the children's parents or guardians.

The Committee noted that, on 1 September 2000, the Governments of Côte d'Ivoire and Mali signed a bilateral cooperation agreement to combat the transborder trafficking of children. It also noted with interest that the Governments of Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo, on 27 July 2005, signed a multilateral cooperation agreement to combat the trafficking of children in West Africa. Furthermore, Côte d'Ivoire is one of the nine West African countries, in addition to Benin, Burkina Faso, Cameroon, Gabon, Ghana, Mali, Nigeria and Togo, which are participating in the Subregional Programme Combating the Trafficking in Children for Labour Exploitation in West and Central Africa (LUTRENA), which commenced in July 2001 with the collaboration of ILO-IPEC. One of the objectives of the LUTRENA programme is to strengthen national legislation to combat the trafficking of children with a view to the effective harmonization of legislation prohibiting trafficking. In this respect, the Committee noted that, according to the information available to the Office, a Bill on the trafficking of children was adopted by the Council of Ministers in 2001, but has still not been put to the vote by the National Assembly.

The Committee noted the efforts that have been made by Côte d'Ivoire for a number of years to combat the trafficking of children, but regretted that the Bill referred to above has not yet been put to the vote by the National Assembly. In practice, this weakness of the legal framework is one of the factors facilitating the economic exploitation of children. The Committee nevertheless noted that the strengthening of the legal framework relating to child labour, and particularly the sale and trafficking of children for economic exploitation, is one of the specific objectives of the National Plan of Action against Child Labour adopted by the Government in 2005. **The Committee requests the Government to take the necessary measures for the adoption of the Bill on the trafficking of children in the near future.**

Article 3(d) and Article 4, paragraph 1. Hazardous work. Gold mines. The Committee noted that, according to the study carried out by ILO-IPEC-LUTRENA in 2005 on the trafficking of children for exploitation in gold mines in Issia, Côte d'Ivoire, children are the victims of internal and transborder trafficking for economic exploitation in the gold mines of Issia. The Committee noted that child labour in mines is one of the 20 hazardous types of work covered by section 1 of Order No. 2250 of 14 March 2005 and is prohibited for young persons under 18 years of age. The Committee also noted that, when this list of hazardous types of work was defined, the various ministries responsible for agriculture and forestry, mines, trade and services, transport and crafts, and the social partners, were consulted. It also noted that Côte d'Ivoire participates in the internal system for the certification of diamonds established by the Kimberley Process. The Committee reminds the Government that, under the terms of *Article 3(d)* of the Convention, work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, is considered to be one of the worst forms of child labour and must be prohibited for persons under 18 years of age. Although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice. **The Committee therefore requests the Government to redouble its efforts to secure the effective application of the legislation on the protection of children against hazardous work, and particularly hazardous work in mines.**

Article 5. Monitoring mechanisms. National Steering Committee. The Committee noted that, according to information concerning the IPEC/LUTRENA programme, a National Steering Committee has been established and will monitor activities relating to child labour, and particularly the trafficking of children. **The Committee requests the Government to provide information on the activities of the National Steering Committee, for example by supplying extracts of reports or documents.**

Article 6. Programmes of action. ILO-IPEC regional programme to combat child labour in cocoa plantations in Western and Central Africa (WACAP). The Committee noted that Côte d'Ivoire is participating in the ILO-IPEC regional programme to combat child labour in cocoa plantations in Western and Central Africa (WACAP), which also includes Cameroon, Ghana, Guinea and Nigeria. In this respect, the Committee noted that, according to information available to the Office, over 5,000 children have been removed from cocoa plantations in Côte d'Ivoire and have benefited from school attendance and training programmes. It also noted that around 1,100 children have been prevented from working in cocoa plantations. **The Committee requests the Government to continue providing information on the number of children who are, in practice, removed from cocoa plantations, and the measures taken for their rehabilitation and social integration. It also requests the Government to provide information on the number of children who are prevented from being engaged in these plantations.**

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assisting in the removal of children from the worst forms of child labour. The Committee noted that, according to information on the IPEC/LUTRENA project available to the Office, nearly 200 child victims of trafficking have been prevented from being the victims of trafficking or removed from this worst form of child labour. **The Committee requests the Government to provide information on the impact of the IPEC/LUTRENA project in Côte d'Ivoire, particularly in terms of the number of children prevented from being the victims of trafficking and the number of child victims removed from this worst form of child labour. It also requests the Government to provide information on the measures taken for the rehabilitation and social integration of these children.**

Clause (c). Ensuring access to free basic education and vocational training for all children removed from the worst forms of child labour. **The Committee requests the Government to provide information on the measures taken in the framework of the ILO-IPEC-LUTRENA project to ensure that child victims of trafficking who have been removed from this worst form of child labour have access to free basic education and vocational training.**

Clause (e). Taking account of the special situation of girls. According to the information available to the Office, the measures taken by the Government to combat child labour and the worst forms of child labour do not properly take into account the special situation of girls. The Committee drew the Government's attention to the fact that over 50 per cent of the children concerned in the LUTRENA project are girls. **It therefore requests the Government to provide information on the measures adopted in practice to take account of the situation of girls in the context of its action to combat the worst forms of child labour.**

Article 8. International cooperation. The Committee noted that Côte d'Ivoire is a member of Interpol, the organization which assists in cooperation between countries in the various regions, particularly to combat the trafficking of children. It also noted that, in the context of the multilateral cooperation agreement to combat the trafficking of children in West Africa of 27 July 2005, the signatory States undertook to adopt measures to prevent the trafficking of children, mobilize the necessary resources to combat this practice, exchange detailed information on the victims and those responsible for violations, bring criminal charges and punish any action to facilitate the trafficking of children, develop specific programmes of action and establish a national

monitoring and coordination committee. *The Committee requests the Government to provide information on the measures adopted to give effect to the multilateral agreement signed in 2005, particularly in cases where the exchange of information provides a basis for identifying child trafficking networks and arresting the persons working in such networks. The Committee also requests the Government to indicate whether measures have been taken to identify and intercept child victims of trafficking in border regions and whether transit centres have been established.*

Parts IV and V of the report form. Application of the Convention in practice. The Committee noted the decisions handed down by courts in Côte d'Ivoire sentencing persons charged with the trafficking of children. It also noted that SIMPOC and LUTRENA have conducted a national survey covering, among other subjects, the scope of the worst forms of child labour and the trafficking of children. *The Committee requests the Government to provide information on this survey, including statistics and information on the nature, extent and trends of the worst forms of child labour, the number of children covered by the measures giving effect to the Convention, the number and nature of infringements reported and penal sanctions applied. To the extent possible, all information provided should be disaggregated by sex.*

A request relating to other points is also being addressed directly to the Government.

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

Czech Republic

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

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

Article 3 of the Convention. Clause (a). Sale and trafficking of children. The Committee had previously noted the ICFTU's indication that children are trafficked from Eastern European countries and the former Soviet Union to the Czech Republic for the purposes of prostitution, and Czech children are also trafficked to Western Europe. The Committee had also noted the following sections of the Penal Code which deal with trafficking: section 216a (trade in children); section 216b (definition of child as per section 216 and 216a); and section 246 (trade in women for sexual relations). The Committee had requested the Government to supply a copy of section 246 of the Penal Code as amended by Act No. 134/2002, which extends its application to boys and young men. The Committee noted with satisfaction the Government's information that a new provision under section 232a, which repeals and replaces section 246 of the Penal Code, has been introduced in the Penal Code by Act No. 537/2004. According to this provision, a person who engages, arranges, hires, entraps, transports, hides or detains a person younger than 18 years, by force, threat, violence or otherwise, for the purposes of sexual exploitation, slavery or serfdom, forced labour or other forms of exploitation shall be punished with imprisonment from two to ten years.

Clause (b). Using, procuring or offering a child for prostitution. The Committee had previously noted the ICFTU's indication that the forced prostitution of children is a serious and increasing problem in the country. Following its previous comments on the matter, the Committee noted the Government's information that a new section 217a was introduced in the Penal Code by Act No. 218/2003. The Committee noted that, according to this section, any person who offers, promises or provides payment or any other benefit for sexual intercourse or self-abuse, denudation or other similar acts to a person younger than 18 years, shall be punished with imprisonment for two years or by a fine.

Article 5. Monitoring mechanisms. The police. The Committee noted the Government's information that, within the framework of the National Plan of Action against the Commercial Sexual Exploitation of Children, the Criminality Prevention Department of the Ministry of Interior, in cooperation with the United Kingdom embassy, organized a two-day seminar in March 2005 for specialists from the criminal police and other professionals of the Czech Republic. This seminar focused on the commercial sexual exploitation and abuse of children, the offenders' typology and tactics for questioning them, understanding of the offender's behaviour when travelling abroad for sexual tourism, women as offenders and Internet criminality distributing child pornography. The Committee noted that the seminar continued in 2006 for the same group. The Committee also noted that various training programmes of police secondary schools were used to train policemen with regard to the legislation; the examination of witnesses; the psychology of persons younger than 15 years; and basic professional preparation to get acquainted with crimes related to the sexual abuse of children and youth, etc. *The Committee requests the Government to continue providing information on the impact of the above measures taken within the framework of the National Plan of Action Against the Commercial Sexual Exploitation of Children on increasing police effectiveness in combating the commercial sexual exploitation of children under 18 years.*

Article 6. Programmes of action to eliminate the worst forms of child labour. National Plan against the Commercial Sexual Exploitation of Children. The Committee had previously noted the Government's indication that a National Plan against the Commercial Sexual Exploitation of Children was adopted in 2000 with a view to eliminating child prostitution and child pornography. The Committee noted the Government's information that within the framework of this national plan, the Criminality Prevention Department (CPD) of the Ministry of Interior provided, financially and organizationally, education to Roma social assistants and street workers in topics related to child prostitution. The Committee also noted that the CPD training plan included a two-day educational training by La Strada Organisation, on psychosocial care for threatened children and children exposed to sexual and commercial sexual abuse. The Committee noted the Government's indication that, in 2006, a training for the Roma assistants will be conducted by the Brno organization which has been realizing a pilot project called SASTIPEN-CR-Health and Social Assistants in Excluded Localities. The Committee further noted the Government's indication that a National Strategy to Combat Trafficking in Persons for the period 2005-07 was approved by government resolution No. 957/2005. The Committee also noted that a National Plan to Abolish Commercial Sexual Abuse of Children for the period 2006-08 is currently under preparation. *The Committee requests the Government to provide information on the impact of these measures on the elimination of the commercial sexual exploitation of children under 18, particularly prostitution. The Committee further requests the Government to supply information on the implementation of the National Strategy to Combat Trafficking in Persons (2005-07) and the National Plan to Abolish the Commercial Sexual Abuse of Children (2006-08) as soon as it has been adopted as well as the results achieved.*

Article 7, paragraph 1. Penalties. The Committee noted that the new section 232a on trafficking in persons introduced in the Penal Code by Act No. 537/2004 and which replaces section 246 (trade in women for sexual relations) of the Penal Code

carries penalties of imprisonment from two to ten years. Section 217a of the Penal Code states that any person who offers, promises or provides payment or any other benefit for sexual intercourse or self-abuse, denudation or other similar acts to a person younger than 18 years is liable to imprisonment for two years and a fine. The Committee noted the statistics provided in the Government's report on the crimes committed under sections 246, 232a and 217a of the Penal Code. According to these statistics, under section 246 for the year 2003: five crimes were committed and five people were sentenced; in 2004: 12 crimes committed and 12 people sentenced; in 2005: 20 crimes committed and 20 people sentenced. Under section 232a for the first quarter of 2006: two crimes were committed by two people for which the legal procedure is pending. With regard to section 217a: in 2004, three people were sentenced; in 2005, six people were sentenced; and in the first quarter of 2006, 11 crimes were committed, out of which eight people were sentenced. **The Committee requests the Government to continue providing information on the application of the above penalties in practice.**

Article 7, paragraph 2. Time-bound measures. Clause (a). Measures taken to prevent the engagement of children in the worst forms of child labour. The Committee noted the Government's information that the problem of the commercial sexual abuse of children is included in the professional training of pedagogical staff, and that the Ministry of Education, Youth and Sports (MEYS) elaborated a strategy for the prevention of sociopathological effects in children and youth within schools, in relation to commercial sexual abuse. The Committee noted that the MEYS in cooperation with the Pedagogic Research Institute initiated two projects: the first was a training programme entitled "Reducing the incidence of child pornography"; and the second one was concerned with the creation of a methodological manual for teachers called "Sex education – child pornography and its prevention at school". The Committee also noted the Government's information that a pilot inquiry called "Prevention of Commercial Sexual Abuse of Children in Educational Institutions for Youth and Child Homes with Schools" conducted by MEYS in 2004 with a sample of pupils of an average age of 16.6 years revealed that most of the children had problems of truancy, including sexual abuse in the family which led them to run away from the family. **The Committee once again requests the Government to provide information on the impact of the abovementioned measures in preventing the commercial sexual exploitation of children.**

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee had previously noted that the programme on the implementation of measures to eliminate the worst forms of child labour of 2003 indicates that the Ministry of Labour and Social affairs and the Ministry of Health shall support long-term therapeutic work with child victims of criminal offences and their families and ensure their protection from further victimization. The Committee noted the Government's information that institutions, such as centres of educational care, diagnostic institutions, children's homes with access to schools and educational institutions provide care for victims of the worst forms of child labour, children hailing from problematic families and children having problems with truancy. The Committee noted the Government's information that within the framework of the National Plan of Action against the Commercial Sexual Exploitation of Children, the Criminology Prevention Department of the Ministry of Interior established interrogation rooms for traumatized victims, especially children, with the aim of preventing secondary victimization of the commercial sexual abuse of such victims. **The Committee once again requests the Government to provide information on the impact of the abovementioned measures on removing children from commercial sexual exploitation and providing for their rehabilitation and social integration.**

The Committee is also addressing a direct request to the Government concerning certain other points.

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

Democratic Republic of the Congo

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. 1. Sale and trafficking of children for sexual exploitation. In its previous comments, the Committee noted that the Committee on the Rights of the Child, in its concluding observations of July 2001 (CRC/C/15/Add.153, paragraphs 68 and 69), expressed grave concern at the information concerning the sale, trafficking, abduction and exploitation for pornography of young girls and boys in the country or from the country to another country. It considered that it was a matter of great concern that the national legislation does not sufficiently protect children from trafficking and recommended that the Government adopt appropriate legislation and penalize persons responsible for such practices. The Committee noted that section 67 of the Penal Code prohibits the forcible abduction, arrest or detention of any person. Furthermore, section 68 of the Penal Code prohibits the abduction, arrest or detention of any person for sale as a slave or the use of persons placed under one's authority for the same purpose. The Committee observed that the provisions of the Penal Code penalizing the sale and trafficking of children for sexual exploitation are not adequate, in view of the scale of the phenomenon in the country, and asked the Government to take the necessary measures to prohibit and penalize this worst form of child labour.

The Committee notes the information supplied by the Government to the effect that article 16(3) and (4) of the Constitution of the Democratic Republic of the Congo of 18 February 2006 states that no person may be kept in slavery or in similar conditions; no person may be subjected to cruel, inhuman or degrading treatment; and no person may be subjected to forced or compulsory labour. The Committee notes **with interest** the Government's statement to the effect that section 174j of the Penal Code, incorporated in the Code in July 2006, states that any person committing an act or transaction relating to the trafficking or sexual exploitation of children or any other person, in return for remuneration or any other benefit, shall be liable to penal servitude ranging from ten to 20 years. Moreover, the Committee notes the Government's statement that Act No. 06/18 strengthens the measures to penalize rape and introduces new provisions with regard to other offences, including enticing minors into debauchery or forced prostitution, trafficking and sexual exploitation of children, and pornography. **The Committee requests the Government to supply a copy of section 174j of the Penal Code and Act No. 06/18. It also requests the Government to provide information on the application of section**

174j of the Penal Code and Act No. 06/18 in practice, including, in particular, statistics on the number and nature of infringements reported, investigations, prosecutions, convictions and penalties imposed.

2. *Forced recruitment of children for use in armed conflict.* The Committee noted that article 184 of the Transitional Constitution provides that no one shall be recruited into the armed forces of the Democratic Republic of the Congo or take part in war or hostilities unless they have reached the age of 18 years at the time of recruitment. It also noted that the Government adopted Legislative Decree No. 066 of 9 June 2000 concerning the demobilization and reintegration of vulnerable groups present within the fighting forces (Legislative Decree No. 066). The Committee also noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 9 February 2005 (A/59/695-S/2005/72, paragraphs 15–22), even though positive steps have been taken, including the integration of several armed groups into the *Forces armées de la République démocratique du Congo* (FARDC), the new national army, these various military units were still not fully integrated and, in many cases, they were only theoretically part of the FARDC and some of them continued to use children. According to the report, despite a certain amount of progress, thousands of children remained in the country's armed forces and armed groups, and recruitment, albeit not systematic, was continuing.

The Committee notes the United Nations Secretary-General's report of 28 June 2007 on children and armed conflict in the Democratic Republic of the Congo (S/2007/391), which covers the period from June 2006 to May 2007. It also notes the United Nations Secretary-General's report of 21 December 2007 on children and armed conflict (A/62/609-S/2007/757, paragraphs 6–9 and 38–45), which covers the period from October 2006 to August 2007. According to these reports, the number of children recruited by the armed groups and armed forces has fallen by 8 per cent, which can be attributed in particular to the progress made in the implementation of the programme for the disarmament, demobilization and reintegration of children, the integration of the army, the reduction in the number of combat zones and the action taken by child protection networks against the recruitment of children. However, the parties to the conflict continue to abduct, recruit and use children. The number of children in the FARDC-integrated and non-integrated brigades remains high, particularly in the Ituri region and the two Kivu provinces.

According to the reports of the United Nations Secretary-General, recruitment of children was intensified in North Kivu, and also in Rwanda and Uganda, prior to and throughout the *mixage* (integration) process, which appears to be linked to the strategy of commanders loyal to Laurent Nkunda to increase the number of troops to be integrated and strengthen the forces before engaging in combat operations against the *Forces démocratiques de libération du Rwanda* (FDLR) and the Mai-Mai in North Kivu. Children who fled or were released indicated that recruitment was continuing actively in the returnee settlements of Buhambwe, Masisi territory, the Kiziba and Byumba refugee camps in Rwanda, the towns of Byumba and Mutura in Rwanda and the town of Bunagana on the border between the Democratic Republic of the Congo and Uganda. Mai-Mai groups still active in North Kivu were alleged still to be recruiting children, including girls.

The Committee notes that, according to the two 2007 reports of the Secretary-General, the number of abductions reported in the region of Ituri and the provinces of North and South Kivu remains high. The abducted children have been recruited by armed groups in 30 per cent of cases, been victims of rape in 13 per cent of cases, and subjected to forced labour (carrying the equipment of armed elements during troop redeployments) in 2 per cent of cases. Furthermore, in 17 per cent of cases, the victims were children previously associated with armed groups whom the FARDC arrested in order to make them provide information on the groups or extort money from their families. Moreover, even though there has been a reduction in the number of injuries or murders involving children, children continue to be victims of the fighting. Despite the adoption of two laws against sexual violence on 20 July 2006, the number of incidents of rape and other sexual violence against children remains extremely high. Furthermore, the Secretary-General indicates that children have been detained for alleged association with armed groups, in violation of international standards, and are subjected to mistreatment and torture and deprived of food.

The Committee notes the information supplied by the Government to the effect that it is giving its fullest attention to the forced recruitment of children for use in armed conflict and is doing its utmost to stop them being enlisted. In order to enforce the applicable legislation, the Government is taking steps, in cooperation with the International Criminal Court, to prosecute Mr Thomas Lubanga, a warlord operating in Ituri. In addition, proceedings have also been instituted at the *Auditorat militaire* (military prosecutor's office) of Lubumbashi garrison in Katanga province against Mr Kyungu Mutanga, warlord of the Mai-Mai "negative forces" of North Katanga, who is facing the same charges. As regards the national armed forces, the FARDC central command issued an explicit instruction in May 2005 to all commanders not to recruit children under 18 years of age and that anyone failing to comply would face severe penalties. The FARDC chief military prosecutor subsequently instructed all garrison prosecutors to prosecute any individual violating the law or military orders. On this basis, the military tribunal of Bukavu garrison convicted Major Biyoyo of the former Mudundu movement on 17 March 2006 for insurrection, desertion abroad and the arbitrary arrest and illegal detention of children in South Kivu in April 2004. However, the Government recognizes that, despite the progress made in the penalization of child recruitment, the continued fighting in certain areas increases the risk of children being enlisted. This has been the case in Ituri and the provinces of North and South Kivu, where the abduction of some 30 children, including girls, has been reported.

The Committee notes that the Government has adopted certain measures to end the impunity which has been enjoyed by perpetrators of the forced recruitment of children for use in armed conflict, particularly on an international scale, through its collaboration with the International Criminal Court for instituting legal proceedings against Mr Thomas Lubanga, and on a national scale, through the legal proceedings instituted against Mr Kyungu Mutanga. However, the Committee notes that, despite these measures taken by the Government, children are still being recruited and forced to join illegal armed groups or the armed forces. It expresses its profound concern with regard to the persistence of this practice, especially as it leads to other violations of the rights of children, in the form of abductions, murders and sexual violence. It also voices its concern with regard to the detention of children for presumed association with armed groups, in violation of international standards. ***The Committee urges the Government to intensify its efforts to improve the situation and to adopt, as a matter of urgency, immediate and effective measures to put a stop in practice to the forced recruitment of children under 18 years of age by armed groups and the armed forces, particularly in Ituri, North Kivu and South Kivu, and to supply information on any new measure taken to this end. With reference to Security Council resolution No. 1612 of 26 July 2005, which recalls “the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children”, the Committee urges the Government to take measures to ensure that sufficiently effective and deterrent penalties are imposed on persons found guilty of recruiting or using children under 18 years of age for the purposes of armed conflict. It requests the Government to supply information in this regard. Finally, the Committee requests the Government to send a copy of Legislative Decree No. 066 of 9 June 2000 concerning the demobilization and reintegration of vulnerable groups present in the fighting forces.***

Clause (d). Hazardous work. Mines. In its previous comments, the Committee noted the observations from the Confederation of Trade Unions of the Congo to the effect that young persons under 18 years of age are employed in mineral quarries in the provinces of Katanga and East Kasai. The Committee also noted that the United Nations Special Rapporteur, in her report of April 2003 on the situation of human rights in the Democratic Republic of the Congo (E/CN.4/2003/43, paragraph 59), noted that military units are recruiting children for forced labour, especially for the extraction of natural resources. The Special Rapporteur added that non-governmental organizations (NGOs) in South Kivu had informed her of children being recruited by armed groups to work in mines. The Committee further noted that, under section 32 of Ministerial Order No. 68/13 of 17 May 1968 determining the conditions of work of women and children (Order No. 68/13), the extraction of minerals, shale, materials and debris from mines, open-cast mines and quarries, and also earthworks, are prohibited for young persons under 18 years of age. The Committee noted that section 326 of the Labour Code establishes penalties for violations of the provisions of *Article 3, paragraph 2(d)*, relating to hazardous work. The Committee observed that, although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice.

The Committee notes the Government's statement confirming the allegations made by the Confederation of Trade Unions of the Congo on the exploitation of young persons under 18 years of age in mineral quarries in the provinces of Katanga and East Kasai. It also notes that section 13(13) of the recently adopted Ministerial Order No. 12/CAB.MIN/TPS/045/08 of 8 August 2008 determining the working conditions of children prohibits the employment of young persons under 18 years of age in work performed underground, under water, at dangerous heights or in confined spaces. Moreover, the Committee notes the Government's indication that measures will be taken by the Committee for the Elimination of Child Labour and also by the labour inspectorate. ***The Committee requests the Government to supply information on the measures which will be taken by the Committee for the Elimination of Child Labour and by the labour inspectorate to prohibit hazardous work for children in mines. It also requests the Government to provide information on the effective application of the legislation on the protection of children in practice against hazardous work in mines, including, for example, statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penalties imposed.***

Article 7, paragraph 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. 1. Sale and trafficking of children for sexual exploitation. The Committee noted that the Committee on the Rights of the Child, in its concluding observations of July 2001 (CRC/C/15/Add.153, paragraph 69), recommended that the Government provide the police force and border guards with special training to help in combating the sale, trafficking and sexual exploitation of children, and establish programmes to provide assistance, including rehabilitation and social reintegration, to the child victims of sexual exploitation.

The Government states in its report that it has established a multi-sectoral cooperation and action framework to prevent and respond to violence inflicted on women, young persons and children, a framework which includes the ministries responsible for human rights, women and the family, and social affairs, United Nations agencies, including the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP), and also NGOs. Action taken within this framework includes the adoption of laws on sexual violence, awareness raising so that victims report their aggressors, psychological and social support for victims, medical support through the creation or reinforcement of health centre facilities to provide suitable care for victims, and legal support through the setting up of legal advice centres. The Committee notes the measures taken by the Government to remove children from sale and trafficking for sexual exploitation and to ensure their rehabilitation and social integration. ***It requests the Government to***

intensify its efforts and supply information in its next report on the number of children who have actually been removed from this worst form of child labour and on specific measures which have been adopted to ensure the rehabilitation and social integration of these children.

2. *Child soldiers.* With reference to its previous comments, the Committee notes that, according to the reports of the United Nations Secretary-General of 28 June 2007 and 21 December 2007, the national programme for disarmament, demobilization and reintegration expressly provided for the release of children. The operational framework for children associated with armed forces and groups was launched in May 2004, and approximately 30,000 children, including those who had been released before the adoption of the operational framework, were separated from the armed forces and groups between 2003 and December 2006. Of this number, 15,167 received assistance with reintegration, with 6,066 receiving aid to enable them to return to school and 9,010 enrolling in programmes designed to equip them for finding the means of subsistence. Implementation of the national programme for disarmament, demobilization and reintegration was delayed because of the *brassage* process and at times it proved difficult to release the children. In addition, according to the Secretary-General's reports, 4,182 children, including 629 girls, were released from the armed forces and groups in the east of the country during the reporting periods. In Ituri, 2,472 children, including 564 girls, were able to leave the ranks of the MRC, FRPI and FNI militias. In North Kivu, 1,374 children, including 52 girls, were released and in South Kivu, 336 children, including 13 girls, were also released.

The Government states in its report that the issue of registering the girls and removing them from the armed forces is a sensitive matter. Afraid of being socially excluded if they are found to have been associated with armed forces or groups, the girls prefer to return discreetly to civilian life. The Government also states that a programme to raise community awareness regarding family reunification and the social-economic reintegration of children released from armed forces and groups has been implemented in all the provinces of the country. In this context, children are catered for in employment centres, searches are undertaken with a view to family reunification and social and economic reintegration measures are taken. However, programmes for the economic reintegration of children are hampered by the lack of possibilities available to improve their economic situation and the financial problems arising from a lack of long-term support mechanisms. As a result, the children are at risk of being re-enlisted in the armed forces or groups. However, the Government points out that it expects to resolve the financial problems in order to revive the programme for the social, vocational and economic reintegration of children. As regards the measures for psychological rehabilitation, the Government acknowledges that the transitional support structures are deficient. The impact on some children has been so great that they find it difficult to readjust to family life. The Committee notes the information supplied by the Government on the measures it has taken to improve the situation. *In this regard, the Committee requests the Government to intensify its efforts and adopt time-bound measures to remove children from armed forces and groups, with special attention given to girls. Furthermore, it requests the Government to revive the programme for social, vocational and economic reintegration and improve the implementation of psychological rehabilitation measures. Finally, the Committee requests the Government to indicate the number of young persons under 18 years of age who have been rehabilitated and integrated into their communities.*

The Committee is also raising a number of other issues in a direct request to the Government.

Dominica

Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

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

Article 2, paragraph 1, of the Convention. Minimum age for admission to employment or work. The Committee recalled that, under section 3 of the Employment of Children Prohibition Ordinance, the minimum age of admission to employment was 12 years and that, under section 4, subsections (1) and (5), of the Employment of Women, Young Persons and Children Ordinance, the minimum age is 14 years. The Government, however, specified a minimum age of 15 years when it ratified the Convention. *It once again urges the Government to take the necessary measures in order to raise the statutory minimum age to 15 years, in accordance with this provision of the Convention.*

The Committee further noted that the statutory provisions on minimum age applied only to persons employed under an employment relationship or under a contract of employment, whereas the Convention also covered work performed outside any employment relationship, including work performed by young persons on their own account. *The Committee hopes that the Government will indicate the measures taken or envisaged to give full effect to the Convention on this point.*

Article 3. Hazardous work. The Committee recalled that no higher minimum age had been fixed for work which is likely to jeopardize the health, safety or morals of young people, other than night work. *It once again urges the Government to take measures so as to set such higher minimum age(s) in accordance with Article 3, paragraph 1, of the Convention, and to determine the types of employment or work to which higher minimum age(s) should apply, in accordance with Article 3, paragraph 2, of the Convention.*

Article 7. Light work. The Committee noted that the national legislation allowed exceptions to the above minimum ages as regards the employment of children under the age of 12 years in domestic work or agricultural work of a light nature at home by the parents or guardian of such children (section 3 of the Employment of Children Prohibition Ordinance) and the employment of children under the age of 14 years in an undertaking or on a ship where only members of the same family are employed (section 4, subsection 1 and section 5, of the Employment of Women, Young Persons and Children Ordinance). The Committee recalled that under this Article of the Convention, national laws or regulations may permit the employment or work of persons 13 to 15

years of age on 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. Another condition is that the activities involved and the conditions of work and employment should be determined by the competent authority. ***It hopes that the Government will take measures to restrict, in accordance with this provision, the possibility to employ children below the minimum age specified, and to determine the activities and conditions of their employment or work.***

As regards the Government's reference to the work of family members as the category excluded under *Article 4*, the Committee pointed out that the exceptions under this provision must be listed in the first report after ratification, and that the Government declared in its first report, received in February 1988, that no use was made of this provision.

Article 9, paragraph 3. Keeping of registers. The Committee noted that section 8, subsection (1), of the Employment of Women, Young Persons and Children Ordinance provided for the keeping of registers or lists of young persons of less than 16 years of age, whereas the Convention describes the keeping of such registers of persons of less than 18 years of age. It noted the Government's indication that this provision is not applied in practice. The Committee nevertheless pointed out that the Government has an obligation to give effect to the provisions of the Convention in law and practice. ***It therefore once again asks the Government to take the necessary measures so that registers or other documents are kept by the employer concerning workers younger than 18 years of age.***

The Committee noted the Government's indication that the provisions of the Convention are upheld by custom and practice. ***Pending the necessary amendments to the legislative provisions as requested above, the Committee once again asks the Government to supply detailed information on how the Convention is applied in practice, as required under Part V of the report form, including, for instance, extracts from official reports, statistics, and information on inspection visits made and contraventions reported.***

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

Dominican Republic

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 2, paragraphs 1 and 4, of the Convention and Part V of the report form. Minimum age for admission to employment or work and application of the Convention in practice. In its previous comments, the Committee noted the comments made by the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), according to which child labour is a major problem in the Dominican Republic. Owing to high unemployment and poverty, particularly among the Haitian community, children enter the labour market at a young age and work in the informal economy or in agriculture. Moreover, the number of Haitian children working in sugar plantations alongside their parents is increasing. In reply to the ITUC's observations, the Government indicated that the Dominican Republic is a very poor country and that it could not deny that children enter the labour market at a very young age. However, with the technical assistance of the ILO-IPEC, it is taking measures to eliminate child labour, for example to remove children who are working in the agricultural sector. The Government also indicated that all children, irrespective of their nationality and including children of Haitian nationality, have to attend school. Furthermore, the Secretariat of State for Labour, in collaboration with the Secretariat of State for Education (SEE), has formulated a plan of action under which labour inspectors who identify children not attending school have to inform the SEE, irrespective of their nationality.

The Committee noted that, according to the statistics contained in the *Report on the results of the national study on child labour in the Dominican Republic*, published in 2004 by the ILO-IPEC, SIMPOC and the Secretariat of State for Labour, around 436,000 children aged between five and 17 years, were working in the Dominican Republic in 2000. Of these, 21 per cent were aged between five and nine years and 44 per cent were between ten and 14. The Committee noted that the sectors of economic activity most affected by child labour were services in urban areas and agriculture in rural areas. Furthermore, there were also many children working in the commercial and industrial sectors. The Committee noted that, in the context of the ILO-IPEC ***Time-bound Programme (TBP)*** on the worst forms of child labour, the Government has implemented several programmes of action in the agricultural and urban sectors to eliminate child domestic labour. According to the information available to the Office, these programmes should benefit around 25,200 boys and girls under 18 years of age and over 2,850 families. The Committee noted the adoption of the National Strategic Plan for the Elimination of the Worst Forms of Child Labour (2006–16), which is the country's response to resolving the problem of child labour.

The Committee notes the Government's indication that, in collaboration with the ILO-IPEC, it continues to take steps to eliminate child labour, in particular to remove children from agricultural plantations. Furthermore, an ongoing awareness-raising campaign on the radio and television has been launched in the country's towns. The Committee also notes that the Government is participating in the ILO-IPEC project entitled "Elimination of Child Labour in Latin America (Central American Component)". It also notes the adoption of a Decent Work Country Programme (2008–11) and that it takes into account child labour. Furthermore, it notes that the ***TBP*** is still in progress in the country.

The Committee notes that, according to the statistics mentioned above, the application of the legislation on child labour seems difficult and that child labour constitutes a problem in practice in the country. It expresses its deep concern at the situation of children under the age of 14 years who are compelled to work in the Dominican Republic. ***The Committee firmly requests the Government to step up efforts to abolish child labour in the country. In this regard, it***

requests the Government to provide information on the measures taken within the framework of the National Strategic Plan for the Elimination of the Worst Forms of Child Labour (2006–16), the ILO–IPEC project on the elimination of child labour in Latin America, the Decent Work Country Programme (2008–11) and the TBP, in particular on the programmes of action which will be implemented to gradually abolish child labour. The Committee requests the Government to provide information on the results achieved. It also invites the Government to provide information on the application of the Convention in practice, including, for example, statistical data on the employment of children and adolescents, extracts from the reports of the inspection services, particularly inspections carried out in the sectors mentioned above.

Furthermore, the Committee is also addressing a direct request to the Government concerning other points.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes that the Government’s report contains no reply to its previous comments. It hopes that the next report will include full information on the matters raised in its previous direct request which read as follows:

Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery and similar practices. Sale and trafficking of children for commercial sexual exploitation. In its previous comments, the Committee noted the observations made by the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), to the effect that the trafficking of human beings, including children, for commercial sexual exploitation is a serious problem in the Dominican Republic, particularly in the tourist industry. The ITUC added that, despite the severe penalties set out in the national legislation for the trafficking of persons and the efforts made by the Government to eliminate this practice, the problem remains very widespread. In this respect, the Government recognized the existence in the country of cases in which children are offered for prostitution and indicated that the national legislation, namely the Code for the protection of the rights of boys, girls and young persons of 2003, and Act No. 137-03 of 7 August 2003 respecting the smuggling of migrants and the trafficking of persons (hereinafter Act No. 137-03 of 7 August 2003), prohibits the sale and trafficking of children for prostitution. The Committee also noted that, according to the study entitled “Commercial sexual exploitation of young persons in the Dominican Republic”, published in 2002 by ILO–IPEC, the children involved in the commercial sexual exploitation sector are aged between 10 and 17 years. It requested the Government to step up its efforts to secure the effective enforcement of the legislation protecting children against sale and trafficking for sexual exploitation, and particularly prostitution, and requested it to provide information on the application of penalties in practice.

The Committee noted the information provided by the Government. It also noted that, according to the information available to the Office, in the context of the ILO–IPEC regional project entitled “Participation in preventing and eliminating the commercial sexual exploitation of children in Central America, Panama and the Dominican Republic”, legislative measures should have been adopted to amend Act No. 137-03 of 7 August 2003 and the Penal Code with a view to reflecting accurately the content of international instruments on the trafficking of persons, including trafficking for commercial sexual exploitation. The Committee indicated that it considered that the adoption of new legislation is bound to improve the protection in relation to the trafficking of children, particularly for commercial sexual exploitation, already established by the legal provisions currently in force in the Dominican Republic. *It once again hopes that the reforms will be adopted in the near future and requests the Government to provide information on any progress achieved in this respect. The Committee once again encourages the Government to step up its efforts to secure in practice the protection of young persons under 18 years of age against sale and trafficking for commercial sexual exploitation and requests it to continue providing information on the imposition of penalties in practice including, for example, reports on the number of convictions.*

Article 6. Programmes of action. National Plan for the Elimination of the Abuse and Commercial Sexual Exploitation of Boys, Girls and Young Persons. With reference to its previous comments, the Committee noted with interest the National Plan for the Elimination of the Abuse and Commercial Sexual Exploitation of Boys, Girls and Young Persons. It noted the activities envisaged by the Plan to combat commercial sexual exploitation in the country. *The Committee once again requests the Government to provide information on the programmes of action established in the context of the National Plan referred to above and the results achieved.*

Article 7, paragraph 2. Effective and time-bound measures. In its previous comments, the Committee noted that the commercial sexual exploitation of children was one of the worst forms of child labour in respect of which the Government has undertaken to adopt measures as a priority in the context of the ILO–IPEC *Time-bound Programme (TBP)* on the worst forms of child labour. The Committee noted with interest that, in the context of the ILO–IPEC regional project entitled “Participation in preventing and eliminating the commercial sexual exploitation of children in Central America, Panama and the Dominican Republic”, over 870 children should have been removed from commercial sexual exploitation or trafficking and around 850 children at special risk of this worst form of child labour should have been prevented from being engaged therein. Furthermore, over 1,000 children should benefit directly from this project.

Clause (a). Preventing the engagement of children in the worst forms of child labour. 1. TBP and ILO–IPEC regional project. Taking into account the information referred to above concerning the number of children who will be prevented from being engaged in commercial sexual exploitation or in trafficking for this purpose, the Committee once again requests the Government to provide information on the measures taken in the context of the TBP and the ILO–IPEC regional project to protect these children. It also once again requests the Government to provide statistical data on the number of children who will in practice be prevented from being engaged in this worst form of child labour as a result of the implementation of the TBP and the ILO–IPEC regional project in the Dominican Republic.

2. Other measures. The Committee noted that the ILO–IPEC regional project on the prevention and elimination of commercial sexual exploitation of children provides for the strengthening of national institutional capacities. The Committee considered that collaboration and the exchange of information between the various actors at the national and local levels concerned with the commercial sexual exploitation of children, such as government agencies, employers’ and workers’ organizations, non-governmental organizations and other civil society organizations, constitute indispensable measures to prevent and eliminate commercial sexual exploitation. *The Committee once again requests the Government to provide information on the measures adopted for this purpose. As the country benefits from widespread tourist activity, the Committee also once again requests the Government to indicate whether measures have been taken to raise awareness among actors directly related to the*

tourist industry, such as associations of hotel owners, tourist operators, unions of taxi drivers and owners of bars, restaurants and their employees.

Clause (b). 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 requested the Government to provide information on the measures adopted to ensure the rehabilitation and social integration of children and the results achieved in removing children from commercial sexual exploitation or trafficking for this purpose as a result of the implementation of the **TBP**. It noted that the Government's report does not contain any information on this subject. *As the ILO–IPEC regional project envisages removing a greater number of children from this worst form of child labour, the Committee once again requests the Government to provide statistical data on the number of children who will in practice be removed from commercial sexual exploitation and trafficking for this purpose as a result of the implementation of the TBP and the ILO–IPEC regional project in the Dominican Republic. It also once again requests the Government to provide information on the economic alternatives envisaged and on the measures adopted to ensure the rehabilitation and social integration of children removed from the worst forms of child labour.*

Article 8. International cooperation. 1. Commercial sexual exploitation. The Committee noted that the ILO–IPEC regional project on the prevention and elimination of the commercial sexual exploitation of children envisages the strengthening of horizontal collaboration between countries participating in the project. The Committee indicated that it considered that international cooperation between law enforcement agencies, particularly the judicial authorities and police forces, is indispensable to prevent and eliminate commercial sexual exploitation, and particularly the sale and trafficking of children for that purpose, through the compilation and exchange of information and through assistance to identify and prosecute the individuals involved and repatriate the victims. *The Committee therefore once again hopes that, in the context of the implementation of the ILO–IPEC regional project on the prevention and elimination of the commercial sexual exploitation of children, the Government will take measures to cooperate with participating countries, thereby reinforcing security measures as a means of bringing an end to this worst form of child labour. It once again requests the Government to provide information on this subject.*

2. Poverty reduction. With reference to its previous comments, the Committee noted that both the Strategic National Plan for the Elimination of the Worst Forms of Child Labour (2005–15) and the National Plan to Eliminate the Abuse and Commercial Sexual Exploitation of Boys, Girls and Young Persons envisage strategic measures for the reduction of poverty in the country. The Committee also noted that, according to the statistical data provided by the Government, around 60 per cent of minors under 14 years of age lived in poverty in 2001. *The Committee once again requests the Government to provide information on the results achieved as a result of the implementation of the two Plans referred to above, particularly in terms of the effective reduction of poverty among children removed from commercial sexual exploitation and from sale and trafficking for this purpose.*

The Committee is also addressing a direct request to the Government concerning other points.

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

Ecuador

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee noted the statistical information from the National Institute of Statistics and Census (INEC) of 2005, to the effect that the number of child workers between 5 and 17 years of age in the country was decreasing. It also noted the Government's statement that the child labour inspection and monitoring service had been reinforced since 2004. The Committee also noted that Ecuador had implemented a **Time-bound Programme (TBP)** in order to eliminate the worst forms of child labour, particularly the work of children in the banana and flower industries.

The Committee notes *with interest* the detailed information sent by the Government concerning the results achieved further to the implementation of the **TBP**, which ended in June 2008. A total of 7,406 children were beneficiaries of the **TBP**. Of these, 5,250 children were prevented from becoming involved in one of the worst forms of child labour covered by the **TBP** and received educational services, and 2,156 children were removed from their work and were also provided with educational services. The Committee duly notes the detailed information provided by the Government on the measures taken to implement other programmes of action, such as the “Being” project and the “Pro-child” programme, for abolishing child labour and the worst forms thereof. Moreover, it notes the Government's indication that a review of the “National Plan for the prevention and elimination of child labour” is in progress. The Committee notes the detailed information provided by the Government on the results of the second national survey of child labour carried out by the INEC in 2006. According to this survey, 580,888 children and young persons were employed in forms of child labour to be abolished under the terms of the Convention. Of these, 164,551 were children between 5 and 11 years of age, 202,585 were adolescents between 12 and 14 years of age, and 213,752 were young persons engaged in hazardous work between 15 and 17 years of age. The Committee notes that, according to the national survey of child labour for 2006, child labour has decreased by 3 per cent in comparison with 2001.

The Committee also notes that, according to ILO–IPEC information, the Government has adopted various public policies, including the “Social agenda for children and young persons”, the “Ten-year National Plan for the full protection of children and young persons” and the “National Development Plan”. In the context of these public policies concerning children, measures will be taken to combat child labour. The Committee also notes that the Government is participating in the ILO–IPEC project on the “Elimination of child labour in Latin America (third phase, South America)”. While duly

noting the measures taken by the Government to combat child labour, the Committee again notes that, according to the abovementioned statistics, the practice observed is still in contradiction with the legislation and the Convention. ***The Committee is deeply concerned at the situation of children under 14 years of age who are compelled to work and urges the Government to intensify its efforts to gradually improve the situation. It requests the Government to take the necessary steps, in the context of the various public policies mentioned above and the ILO-IPEC project on the "Elimination of child labour in Latin America", to abolish child labour. It requests the Government to supply information on the results achieved. The Committee also requests the Government to provide information on the application of the Convention in practice, including, for example, statistics relating to the employment of children and young persons, and extracts of the reports of the inspection services, particularly inspections conducted in the abovementioned sectors. Finally, it requests the Government to supply a copy of the new "National Plan for the prevention and elimination of child labour", once it has been formulated.***

Article 2, paragraphs 2 and 5. Raising the minimum age for admission to employment or labour to 15 years. The Committee noted the Government's statement that Act No. 2006-39 raised the minimum age for admission to employment or work from 14 to 15 years, thereby aligning the provisions of section 134(1) of the Labour Code with those of section 82(1) of the Children and Young Persons Code of 2003. It requested the Government to consider the possibility of sending the ILO Director-General a new declaration stating that Ecuador had raised the previously specified minimum age, in accordance with *Article 2, paragraph 2*, of the Convention. The Government indicates that it will recommend that the Ministry of Labour and Employment notify the Director-General that the minimum age for admission to employment or work has been raised from 14 to 15 years. ***The Committee requests the Government to supply information on any new developments in this regard.***

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee notes that, according to UNICEF statistics for 2006, the net primary school enrolment rate was 98 per cent for girls and 97 per cent for boys and the figures for secondary schools were 53 per cent for girls and 52 per cent for boys. The Committee duly notes that, according to the Education for All (EFA) Global Monitoring Report 2008 published by UNESCO entitled "Education for All by 2015: Will we make it?", Ecuador has achieved the objective of universal primary education for all and that of gender parity in both primary and secondary education. The Committee duly notes the net primary school enrolment rate. However, it expresses its concern with regard to the low net secondary school enrolment rate. It observes that poverty is one of the primary causes of child labour and, combined with a deficient education system, it hampers the development of the child. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to continue its efforts to improve the functioning of the education system in the country and to take measures to enable children to attend compulsory basic education or enter an informal school system. In this regard, it requests the Government to supply information on the measures taken to increase the secondary school enrolment rate. Finally, the Committee requests the Government to supply information on the results achieved.***

Article 3, paragraph 2. Determination of hazardous work. With reference to its previous comments, the Committee notes ***with satisfaction*** resolution No. 016 CNNA-2008 of 8 May 2008, adopting regulations on hazardous work which is prohibited for young persons who are legally entitled to work in employment or on a self-employed basis. This resolution was adopted in consultation with the employers' and workers' organizations, and also with various other parties concerned with the problem of child labour. The Committee notes in particular that section 5 of these Regulations contains a very detailed list of types of work prohibited for young persons between 15 and 18 years of age. It also duly notes that section 6 of the Regulations fixes at 18 years of age the minimum age for admission to employment for young domestic workers who live in the homes of their employers. The Committee also notes the Government's statement that agreements concerning the types of work prohibited for young persons between 15 and 18 years of age in the banana and flower industries have been concluded. ***The Committee requests the Government to supply a copy of these agreements in its next report. It also requests the Government to provide information on the application in practice of resolution No. 016 CNNA-2008 adopting regulations on hazardous work.***

Article 8. Artistic performances. In its previous comments, the Committee noted the Government's statement that Regulations issued under the Children and Young Persons Code will lay down the conditions of employment for children and young persons engaged in artistic activities or performances. The Committee notes the Government's information to the effect that the Regulations implementing the Children and Young Persons Code are in the process of being validated. The Committee reminds the Government that, under *Article 8, paragraph 1*, of the Convention, the competent authority may waive the minimum age of 14 years specified by Ecuador for admission to employment or work and, after consultation of the employers' and workers' organizations concerned, may grant permission in individual cases for purposes such as participation in artistic performances. It also reminds the Government that according to *Article 8, paragraph 2*, the permits so granted must limit the number of hours during which, and prescribe the conditions in which, employment or work is allowed. ***The Committee expresses the firm hope that the regulations implementing the Children and Young Persons Code will be adopted in the near future, will take account of the comments made above and will lay down the conditions of employment for children and young persons in artistic performances. It requests the Government to supply information on any new developments in this regard.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3, clauses (a) and (b), of the Convention and Part III of the report form. Sale and trafficking of children for commercial sexual exploitation, the use of children for prostitution and court decisions. In its previous comments, the Committee noted that, according to ILO–IPEC statistics, over 5,200 children were victims of commercial sexual exploitation or trafficking for this purpose in Ecuador. It also noted the adoption of Act No. 25-447 of 23 June 2005, reforming the Penal Code, which categorizes crimes involving the sexual exploitation of young persons under 18 years of age and establishes heavy penalties for persons found guilty of having committed a crime established under this Act.

The Committee notes that, according to a 2007 report on the worst forms of child labour in Ecuador, available on the UNHCR web site (www.unhcr.org), Colombian girls are trafficked to Ecuador for commercial sexual exploitation, and Ecuadorian children are trafficked to neighbouring countries and Spain. According to this report, it would seem that most children are trafficked within the country to urban centres, particularly for prostitution. The Committee also notes that the Committee on the Protection of the Right of Workers and their Migrant Families, in its final observations on Ecuador's initial report on December 2007 (CMW/C/ECU/CO/1, paragraph 32), while recognizing the efforts undertaken by the National Council for Children and Young Persons against the commercial sexual exploitation of children and trafficking for this purpose, was nevertheless concerned at the involvement of migrant children in prostitution, especially in the Lago Agrio region, and at the fact that there still seemed to be a sort of social acceptance of this criminal behaviour against children in Ecuadorian society.

The Committee notes the information provided by the Government on the denunciations received by the National Police Unit specialized in the welfare of boys, girls and young persons (DINAPEN) concerning the commercial sexual exploitation of children. It notes that, between 2006 and June 2008, there had been a total of 184 denunciations, of which 153 concerned prostitution, including trafficking, 24 child pornography and eight sexual tourism. The Committee takes note of the Government's statement that, since 2005, 14 persons have been sentenced for the exploitation of children under 18 years of age for sexual purposes in the cities of Machala and Quito. In Quito, five sentences were handed down for the trafficking of children for sexual exploitation and one for the procuring of children, while in Machala, five sentences were handed down for trafficking for sexual exploitation, two for procuring and two for pornography. The penalties applied ranged from between three and five years' imprisonment. ***The Committee encourages the Government to continue its efforts to ensure, in practice, the protection of children under 18 years of age against these worst forms of child labour. In this respect, it requests the Government to continue to provide information on the application of the provisions of the Penal Code applying to the crimes of sexual exploitation against minors of less than 18 years of age in practice. Furthermore, taking account of the information that persons have been prosecuted and sentenced, the Committee requests the Government to provide copies of the judgements handed down by virtue of the provisions in the Penal Code in its next report.***

Article 5. Monitoring mechanisms. The Committee notes that, according to the information contained in the final ILO–IPEC report on the **Time-bound Programme (TBP)** for the elimination of the worst forms of child labour, of June 2008, persons working for the DINAPEN, in particular child labour inspectors and police officers, have received training on commercial sexual exploitation and trafficking for this purpose. The Committee also notes that, according to this report, judicial officials, including magistrates from various districts throughout the country, including those from Lago Agrio, Machala and Galapagos, have also received training on these worst forms of child labour. Furthermore, about 20 child labour inspectors have been appointed.

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour, removing them from these forms of labour and ensuring their rehabilitation and social integration. Commercial sexual exploitation of children and the trafficking of children for this purpose. In its previous comments, the Committee noted that, in the context of the **TPB**, programmes of action were to be implemented to combat the commercial sexual exploitation of children and the trafficking of children for this purpose. In this respect, the Committee notes, **with interest**, the detailed information provided by the Government on the results obtained following the implementation of the **TPB**, which ended in June 2008. It notes, more particularly, that a total of 1,174 children who were victims of commercial sexual exploitation or trafficking for this purpose benefited from the **TPB**. Out of this number, 1,037 children, of which 692 were girls and 345 boys, were prevented from being engaged in these worst forms of child labour, and 137 children, of which 135 were girls and two boys, were removed from these worst forms of child labour. The Committee further notes that according to the Government, the children who benefited from the **TPB** also received assistance in re-entering the formal or informal education system, or received vocational training. What is more, temporary accommodation and social and legal assistance were provided to the children who had been removed from these worst forms of child labour. Finally, assistance, especially in the form of grants, were offered to the families of children benefiting from the **TPB**.

The Committee takes due note of the Government's indication that it has adopted a national plan to combat the trafficking of persons, the illicit traffic of migrants, sexual exploitation, economic and other forms of exploitation, the prostitution of women, boys, girls and young persons, child pornography and the corruption of minors (National Plan to combat the trafficking of persons and commercial sexual exploitation). The Committee also notes that, in the districts of Cuenca and Machala, plans to combat the commercial sexual exploitation of children and trafficking of children for this purpose have also been drawn up. Furthermore, according to the ILO–IPEC final report on the **TPB** of June 2008, the

National Programme of protection for children and young people who are victims of commercial sexual exploitation or trafficking for this purpose is still in operation in the cities of Quito and Machala and will also be implemented in the region of Lago Agrio.

The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the time-bound measures taken, when implementing the National Plan to combat the trafficking of persons and commercial sexual exploitation and the plans to combat the commercial exploitation of children and the trafficking of children for this purpose in Cuenca and Machala, to: (a) prevent children from being victims of commercial sexual exploitation or trafficking for this purpose; and (b) provide the necessary and appropriate direct assistance to remove child victims from these worst forms of child labour. It requests the Government to continue providing information on the results obtained. The Committee also requests the Government to provide information on the implementation of the National Programme of protection for children and young persons who are victims of commercial sexual exploitation or trafficking for this purpose, especially with respect to the measures taken in the context of this programme to guarantee the rehabilitation and social integration of the victims of this worst form of child labour.

Article 8. International cooperation and assistance. Commercial sexual exploitation of children and trafficking of children for this purpose. In its previous comments, the Committee expressed the hope that, in the context of the implementation of the *TPB*, the Government would take measures to cooperate with neighbouring countries, particularly through the reinforcement of security measures on common borders. In this respect the Committee takes due note of the information provided by the Government that it participated in a meeting with Peru and Colombia to coordinate actions with a view to exchanging information on the commercial sexual exploitation of children and the trafficking of children for this purpose. Agreements had been reached on an exchange of information between the police and judicial services. *The Committee requests the Government to indicate whether the exchanges of information with Peru and Colombia, carried out in the context of the agreements signed between the police and judicial services, have made it possible: (a) to identify and arrest persons working in networks involving the trafficking of children; and (b) to detect and intercept child victims of trafficking at the borders.*

Furthermore, the Committee is addressing a direct request to the Government concerning other points.

Egypt

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 1 of the Convention. National policy on the effective abolition of child labour. Following its previous comments, the Committee notes the Government's information that awareness campaigns were conducted in undertakings, and workshops in particular, on the prohibition of engaging children under the legal age for admission to employment. The Government also indicates that programmes are broadcast on several radio stations for the purpose of raising awareness on the issue of child labour. In this regard, an agreement was reached between the Government and the radio of southern Sinai to broadcast a five-minute daily programme on child labour. The Committee further notes the Government's information that a Protocol was prepared between the Department of Manpower and Migration in Alexandria and the Network on the Elimination of Child Labour, which includes ten non-governmental organizations working in this field and some executive bodies in the governorate of Alexandria, so as to prepare and implement a plan for the coordination of such bodies to eliminate the employment of children who have not reached the legal age of admission to employment or work. Finally, the Committee notes that, according to information made available by UNICEF, the Government has drafted a national strategy to combat child labour. *The Committee requests the Government to provide information on the progress made in the adoption of the draft national strategy to combat child labour and to provide a copy of it as soon as it is adopted. It also requests the Government to provide information on the results achieved through the implementation of these measures on the prevention and elimination of child labour.*

Article 2, paragraph 1. Minimum age for admission to employment or work. The Committee had previously noted that Labour Code No. 12 of 2003 (Labour Code) in section 99 of Chapter 3, Part VI, provides that the employment of female or male children shall be prohibited until they complete their basic education, or have reached the age of 14, whichever is higher. The Committee notes the Government's information that Child Law Act No. 12 of 1996 (Child Law), which provided for the prohibition of the employment or work for children under 14 years of age, was amended to prohibit the employment of children under the age of 15. However, the Committee observes that both Law No. 126 of 2008 on Amending Provisions of the Child Law, Penal Code and Civil Status, as well as the text of the Child Law dated October 2008, provide that children shall not be employed for work before attaining "fourteen complete calendar years of age", which is the age that was specified by the Government at the time of ratification.

Part III of the report form. Labour inspection. The Committee had previously noted that, in its concluding observations, the Committee on the Rights of the Child noted that 80 per cent of child labour is reportedly concentrated in the agricultural sector and that "many of these children work long hours in dusty environments, without masks or respirators, receiving little or no training on safety precautions for work with toxic pesticides and herbicides" (CRC/C/15/Add.145, paragraph 49, of 21 February 2000). The Committee had requested the Government to indicate in what manner it is ensured that children who work in pure cultivation work in the agricultural sector, which is one of the

categories of work excluded by the Government at the time of ratification, are protected from carrying out work which is likely to jeopardize their health, safety or morals.

The Committee notes the Government's information that, this year, inspections were carried out in 41,618 undertakings that employ children, during which the number of children reached was 39,251. As a result, 9,083 undertakings were given warnings to remedy violations with regard to child labour, and 548 minutes were prepared for the violations detected. The Committee also notes that, according to a 2007 report on findings on the worst forms of child labour in Egypt, available on the High Commissioner for Refugees web site (www.unhcr.org), a separate unit within the Ministry of Manpower and Migration (MOMM) is responsible for child labour investigations in the agricultural sector. In this regard, it notes the Government's information, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that inspections are conducted on commercial plantations with a large agricultural production and child labour inspectors endeavour to enforce the legislation regarding children working in agriculture. As a result, the MOMM reported that its 2,000 labour inspectors issued 72,000 citation violations between 2006 and the first nine months of 2007. While observing the number of inspections that were carried out concerning children working in the agricultural sector, the Committee notes that no information is contained in the inspection reports, communicated to the Office along with the Government's report under the Labour Inspection Convention, 1947 (No. 81), with regard to such children. ***The Committee therefore once again requests the Government to provide information on the violations, including violations of the prohibition of hazardous work, detected by labour inspectors with regard to children working in the agricultural sector.***

Part V of the report form. Application of the Convention in practice. The Committee had previously noted that, according to the report of the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the trade policies of Egypt of 26 and 28 July 2005, entitled "Internationally recognized core labour standards in Egypt", 6 per cent of children aged 5–14 are involved in labour activities, 78 per cent of whom are in the agricultural sector. In the rural sector, children are employed in commercial as well as subsistence agriculture. Moreover, children often work in repair and craft shops, in heavier industries such as brick making and textiles, and as workers in leather and carpet-making factories. The ITUC adds that, even if the fines that child offenders have to pay in child labour cases were increased, there is still clear evidence of employers who abuse, overwork and many times endanger many child workers. The ITUC concludes that child labour is employed extensively in Egypt, in both the rural and the urban sectors and, despite recent legislative improvements combined with some governmental programmes to tackle this issue, it remains a serious case for concern and further improvements are needed both in law and in practice. The Committee further notes that, according to the 2007 report on findings on the worst forms of child labour in Egypt on the High Commissioner for Refugees web site (www.unhcr.org), children work in a number of other hazardous sectors, including fishing, glassworks, blacksmithing, working metal and copper, construction, carpentry, mining and quarrying. ***Once again expressing serious concern at the situation of children working in Egypt, the Committee urges the Government to redouble its efforts to combat child labour. It also requests the Government to provide information on the application of the Convention in practice, including statistical data on the employment of children and young persons, extracts of inspection reports, as well as the number and nature of contraventions reported and penalties imposed.***

El Salvador

Minimum Age Convention, 1973 (No. 138) (ratification: 1996)

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee noted the indication by the Inter-Union Commission of El Salvador that children between 12 and 14 years of age are engaged in work in El Salvador and that the Government has not implemented a plan of action for the elimination of child labour. It also noted the indication by the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), that child labour is very widespread in unregulated rural and urban economies. The Committee noted the Government's indication that activities have been carried out in collaboration with ILO-IPEC. It also noted the numerous projects implemented in the context of the ***Time-bound Programme (TBP)*** on the worst forms of child labour, and the results achieved. It further noted that, according to the statistics contained in a study conducted in 2005 in households in the country (EHPM), the number of children between the ages of 5 and 17 years who were engaged in work had fallen from 222,475 in 2001 to 207,460 in 2005.

The Committee notes ***with interest*** the information provided by the Government on the results of the implementation of Phase I of the ***TBP*** between September 2001 and September 2006. In total, 42,770 children benefitted from this phase of the ***TBP***. Of this number, 12,967 children were removed from child labour and 29,803 were prevented from working. These children also benefitted from various services, including formal and non-formal schooling and vocational training, and their parents had access, among other measures, to income-generating activities. Phase II of the ***TBP*** commenced in October 2006. The objective of the second Phase is to implement programmes of action to eliminate child labour, including its worst forms, among other areas, in the sugar cane and fishing industries and hazardous types of work in markets. The Committee notes ***with interest*** that between October 2006 and August 2008, over 5,054 children benefitted

from Phase II of the *TBP*. Of these, 3,754 children were prevented from being engaged in work and 1,300 children were removed from their work.

The Committee notes the information provided by the Government that labour inspections carried out between August 2006 and June 2008 resulted in the removal of over 200 children from their work and the assurance that the children did not return to work. It also notes the statistics provided by the Government on a survey carried out by the General Directorate of Statistics and Census in 2006, according to which 205,009 children between the ages of 5 and 17 years were engaged in work. Of this number, 24,818 children were between the ages of 5 and 11 years and 108,191 were between 12 and 17 years of age. According to the survey, the great majority of children were engaged in work in rural areas and in unpaid activities: 132,015 children between the ages of 5 and 17 years worked in rural areas in agriculture and commerce, with 72,994 children working in urban areas, in manufacturing and commerce.

The Committee notes that the Government is participating in the ILO–IPEC project on the elimination of child labour in Latin America (third phase). It also notes that in August 2007 the Government signed a tripartite agreement for the adoption of the Decent Work Country Programme, which takes into account child labour. The Committee notes the Government’s indication that a preliminary draft text of a Bill for the comprehensive protection of children and young persons is currently under discussion in the Presidential Chamber and that it will then be submitted to the Legislative Assembly. It contains a chapter entirely devoted to child labour.

The Committee notes that, according to the statistics referred to above, the number of working children fell from 207,460 in 2005 to 205,009 in 2006. The Committee appreciates the measures taken by the Government for the abolition of child labour and considers these measures as an affirmation of its political will to develop strategies to combat the problem. However, it expresses concern at the persistence of child labour in practice. ***The Committee therefore strongly encourages the Government to pursue its efforts to improve the situation and requests it to provide information on the measures adopted, in the context of the implementation of Phase II of the TBP, the ILO–IPEC project for the elimination of child labour in Latin America and the Decent Work Country Programme, for the abolition of child labour in practice. It asks the Government to provide information on the results achieved. Furthermore, the Committee invites it to continue providing detailed information on the manner in which the Convention is applied in practice including, for example, statistical data disaggregated by sex on the nature, extent and scope of work by children and young persons under the minimum age specified by the Government when ratifying the Convention and extracts from the reports of the inspection services.***

Article 2, paragraph 3. Compulsory schooling. In its previous comments, the Committee noted the ITUC’s indication that, although education is compulsory and free of charge up to the age of 14 years in El Salvador, additional fees have to be paid, which prevent children from poor families from attending school. In this respect, it noted the many educational programmes implemented by the Ministry of Education in the context of Plan 2021, the object of which is to facilitate the access to education of the greatest possible number of children. Furthermore, the Committee noted that, according to statistics on the school attendance rate of children between 5 and 17 years of age in 2003, the percentage of children who work is increasing when only rural areas are taken into account. Indeed, while the percentage of registrations is balanced, with 50 per cent in rural areas and 50 per cent urban areas, 76.2 per cent of children at school who also work are in rural areas. The Committee requested the Government to provide information on the implementation of the educational programmes decided upon in the context of Plan 2021.

The Committee notes *with interest* the detailed information provided by the Government on the programmes of action implemented by the Ministry of Education in the context of Plan 2021. It notes that various measures have been adopted under these programmes to improve the quality of education and increase school attendance rates, particularly for marginalized children or those from very poor families in rural and urban areas. Measures have also been taken to promote equality of opportunity in access to education, not only between the sexes, but also for those who require specialized education or who have a disability. According to the Government, these programmes benefitted over 1,857,246 students in 2007.

The Committee notes that, according to the Global Monitoring Report 2008 on Education for All, published by UNESCO and entitled “Education for All by 2015: Will we make it?”, the country has a high chance of achieving the goal of universal primary education for all by 2015. Furthermore, if progress is regular, gender parity in both primary and secondary education is likely to be achieved. The Committee further notes that, according to UNICEF statistics for 2006, the gross primary school enrolment rate is 93 per cent for both girls and boys, while the rates for secondary school are 54 per cent for girls and 52 per cent for boys.

The Committee takes due note of the gross enrolment rate for primary school and the fact that the country has a high chance of achieving by 2015 the goal of universal primary education for all and of gender parity. However, it expresses concern at the gross enrolment rate for secondary school, which is fairly low. It observes that poverty is one of the primary causes of child labour and, when combined with a deficient educational system, prevents the development of children. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee strongly requests the Government to redouble its efforts to improve the operation of the education system in the country and to take measures to allow children to attend compulsory basic education or to join an informal school system. In this respect, it asks the Government to continue providing information on the measures adopted in the context of Plan***

2021 to increase the enrolment rate, particularly for secondary education, so as to prevent children under 14 years of age from working. The Committee asks the Government to provide information on the results achieved.

The Committee is also raising another matter in a request addressed directly to the Government.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3, clauses (a) and (b), of the Convention and Part III of the report form. Sale and trafficking of children for sexual exploitation, and court decisions. In its previous comments, the Committee noted the indication from the Inter-Union Commission of El Salvador (CATS–CTD–CGT–CTS–CSTS–CUTS), to the effect that ever increasing numbers of boys and girls are being sexually exploited in El Salvador. It also noted that, according to the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), the trafficking of people for sexual exploitation, particularly in forced prostitution rings involving children, is a serious problem in the country, with child victims of trafficking for prostitution coming from Mexico, Guatemala and other countries in the region. Moreover, the ITUC indicated that an internal trafficking network exists. The Committee also noted the amendments made to sections 169, 170 and 367-B of the Penal Code and the drawing up of a preliminary draft Act on migration and the status of foreigners.

The Committee notes the information supplied by the Government to the effect that the preliminary draft Act on migration and the status of foreigners is currently the subject of consultation and revision by a commission composed of public institutions including the Ministry of External Relations, the Ministry of Economic Affairs and the Legal Department of the Presidency. Once this procedure has been completed, the preliminary draft Act will be presented to the Legislative Assembly for approval and promulgation. The Committee notes *with interest* the detailed information supplied by the Government on the investigations conducted into the sale and trafficking of persons, particularly children. It notes in particular the statistics on penalties imposed for the sale and trafficking of children for commercial sexual exploitation between August 2006 and December 2007. A total of 136 investigations have been conducted by the police forces. Of these, 58 cases are being examined by the courts; 43 cases are still under investigation; and 35 persons have been convicted. The Committee notes the Government's statement that persons found guilty of the sale and trafficking of children for sexual exploitation have been sentenced to terms of imprisonment ranging from 14 to 26 years. **The Committee strongly encourages the Government to continue its efforts to ensure in practice the protection of children under 18 years of age against sale and trafficking for sexual exploitation. It requests the Government to continue providing information on the application of the new provisions of the Penal Code in practice. In particular, in view of the information to the effect that persons have been prosecuted under these new provisions, the Committee requests the Government to supply copies of any court decisions issued under these provisions in its next report. Finally, it requests the Government to supply a copy of the Act on migration and the status of foreigners once it has been adopted.**

Article 5. Monitoring mechanisms. The Committee notes the information supplied by the Government to the effect that the Department of Investigations into the Trafficking of Persons, which forms part of the Border Division of the civilian national police, has been strengthened in order to ensure better coverage of the country in the fight against crimes connected with commercial sexual exploitation. The Committee also notes that, according to information contained in the September 2008 report on the ILO–IPEC project entitled “Stop the exploitation. Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama and the Dominican Republic” (ILO–IPEC project on the prevention and elimination of the commercial sexual exploitation of children), the Office of the Chief Public Prosecutor has been provided with training relating to commercial sexual exploitation and trafficking to this end.

Article 6. Programmes of action to eliminate the worst forms of child labour. Sale and trafficking. The Committee notes that, according to the information contained in the September 2008 report on the ILO–IPEC project on the prevention and elimination of the commercial sexual exploitation of children, a national plan against the trafficking of persons was approved in August 2008. **The Committee requests the Government to supply information on the implementation of this national plan, particularly by indicating the programmes of action to be adopted as part of this plan to eliminate the sale and trafficking of children under 18 years of age for sexual exploitation. It also requests the Government to send a copy of the plan to the Office.**

Article 7, paragraph 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 the worst forms of child labour. Commercial sexual exploitation. With reference to its previous comments, the Committee notes *with interest* that phase II of the **Time-bound Programme (TBP)**, which started in October 2006 and will end in September 2009, aims to support and consolidate the measures taken and the results achieved during phase I of the **TBP**. The Committee duly notes the Government's indication that, between October 2006 and August 2008, more than 5,054 children benefited from phase II of the **TBP**, including 400 children who were prevented from becoming victims of commercial sexual exploitation. It also duly notes the detailed information supplied by the Government on the measures taken in the context of the “Strategic plan on commercial sexual exploitation (2006–09)”. Moreover, the Committee notes the Government's indication that the objective in 2008 is to prevent the engagement of some 200 children in, or remove them from, commercial sexual exploitation.

The Committee also notes that, according to the information contained in the September 2008 ILO–IPEC report on the implementation of phase II of the *TBP*, the Institute for the Development of Children and Young Persons (ISNA) is responsible for providing accommodation for victims of trafficking. To date, the ISNA has the capacity to host 15 persons. As regards the victims of commercial sexual exploitation, these are admitted to the Centre for the Immediate Protection of Children (CIPI) and are then transferred to other ISNA reception centres. The Committee duly notes the measures taken by the Government to prevent the sale and trafficking of children and to remove them from this worst form of child labour, measures which it considers to be an expression of its political will to eliminate the latter. ***The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the time-bound measures taken as part of the implementation of phase II of the TBP and the “Strategic plan on commercial sexual exploitation (2006–09)” to: (a) prevent children from becoming victims of commercial sexual exploitation or trafficking to this end; and (b) provide necessary and appropriate direct aid to remove children from these worst forms of child labour. It requests the Government to provide information on the results achieved. The Committee also requests the Government to provide information on the reception centres established by the ISNA and the CIPI, particularly regarding the measures taken in the context of these centres to ensure the rehabilitation and social integration of child victims of commercial sexual exploitation or trafficking to this end.***

Clause (d). Children at special risk. In its previous comments, the Committee noted the indication from the CATS–CTD–CGT–CTS–CSTS–CUTS to the effect that ever-increasing numbers of boys and girls were becoming victims of hazardous working conditions. It also indicated that the practice of “handing over” boys and girls to families still exists in the country. These children are then used as domestic servants and work long hours without adequate remuneration and without attending school. The Committee took note of a rapid assessment study on domestic work done by children published by ILO–IPEC in February 2002, according to which 93.6 per cent of children working in domestic service are girls.

The Committee notes the information supplied by the Government on the measures taken by the National Committee on the Elimination of the Worst Forms of Child Labour and the National Committee on the Trafficking of Persons to protect children against the various forms of abuse. The Committee notes the public awareness campaigns which have been undertaken relating to commercial sexual exploitation and the sale and trafficking of persons. The Committee further notes that these measures do not relate to child domestic workers in El Salvador. ***Noting once again that children employed in domestic work are often the victims of exploitation, which occurs in a wide variety of forms, the Committee urges the Government to take effective and time-bound measures to protect these children from the worst forms of child labour. It also requests the Government to supply information on the results achieved in this respect.***

Article 8. International cooperation and assistance. Poverty reduction. The Committee noted the “Solidarity network” programme aimed at significantly reducing poverty among 100,000 families spread over the 100 poorest municipalities in the country. It requested the Government to provide information on the results achieved from the implementation of the programme. The Committee duly notes the detailed information provided by the Government on the measures taken in the context of the “Solidarity network” programme to reduce poverty. It notes in particular that, between October 2005 and December 2007, 48,659 families living in 47 poor or extremely poor municipalities in the country benefited from the programme. For 2008, the programme will be implemented in 77 poor or extremely poor municipalities. ***The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the measures taken as part of the implementation of the “Solidarity network” programme, particularly as regards the effective reduction of poverty among child victims of commercial sexual exploitation or of trafficking to this end.***

The Committee is also raising a number of other points in a direct request to the Government.

Gabon

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the information provided by the Government in its report. It also notes the information provided by it in June 2007 at the 96th Session of the Committee on the Application of Standards, as well as the discussion which took place on that occasion.

Article 3, clause (a), of the Convention and Part III of the report form. Sale and trafficking of children and court decisions. In response to previous comments, the Committee notes that the Government has brought its legislation in respect of the sale and trafficking of children into line with the Convention. The Committee notes however that, according to the information contained in a UNICEF report of 2006 entitled “Trafficking in human beings, in particular women and children, in West and Central Africa”, a number of children, particularly girls, are victims of internal and cross-border trafficking, to work as domestic workers or in the country’s markets. Children from Benin, Burkina Faso, Cameroon, Guinea, Niger, Nigeria and Togo are victims of trafficking to Gabon. Beninese children sent to Gabon mainly come from the departments of Ouémé, Mono, Atlantique and Zou. According to the UNICEF report, in the border regions of Gabon, Cameroon and Equatorial Guinea, the exchange of goods and the free movement of persons of certain ethnic identities, particularly the Fang, who do not require a visa to cross the border, facilitate trafficking.

The Committee notes that despite the declaration by the Government representative made in the Committee on the Application of Standards in June 2007 that there is no internal trafficking of children on the national territory, it emerged from the discussion that took place within this Committee that children are victims of both internal and cross-border trafficking in the country. The Committee notes that, in its conclusions of June 2007, the Committee on the Application of Standards requested the Government to ensure that persons who infringe the Convention are prosecuted and face sufficiently effective and dissuasive sanctions. In the regard, the Committee duly notes the Government's indication that there are 11 judicial proceedings pending, most of which have been referred to the Public Prosecutor's Office.

The Committee notes that, although the legislation is in conformity with the Convention on this matter, the sale and trafficking of children under 18 years of age for labour exploitation exists in the country. ***Referring to the conclusions of the Committee on the Application of Standards, the Committee urges the Government to redouble its efforts to ensure, in practice, the protection of children under 18 years of age against the sale and trafficking of children, including by ensuring thorough investigations and robust prosecutions of offenders and that effective and sufficiently dissuasive sanctions are imposed. In this regard, it requests the Government to provide information on the application of the provisions concerning the sale and trafficking of children for labour exploitation in practice by providing, in particular, statistics on the convictions and penal sanctions imposed. Furthermore, taking into account the information that judicial proceedings are pending, some of which have been referred to the Public Prosecutor's Office, the Committee requests the Government to provide the court rulings handed down.***

Article 5. Monitoring mechanisms. 1. *Council to Prevent and Combat the Trafficking of Children.* The Committee previously noted the establishment of a Council to Prevent and Combat the Trafficking of Children, an administrative body dedicated to preventing and combating the trafficking of children. It also noted that the Council is responsible in particular for detecting cases of trafficking of children, identifying victims, removing the victims from their situation of exploitation and protecting their rights, and strengthening the action of the follow-up committee in the province. The Committee requested the Government to continue providing information on the work of the Council.

The Committee notes from the discussion which took place in the Committee on the Application of Standards in June 2007 that questions remained with regard to the functioning of the Council and that information on its effectiveness was requested by members of that Committee. On that occasion, the Government representative indicated that the Council was not yet functioning. The Committee notes the information provided by the Government in its report that vigilance committees for the prevention and combating of the trafficking of children, which are regional structures, oversee the phenomenon of trafficking in the interior of the country and take responsibility for the child victims. ***The Committee requests the Government to provide information on the functioning of the Council and the vigilance committees, in particular with respect to the number of child victims of trafficking who have been rehabilitated and integrated into society.***

2. *Labour inspection.* In its previous comments, the Committee noted that, under Decree No. 007141/PR/MTE/MEFBP of 22 September 2005 (Decree No. 007141 of 22 September 2005), a labour inspector may impose penalties directly in the case of offences relating to the trafficking of children. The Committee notes that, in its conclusions of June 2007, the Committee on the Application of Standards requested the Government to expand the authority of the labour inspection services in enforcing the law and to increase their human and financial resources. The Committee on the Application of Standards also requested the Government to ensure that regular visits were carried out by the labour inspectorate. In this regard, the Committee notes the Government's indication that a draft text is currently being examined with a view to the effective implementation of Decree No. 007141 of 22 September 2005. This draft text provides for the creation of a special inspectorate responsible for combating child labour. ***Referring to its observation made under the Labour Inspection Convention, 1947 (No. 81), the Committee expresses the firm hope that the draft text which is in the process of being examined will give effect to the recommendation of the Committee on the Application of Standards and will equip the special inspectorate responsible for combating child labour, with the means to enable it to enforce effectively the national legislation on the sale and trafficking of children. The Committee requests the Government to provide information on any developments relating to the adoption of the draft text.***

Article 7, paragraph 2. Effective and time-bound measures. The Committee notes ***with interest*** the document on the results of the Government's action to combat the trafficking of children, which contains detailed information on the measures taken in the context of the subregional project on combating the trafficking in children for labour exploitation in West and Central Africa (IPEC/LUTRENA), the activities of which were completed in 2007.

Clause (a). Preventing the engagement of children in the worst forms of child labour. 1. *Access to free basic education.* The Committee notes that, in its conclusions of June 2007, the Committee on the Application of Standards underlined the importance of free, universal and compulsory formal education in preventing the worst forms of child labour, and invited the Government to take the necessary measures to ensure access to free basic education for both boys and girls. In this regard, the Committee notes that, according to the UNICEF statistics from 2006, the net school attendance at the primary level is 94 per cent for girls and boys and, at the secondary level, 36 per cent for girls and 34 per cent for boys. Furthermore, the Committee notes that, according to the Education for All Global Monitoring Report of 2008, published by UNESCO and entitled *Education for All by 2015: Will we make it?*, at least 20 per cent of the country's primary school pupils are repeating or have repeated a year and the figure rises to more than 30 per cent for the first year of primary school.

The Committee takes note of the net school attendance rate at the primary level. However, it expresses concern at the rather low net school attendance rate at the secondary level and at the high level of repetition among pupils at the primary level. ***Considering that education contributes to preventing the engagement of children in the worst forms of child labour, and referring to the conclusions of the Committee on the Application of Standards of June 2007, the Committee strongly encourages the Government to continue its efforts to improve the functioning of the education system in the country. In this regard, it requests the Government to provide information on the time-bound measures taken to increase school attendance, particularly at the secondary level, and to reduce the repetition rate at the primary level. The Committee requests the Government to provide information on the results achieved.***

2. *Awareness-raising activities.* Referring to its previous comments, the Committee notes the indication of the Government's representative of June 2007 to the effect that a free hotline has been set up. Furthermore, it takes due note of the information provided by the Government that, in the context of combating the worst forms of child labour, awareness-raising campaigns have been organized with NGOs and a number of workers' organizations in order to explain to society the gravity of the phenomenon of the trafficking of children and its immorality, the traumatic consequences of this scourge on children and the penalties incurred by persons engaged in trafficking or all those who exploit minors. ***The Committee requests the Government to continue its efforts to prevent children from becoming victims of trafficking for labour exploitation and requests it to provide information on the results achieved in this regard.***

Clause (b). Assistance for the removal of children from the worst forms of child labour. Reception centre and medical and social assistance for child victims of trafficking. In its previous comments, the Committee noted that section 5 of Act No. 09/2004 of 21 September 2004 provides for the establishment of specific medical and social assistance for children who are victims of trafficking and for the establishment of reception centres for child victims of trafficking before their repatriation to their country of origin. It also noted that a national manual of procedures for dealing with child victims of trafficking has been prepared.

The Committee notes ***with interest*** the information provided by the Government's representative to the Committee on the Application of Standards in June 2007 to the effect that, during the period 2003–05, 200 individuals who had been victims of trafficking were removed from this worst form of child labour, of whom 137 were children aged between 5 and 16 years. Of these 137 children, 115 were girls, who are the most affected by the phenomena of trafficking and exploitation. Furthermore, two-thirds of these children have been reintegrated into their country of origin and the others in Gabon.

The Committee also notes the information provided by the Government in its report that the country has four reception centres, three in Libreville and one in Port-Gentil. Children removed from a situation of exploitation receive an initial medical visit a few days after their placement in a centre. Children who are ill are taken care of by doctors and, if necessary, hospitalized. Furthermore, with a view to their rehabilitation and social integration, children are supervised by specialist teachers and psychologists and benefit from social and educational activity programmes and administrative and legal support in association with the follow-up committee and vigilance committees. The Committee takes due note of the information provided by the Government that children removed from trafficking are, during their stay in the centres, according to their age, enrolled free of charge in public schools in which they benefit from the same advantages as other children. Those who have passed school age are enrolled in literacy centres. The Committee also notes the Government's indication that the national manual of procedures for dealing with child victims of trafficking has been adopted. It develops a four-stage process: (a) identification of the victim; (b) removal; (c) administrative action and psychosocial care; and (d) restoration, accommodation and return to the country of origin or reintegration into Gabon.

The Committee requests the Government to continue providing information on the time-bound measures taken to remove child victims of sale and trafficking, in particular, the number of children who have actually been removed from this worst form of labour. The Committee also requests the Government to provide information on the specific measures taken in the context of the national manual on procedures for dealing with child victims of trafficking to ensure their rehabilitation and social integration.

Article 8. International cooperation. Referring to its previous comments, the Committee emphasizes that it emerged from the discussion which took place within the Committee on the Application of Standards in June 2007 that it is necessary for the Government to continue its cooperation with neighbouring countries to combat the trafficking of children. Moreover, the Government representative indicated on that occasion that the possibility of taking measures to increase the number of police officers at land, maritime and aerial borders, setting up joint border patrols and opening transit centres of neighbouring countries was being envisaged.

The Committee takes due note of the information provided by the Government that, in July 2006, it signed the Multilateral Cooperation Agreement to Combat Trafficking in Persons, especially Women and Children in West and Central Africa. It also notes the Government's statement that it is negotiating a bilateral agreement with Benin regard to the trafficking of children. However, the Committee notes the Government's indication that it has not given full effect to the matters of increasing the number of police officers at land, maritime and aerial borders, setting up joint border controls and establishing transit centres of neighbouring countries. ***The Committee requests the Government to provide information on the measures taken to give effect to the Multilateral Cooperation Agreement to Combat Trafficking in Persons. Furthermore, the Committee expresses the hope that the bilateral agreement with Benin on the trafficking of children will be signed in the near future and requests the Government to provide information on any developments in***

this regard. Finally, the Committee expresses the firm hope that, under these two agreements, measures will be taken to increase the number of police officers at land, maritime and aerial borders, in particular through the establishment of joint patrols at borders and the opening of transit centres of neighbouring countries.

Part V of the report form. Application of the Convention in practice. The Committee emphasizes that, in its observation of 2004, it noted the statistics included in the additional information attached to the Government's initial report submitted to the Committee on the Rights of the Child in 2002 (GAB/1, page 12). According to these statistics, 25,000 children were working in Gabon, of whom between 17,000 and 20,000 were victims of trafficking. The Committee notes that, during the discussion which took place within the Committee on the Application of Standards in 2007, it was emphasized that there was a lack of recent statistical data on the trafficking of children in the country. In this regard, the Government representative indicated that the Government intended to carry out an analysis of the national situation concerning child trafficking in Gabon and a mapping of the trafficking routes and zones in which forced labour involving children was practised. The Committee notes that, in its conclusions of 2007, the Committee on the Application of Standards urged the Government to undertake a national study on child labour to assess the extent of the worst forms of child labour in the country. ***The Committee expresses the firm hope that the Government will carry out this analysis of the national situation concerning child trafficking in Gabon as soon as possible and requests the Government to provide information on this matter.***

The Committee is also addressing a direct request to the Government concerning other points.

Georgia

Minimum Age Convention, 1973 (No. 138) (ratification: 1996)

The Committee had previously noted the communication of the Georgian Trade Unions Confederation (GTUC) dated 30 August 2006. The Committee notes the Government's report and its reply to the issues raised by the GTUC.

Article 2, paragraph 1, of the Convention and Part V, of the report form. 1. *Minimum age for admission to employment and application of the Convention in practice.* In its communication, the GTUC had stated that according to UNICEF estimates, 30 per cent of children between the ages of 5 and 15 years work in Georgia and that there were reports of children between the ages of 7 and 12 years working on the streets of Tbilisi, in markets, carrying or loading wares, selling goods in underground carriages, railway stations, etc. Moreover, based on the information provided by the trade union of agricultural workers, the GTUC alleged that child labour is widespread in the agricultural sector at harvest time in several regions of Georgia.

In its replies, the Government states that in order to clarify the above allegations made by the GTUC, the Government had requested the GTUC to provide the documentation of the respective sources, including UNICEF statistical data and the information regarding child labour in the agricultural sector in the specially noted regions. But, unfortunately, the GTUC was unable to produce such data and just named a few organizations who conducted studies in 2000, 2003 and 2004. Moreover, the data prepared by UNICEF, which is available on its web site does not include the aforementioned statistics. The Government therefore states that the above allegations by the GTUC were based on unverified sources. The Committee further notes the Government's indication that, in the near future, UNICEF plans to conduct a study on street children which would possibly help the Government to evaluate the actual situation and to plan for specific measures.

The Committee, nevertheless, notes that according to the Multiple Indicator Cluster Survey (MICS), UNICEF 2005 (page 51) more than 18 per cent of the children aged 5–14 years were involved in child labour, mainly unpaid and working for a family business. The number of children involved in child labour varied in different regions, ranging from 12.8 per cent in Samegrelo-Zemo Svaneti to 26.1 per cent in Guria. The corresponding estimate from the MICS of 1999 was 30 per cent, implying an important drop in the percentage of children involved in labour. ***In this respect, the Committee requests the Government to pursue its efforts to ensure that no child under the age of 15 years performs child labour in any sector of economic activity. It also requests the Government to provide recent statistical information on the employment of children and young persons, in particular children working on the streets and in the agricultural sector.***

2. *Scope of application.* The Committee had previously noted the Government's indication that self-employment is not regulated by the legislation of Georgia. The Committee had, therefore, requested the Government to provide information on the manner in which the protection afforded by the Convention is secured for children who work in the agricultural sector, as well as those working on their own account. The Committee notes the Government's information that, according to section 4(2) of the Labour Code, the labour capacity of children below 16 years shall only be permitted in the case of consent from his/her legal representative, tutor or guardian, if it is not against his/her interests, does not damage his/her moral, physical or mental development and does not limit his/her right and ability to obtain elementary, compulsory and basic education. Consequently, a child between 14 and 16 years can be employed in different sectors, including agriculture, but subject to the above conditions. The Committee further notes the Government's information that, according to the Department of Statistics of Georgia, 95 per cent of employees in agriculture are engaged in small-scale farms and household cultivated lands of up to 1 hectare and do not use hired labour. The Government, therefore, states that children's work, if any, is not hired work and their work in the abovementioned family holdings cannot be considered as incompatible with the requirements of the Convention. The Committee reminds the Government that, by

virtue of the minimum age specified by it, children under 15 years of age shall not be permitted to work, regardless of the type of work performed, and whether it is paid or not, with the exception of light work, which can only be carried out under the conditions laid down in *Article 7* of the Convention. ***The Committee once again requests the Government to take the necessary measures to ensure that children working in the agricultural sector, as well as those working on their own account, are entitled to the protection afforded by the Convention. It also requests the Government to take measures to adapt and strengthen the labour inspection services, in order to ensure that the protection established by the Convention is applied to all self-employed children.***

Article 3, paragraph 1. Age of admission to hazardous work. The Committee had previously noted that, according to section 4(5) of the Labour Code of 2006, it is prohibited to conclude a contract with under age persons for hard, unhealthy and hazardous work. It had also noted section 4(4) of the Labour Code, which prohibits under age persons from entering into a contract for work related to the gambling business, in night entertainment institutions, pornography production and the production and conveyance of pharmaceutical and toxic substances. The Committee had requested the Government to indicate the legal provisions which defines under age persons as persons under the age of 18 years. The Committee notes ***with interest*** the Government's information that, according to section 12 of the Civil Code of Georgia, a minor is a person under the age of 18 years. The Government further states that the Labour Code does not provide for a definition different from that of the Civil Code of Georgia.

Article 3, paragraph 2. Determination of hazardous work. The Committee had previously noted that, under the new Labour Code, a draft list of hard, harmful and hazardous work has been elaborated and sent to the employees' and employers' organizations for approval. The Committee notes ***with satisfaction*** the Government's information that the Minister of Labour, Health and Social Affairs adopted Order No. 147/N, 3 May 2007 which provides for a list of heavy, hazardous and harmful works. ***The Committee requests the Government to supply a copy of the above Order No. 147/N along with its next report.***

Article 7, paragraphs 1 and 3. Light work and determination of light work. The Committee had previously noted the comments by the GTUC that the hours of work of young workers are not limited. As per section 14 of the Labour Code, if parties do not agree otherwise, a working week shall not exceed 41 hours, which is also applicable to young workers. The Committee notes the Government's reference to section 18 of the Labour Code which prohibits night work (10 p.m. to 6 a.m.) by young persons and section 4(2) which lays down the conditions of employment of children between 14 and 16 years. The Committee further notes the Government's statement that a child can be employed in different sectors, including agriculture, but subject to the conditions under section 4(2) of the Labour Code. The Committee observes, however, that the Labour Code does not contain provisions which prescribe the number of working hours during which young persons may work. The Committee once again recalls that, according to *Article 7, paragraph 3*, of the Convention, the competent authority shall determine the activities in which employment or work may be permitted and shall prescribe the number of hours during which such employment or work may be undertaken. ***The Committee accordingly requests the Government to take the necessary measures to determine light work activities and to prescribe the number of hours during which light work may be undertaken by young persons of 14 years of age and above, in conformity with the Convention.***

The Committee is also addressing a direct request to the Government concerning certain other points.

Guatemala

Minimum Age Convention, 1973 (No. 138) (ratification: 1990)

Article 2, paragraphs 1 and 4, of the Convention and Part V of the report form. Minimum age for admission to employment or work and application in practice. The Committee had previously noted that, according to the study entitled "Understanding child labour in Guatemala", carried out in 2000 by the National Statistical Institute, around 507,000 boys and girls aged between 7 and 14 years were engaged in work in Guatemala. The agricultural sector was the branch of economic activity with the most child workers (62 per cent), followed by commerce (16.1 per cent), manufacturing (10.7 per cent), services (6.1 per cent), and construction (3.1 per cent). The Committee noted that the Labour Code and the Act on the Integral Protection of Children and Young Persons of 2003 banned work by children under 14 years of age in any activity, including the informal economy. The Committee also noted the adoption of Government Agreement No. 112-2006 of 7 March 2006 issuing Regulations on the Protection of Children and Young Persons at Work (Regulations on the Protection of Children and Young Persons at Work) which bans work for children under 14 years of age and contains provisions on the protection of children and young people involved in an economic activity. It requested the Government to provide detailed information on the way in which the Convention is applied in practice, by providing in particular statistics on the nature, extent and trends of the employment of children under the specified minimum age.

In its report, the Government points out that the Special Labour Inspectors Unit under the Ministry of Labour and Social Welfare formulated a project, in 2006, with a view to monitoring the application of the provisions contained in the Labour Code and the Act on the Integral Protection of Children and Young Persons of 2003. The Committee also notes that, according to the Government, a public policy for the full protection of children and young persons as well as an Action Plan on Children and Young Persons (2004–15) have been adopted. While noting this information, the Committee

observes that the Government's report does not contain any statistics on the nature, extent and trends of child labour in the country. In this respect, it notes that, according to an ILO-IPEC report of June 2008 entitled "Elimination of child labour in Latin America. Third stage", a study on the living conditions in Guatemala was carried out in 2006.

Given the statistics mentioned above, the Committee states once again that it is very concerned about the number of children under 14 years of age obliged to work and urges the Government to step up its efforts to improve this situation. In this respect, it requests the Government to provide information on the measures taken, especially in the context of the implementation of the public policy for the full protection of children and young persons and the Action Plan on Children and Young Persons (2004–15), with a view to eliminating child labour. The Committee requests the Government to provide information on the results obtained. Finally, it requests the Government to provide a copy of the study on the living conditions in Guatemala, which was carried out in 2006.

Article 3, paragraph 2. Determination of hazardous types of work. Production and handling of explosive substances and objects. In its previous comments, the Committee noted the indication by the International Confederation of Free Trade Unions, now called the International Trade Union Confederation (ITUC), that child workers were engaged in extremely dangerous activities, such as the production of fireworks and in stone quarries. The ITUC pointed out that work in the fireworks industry was particularly dangerous and that children were often seriously injured. The Committee noted that the list of types of hazardous work determined by the Government included the fireworks industry and construction, including activities which entailed working with stone. The Committee took note of the measures taken by the Government to combat child labour in the fireworks industry, especially the adoption of Government Agreement No. 28-2004 of 12 January 2004 issuing regulations on firework production. The Committee noted that section 7(a) of the Government Agreement No. 250-2006 issuing regulations on the application of Convention No. 182 of the International Labour Organization on the worst forms of child labour and immediate action for their elimination (Regulation on the application of Convention No. 182) prohibited work by persons under 18 years of age in the manufacture, layout and handling of explosive substances or objects and the production of explosives or fireworks. It also noted that section 4(b) and (c) of the Regulation applied to employers and parents who used young persons under 18 years of age in any of the prohibited activities; furthermore, section 5 stipulated that such persons should be held responsible and liable to penalties. The Committee requested the Government to provide information on the implementation of the Regulation on the application of Convention No. 182 in practice.

In its report, the Government points out that the Department on Training in Labour Matters, under the Ministry of Labour and Social Welfare, has conducted information and awareness-raising workshops on the hazards of the fireworks industry, especially for children, in more than 69 small enterprises and for the families of workers employed in these enterprises. It also mentions that labour inspectors have carried out 28 visits to factories manufacturing fireworks. Furthermore, the Ministry of Education had introduced a programme of grants entitled "Grants for peace", to ensure that no person under 18 years of age should be employed in the fireworks sector and in public refuse dumps. According to the Government, 4,320 grants were awarded to students from 21 schools. The Committee takes due note of the efforts made by the Government to end the employment of children under 18 years of age in this dangerous activity. It notes, however, that the Government's report does not contain any information on the results obtained when it visited the 28 factories manufacturing fireworks. *It therefore requests the Government to provide information on the implementation of the Regulation on the application of Convention No. 182 in practice, by giving details on the inspections carried out by the labour inspectors in the factories manufacturing fireworks, submitting extracts from the reports of the inspection services, and specifying the number and nature of violations recorded and the penalties applied.*

The Committee is also addressing a direct request to the Government concerning other points.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3, paragraph (a), of the Convention and Part III of the report form. Sale and trafficking of children for commercial sexual exploitation and court decisions. In its previous comments, the Committee noted the comments made by the International Confederation of Free Trade Unions, now the International Trade Union Confederation (ITUC), reporting the problem of trafficking of persons for prostitution in Guatemala, of whom the majority of child victims were from neighbouring countries and particularly from the border regions with Mexico and El Salvador. The Committee also noted the comments made by the Trade Union Confederation of Guatemala (UNSTRAGUA) according to which many girls and boys who are victims of trafficking for sexual exploitation are from neighbouring countries. Finally, it noted that section 194 of the Penal Code prohibits the trafficking of persons, including minors, for exploitation, prostitution, pornography or any other form of sexual exploitation.

The Committee notes that the Committee on the Rights of the Child, in its concluding observations on the Government's initial report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of July 2007 (CRC/C/OPSC/GTM/CO/1, paragraphs 8, 12 and 22) expressed concern at the increasing incidence of commercial sexual exploitation of children and the high number of victims in the country, estimated by the Government at 15,000 victims. The Committee on the Rights of the Child also noted reports that child victims are penalized and institutionalized during prolonged periods awaiting decisions in their cases. The Committee also notes that, according to a Trafficking in Persons Report of 2008, available on the UNHCR web site (www.unhcr.org), trafficking in persons is a significant and growing problem in the country. Guatemala is a source, transit

and destination country. According to this report, Guatemalan children are victims of internal trafficking for commercial sexual exploitation or cross-border trafficking to Mexico or the United States for the same purpose. Furthermore, the border areas with Mexico and Belize remain a top concern due to the heavy flow of undocumented migrants, many of whom fall victims to traffickers. The report also indicates that Guatemala is a destination country for victims of trafficking for sexual exploitation from El Salvador, Honduras and Nicaragua.

In its report, the Government indicates that, since November 2007, the Trafficking in Persons Unit has conducted a number of investigations relating to commercial sexual exploitation. These investigations have led to 37 prosecutions for trafficking in persons. The Committee also notes that, according to the information contained in the ILO-IPEC report of September 2008 on the regional project entitled "Stopping exploitation: Contribution to the prevention and elimination of the commercial sexual exploitation of children in Central America, Panama and the Dominican Republic" (the project on the prevention and elimination of the commercial sexual exploitation of children), an initiative for the adoption of a law against violence, exploitation and trafficking for the purposes of sexual exploitation was submitted to the Congress of the Republic in August 2008. Furthermore, according to the information contained in the ILO-IPEC report of September 2008, one person has been sentenced for the trafficking of children and 16 cases are in the process of being investigated. Finally, according to this report, the reform of the Penal Code is still under way.

The Committee notes the measures taken by the Government, particularly those of a legislative nature, against the sale and trafficking of children for commercial sexual exploitation. However, it is very concerned that concordant information from various sources confirm the persistence of the problem in the country, which seems to be of considerable magnitude. The Committee also expresses concern at the practice which exists of punishing child victims of trafficking or institutionalizing them for long periods. ***The Committee therefore urges the Government to take immediate and effective measures to ensure the protection of children under 18 years of age against sale and trafficking for sexual exploitation. In this regard, it requests the Government to provide information on the application in practice of the provisions of the Penal Code prohibiting the sale and trafficking of children for sexual exploitation, by providing, in particular, statistics on convictions and the penal sanctions imposed. Furthermore, taking into account the information that investigations are conducted and individuals are prosecuted, the Committee requests the Government to provide the court decisions handed down. Finally, it requests the Government to provide a copy of the law against violence, exploitation and trafficking for sexual purposes and of the amended Penal Code as soon as they have been adopted.***

Article 5. Monitoring mechanisms. The Committee takes due note that, according to the information contained in the ILO-IPEC report of September 2008 on the project to prevent and eliminate the commercial sexual exploitation of children, awareness-raising and training activities on commercial sexual exploitation and the sale and trafficking to that end have been organized for judges, local authorities and police forces.

Article 6. Programmes of action. National Plan of Action to combat the commercial sexual exploitation of children. Referring to its previous comments, the Committee notes that, according to the information contained in the ILO-IPEC report of September 2008 on the project on the prevention and elimination of the commercial sexual exploitation of children, the National Plan of Action to combat the commercial sexual exploitation of children is to be revised. ***The Committee requests the Government to provide a copy of the new Plan of Action and information on the programmes of action which will be adopted in the context of its implementation.***

Article 7, paragraph 2. Effective and time-bound measures. The Committee notes that, according to the information contained in the ILO-IPEC report of September 2008 on the project on the prevention and elimination of the commercial sexual exploitation of children, of the total of 2,573 children who have benefitted from the project in the participating countries, 1,409 have been prevented from becoming victims of trafficking or commercial sexual exploitation and 1,164 have been removed from this worst form of child labour.

Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these forms of labour and ensuring their rehabilitation and social integration. 1. *Regional project on the prevention and elimination of the commercial sexual exploitation of children.* Referring to its previous comments, the Committee notes ***with interest*** that, according to the information contained in the ILO-IPEC report of September 2008 on the project for the prevention and elimination of the commercial sexual exploitation of children, between March and April 2008, of a total of 84 children who benefitted from the project, 30 were prevented from becoming victims of commercial sexual exploitation or trafficking to that end and 54 were removed from these worst forms of labour. The Committee also notes that these children have either been reintegrated into the formal or informal school system or have received other training.

The Committee takes due note of the information provided by the Government that a public policy against the trafficking of persons and for the full protection of the victims and a National Plan of Strategic Action (2007-17) were adopted in 2007. According to the Government, this public policy and the National Plan aim to provide for immediate and full protection of the victims, namely medical and psychological care and reintegration into the family and society. ***The Committee requests the Government to provide information on the time-bound measures taken in the context of the implementation of the ILO-IPEC regional project for the prevention and elimination of the commercial sexual exploitation of children and on the results achieved to: (a) prevent children from becoming victims of commercial sexual exploitation or trafficking for that purpose; and (b) provide the necessary and appropriate direct assistance to remove the child victims from these worst forms of child labour. With regard to the public policy against the trafficking of persons and for the full protection of the victims and the National Plan of Strategic Action (2007-17), the***

Committee requests the Government to provide information on the specific time-bound measures taken in the context of their implementation, to ensure the rehabilitation and social integration of the child victims removed from these worst forms of labour.

2. *Tourist activities.* In its previous comments, the Committee asked the Government to provide information on the measures taken to raise the awareness of the actors directly involved in the tourist industry. The Committee notes the Government's indication that the Guatemalan Institute of Tourism (INGUAT) has undertaken to promote, at the national scale, a process of training and awareness raising of the tourist industry for the years 2007–10 to prevent the formation of trafficking networks, particularly for commercial sexual exploitation, and to detect their activities. It also notes the Government's indication that the Global Code of Ethics for Tourism is promoted in the country and, in 2008, a plan of action to implement the Code of Conduct for the tourism sector for the protection of children against commercial sexual exploitation will be devised. **The Committee takes due note of the measures taken by the Government to raise the awareness of the actors directly involved in the tourist industry and urges it to continue its efforts in that regard.**

Article 8. International cooperation. Trafficking of children for commercial sexual exploitation. The Committee previously noted that, in the context of the implementation of the public policy and National Plan of Action for Childhood (2004–15), the Government planned to adopt measures in collaboration with neighbouring countries with a view to bringing to an end the sale and trafficking of girls, boys and young persons for the purposes of sexual exploitation.

The Committee notes the statistics provided by the Government according to which, for the year 2000, 1,981 children travelling with their parents were recorded in the register of migrant workers of the labour migration office of the village of El Carmen and, between January and July 2008, 1,290 were recorded. It takes due note of the Government's indication that a new labour migration office will open in the town of Tecún Umán. The Committee notes that the National Protocol for the repatriation of boys, girls and young persons who are victims of trafficking was adopted in 2007. Furthermore, a document has been adopted on the regional directives for the special protection for returning boys, girls and young persons who have been victims of trafficking (regional directives for the special protection of returning victims of trafficking), the purpose of which is to promote cooperation between member countries of the Regional Conference on Migration.

The Committee notes, however, that the Committee on the Rights of the Child, in its concluding observations of July 2007 (CRC/C/OPSC/GTM/CO/1, paragraph 29), while recognizing the existence of relevant memorandums of understanding with neighbouring countries of Guatemala, expressed concern that undocumented foreign children, including victims of trafficking, are subject to deportation and must leave the country within 72 hours. **The Committee is also concerned at this situation and expresses the firm hope that the implementation of the National Protocol for the repatriation of boys, girls and young persons who have been victims of trafficking and of the regional directives for the special protection for returning victims of trafficking will allow this situation to be remedied. In this regard, it requests the Government to provide information on the measures taken to ensure the rehabilitation and social integration of child victims removed from trafficking for commercial sexual exploitation in their country of origin.**

Furthermore, the Committee is also addressing a direct request to the Government concerning other points.

Honduras

Minimum Age Convention, 1973 (No. 138) (ratification: 1980)

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee noted that, in its concluding observations on the third periodic report by the Government in February 2007, the Committee on the Rights of the Child expressed concern at: the lack of funds allocated for the implementation of the National Plan of Action for the Prevention and Gradual and Progressive Elimination of Child Labour; the large number of children, especially in rural areas and among indigenous peoples, working under exploitative conditions, including children engaged in deep sea fishing in Puerto Lempira; and young persons between 14 and 17 years of age working in mines (CRC/C/HND/CO/3, paragraph 72). The Committee however noted that a new national plan of action for the prevention and gradual and progressive elimination of child labour, which would be closely linked to the worst forms of child labour, was under preparation. It strongly encouraged the Government to redouble its efforts to combat child labour and requested it to provide information on the implementation of the new national plan of action.

The Committee notes that the Government has not provided information in its report. The Committee notes that the Government signed a third Memorandum of Understanding (MoU) with ILO–IPEC in July 2007. Moreover, it notes **with interest** the information provided by the Government in its report under Convention No. 182 that the National Commission for the Gradual and Progressive Elimination of Child Labour (CNEGTE) has developed a second National Plan of Action for the Gradual and Progressive Elimination of Child Labour in Honduras (2008–15) (National Plan of Action for the Elimination of Child Labour (2008–15)). The objective of this second plan of action is to determine the appropriate measures which governmental institutions, with the participation of civil society and international cooperation, should take to prevent and eliminate child labour. The Committee further notes that, according to an ILO–IPEC report of January 2008 on the project for the “Elimination of Child Labour in Latin America Third Phase” (ILO–IPEC report of January 2008), a programme of action has recently been launched with the objective of contributing to preventing and

removing indigenous girls, boys and young persons from child labour. The Committee further notes that the Government signed a tripartite agreement in August 2007 relating to the adoption of the Decent Work Country Programme, which takes child labour into account. However, the Committee notes that, according to the 2006 statistics contained in a CNEGPTTE document on the second National Plan of Action for the Elimination of Child Labour (2008–15), 299,916 girls, boys and young persons aged between 5 and 17 years were economically active. Of this number, 21.51 per cent were girls and 78.49 per cent were boys. Moreover, 72 per cent of the children engaged in work live in rural areas, and 28 per cent in urban areas. Children work principally in agriculture, forestry, fishing and domestic work (56.2 per cent); businesses, hotels and restaurants (24.4 per cent); manufacturing (8.2 per cent); construction (3 per cent); and transport, shops and distribution (1 per cent).

The Committee expresses appreciation of the measures adopted by the Government for the abolition of child labour and considers these measures as an affirmation of its political will to develop strategies to combat the problem. The Committee however expresses concern at the persistence of child labour in practice. ***It therefore firmly requests the Government to continue its efforts for the abolition of child labour. In this respect, the Committee requests the Government to provide information on the measures that are taken in the context of the second National Plan of Action for the Elimination of Child Labour (2008–15), and particularly the programmes of action that are implemented, and of the Decent Work Country Programme, with a view to the progressive abolition of child labour. It requests the Government to provide information on the results achieved. The Committee also invites the Government to provide information on the application of the Convention in practice including, for example, statistical data on the employment of children and young persons, extracts from the reports of the inspection services, and particularly inspections in the sectors referred to above.***

Article 2, paragraph 1. Scope of application. The Committee has observed previously that it would be necessary to amend section 2(1) of the Labour Code, which excludes from its scope agricultural and stock-raising undertakings that do not permanently employ more than ten workers, so that the minimum age provisions contained in the Labour Code apply to this category of workers. In this respect, the Committee notes the Government's indication that the draft revision of the Labour Code contains provisions to bring national labour legislation into conformity with the international Conventions ratified by Honduras, and accordingly to harmonize the provisions of the Labour Code and the Regulations on Child Labour of 2001 with the Code for Children and Young Persons of 1996. This should ensure that the provisions relating to the minimum age for admission to work apply to children working under an employment contract or on their own account. Furthermore, the Committee notes the statistics contained in the national report on child labour in Honduras of 2002, according to which 54.3 per cent of children between the ages of 5 and 9 years and 59.8 per cent of those aged between 10 and 14 years worked in agriculture, forestry, hunting and fishing. Furthermore, 6.2 per cent of children between the ages of 5 and 17 years worked on their own account in urban areas and 7 per cent in rural areas. The Committee notes that the Government's report does not contain any information on this subject. ***Recalling once again that it has been raising this issue for a number of years, and taking into account the worrying statistics referred to above, the Committee expresses the firm hope that the draft revision of the Labour Code will be adopted as soon as possible and that it will contain provisions guaranteeing the protection provided for by the Convention in respect of children working in agricultural and stock-raising undertakings that do not permanently employ more than ten workers. It requests the Government to provide information in this respect. Furthermore, the Committee asks the Government to envisage the possibility of adapting and strengthening the labour inspection services so as to ensure the application of this protection.***

Article 2, paragraph 3. Age of completion of compulsory schooling. In its previous comments, the Committee noted that, in its concluding observations on the Government's third periodic report in February 2007, the Committee on the Rights of the Child expressed concern at the high percentage of children who do not attend school (CRC/C/HND/CO/3, paragraph 72). The Committee notes that, according to UNICEF statistics for 2006, the net school attendance rate in primary education is 80 per cent for girls and 77 per cent for boys, and that the rate for secondary education is 36 per cent for girls and 29 per cent for boys. It also notes the information contained in the ILO–IPEC report of January 2008 that the objectives of the plan for Education for All by 2015 will not be achieved. However, the Committee notes that, according to the ILO–IPEC report of January 2008, a preliminary draft of a General Education Act, to replace the Framework Act of 1966, has been submitted to the Directorate of Education. The new law, among other measures, establishes compulsory and free schooling for ten years, consisting of one year of pre-school and nine years of primary schooling. The Committee further notes that, according to the ILO–IPEC report of January 2008, the programme of action for the elimination of child labour in the fireworks industry directly benefitted 770 girls and boys, who have been integrated into the formal education system.

While noting that the net school attendance rate at the primary level is relatively good, the Committee expresses concern at the fact that the country will not achieve the objectives for Education for All in 2015. It also expresses concern at the low rate of net school attendance at secondary school. It observes that poverty is one of the primary causes of child labour and that, when combined with a defective education system, it hinders the development of children. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee firmly requests the Government to redouble its efforts to improve the operation of the education system in the country and to take measures to enable children to attend compulsory basic education or to be integrated into an informal school system. In this respect, it requests the Government to provide information on the measures adopted to increase the school***

attendance rate, at both primary and secondary school, with a view to preventing children under 14 years of age from being engaged in work. The Committee requests the Government to provide information on the results achieved. Finally, the Committee once again requests the Government to provide a copy of the General Education Act once it has been adopted.

Article 2, paragraph 4. Minimum age for admission to employment or work. The Committee noted previously that under section 120(2) of the Code for Children and Young Persons of 1996, a minor under 14 years of age may not, under any circumstances, be permitted to work. It also noted that under section 32(1) of the Labour Code, young persons under 14 years and those having reached this age who are still engaged in compulsory education are not allowed to work. However, it noted that, under section 32(2) of the Labour Code, the authorities responsible for supervising work by persons under 14 years of age may permit them to work if they consider that it is indispensable to provide for their subsistence or that of their parents or their brothers and sisters, and provided that it does not prevent them from following compulsory schooling. The Committee reminded the Government that, under *Article 2, paragraph 1*, of the Convention, *no one under the age specified shall be admitted to employment or work in any occupation, subject to the derogations envisaged in Articles 4 to 8 of the Convention. Noting that the Government's report does not contain any information on this subject, the Committee once again expresses the firm hope that, in the context of the revision of the Labour Code, the Government will take into account the above comments. It requests the Government to provide information on the measures adopted or envisaged to ensure that no minor under 14 years of age is authorized to work in any sector of economic activity.*

Article 3, paragraph 2. Determination of hazardous types of work. Further to its previous comments, the Committee notes *with satisfaction* the adoption of Agreement No. STSS-097-2008 of 12 May 2008 amending section 8 of the Child Labour Regulations and adopting a detailed list of types of hazardous work that are prohibited for persons under 18 years of age. It also notes that this Agreement was adopted in consultation with the organizations of employers and workers. Furthermore, the Committee notes that the Agreement provides that the list of hazardous types of work shall be revised and updated every three years.

Article 3, paragraph 3. Hazardous work from the age of 16 years. In its previous comments, the Committee noted that, under section 122(3) of the Code for Children and Young Persons of 1996, young persons between 16 and 18 years of age may be permitted to perform hazardous types of work, as enumerated in the list contained in section 122(2) of the Code, if so approved for this purpose by technical studies undertaken by the National Vocational Training Institute or a specialized technical institute under the responsibility of the Secretariat of State for Public Education. In this respect, the Government indicated that the Department of Labour and Social Security examines the technical studies with a view to certifying that the workloads associated with the tasks in question can be performed by young persons between 16 and 18 years of age and that occupational safety measures are adopted in order to minimize the dangers to their health and safety. The Government added that the use of the term “could” in section 122 of the Code for Children and Young Persons means that a work permit for a young person over 16 years of age may only be granted in cases in which, in the view of the Department of Labour and Social Security, the work would not prejudice the young person. Moreover, for work to be permitted by a young person, the latter must attend school. While taking due note of the information provided by the Government, the Committee recalled that, in accordance with *Article 3, paragraph 3*, of the Convention, the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. The Committee notes that the Government has not provided information on this subject. *In view of the fact that, according to the statistics contained in the national report on child labour in the Honduras of 2002, a large number of children still work in hazardous activities, the Committee once again requests the Government to take the necessary measures to ensure that, where a young person of 16 years of age is permitted to perform hazardous types of work, the conditions set forth in this provision of the Convention are observed. It requests the Government to provide information in this respect and to indicate the number of work permits granted by the Department of Labour and Social Security to young persons between the ages of 16 and 18 years.*

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3, clauses (a) and (b), of the Convention and Part III of the report form. Sale and trafficking of children for commercial sexual exploitation, use of children for prostitution or for the production of pornography or for pornographic performances and court decisions. In its previous comments, the Committee noted with satisfaction the adoption of Decree No. 234–2005 of 28 September 2005, reforming the Penal Code. It noted that the new provisions of the Code prohibit: the procuring and the international and internal trafficking of persons for commercial exploitation; the use of young persons under 18 years of age in exhibitions or performances of a sexual nature and in the production of pornography; and the promotion of the country as a tourist destination accessible for sexual activities. The Committee noted, however, that, according to the information contained in the ILO–IPEC reports on the subregional project entitled “Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama and the Dominican Republic” (the ILO–IPEC subregional project on the commercial sexual exploitation of children), in which Honduras is participating along with Belize, Costa Rica, El Salvador, Guatemala and Nicaragua, despite the progress achieved, the problem of the commercial sexual exploitation of young persons under 18 years of age

still persists in the country. In this regard, the Committee noted that, in its concluding observations of February 2007 on the Government's third periodic report (document CRC/C/HND/CO/3, paragraph 78), the Committee on the Rights of the Child expressed concern that the commercial sexual exploitation of children is common in Honduras. It asked the Government to provide information on the application of the new provisions in practice.

The Committee notes that the Government's report does not contain any information on this subject. It duly notes, however, that, according to a 2007 report on the ILO-IPEC subregional project on the commercial sexual exploitation of children, the new provisions of the Penal Code have been implemented and individuals have been prosecuted. ***The Committee requests the Government to ensure, in practice, the protection of children under 18 years of age against this worst form of child labour. In this regard, it once again requests the Government to provide information on the application of the new provisions of the Penal Code in practice. Furthermore, taking into account the information that individuals have been prosecuted under these new provisions, the Committee requests the Government to provide the court decisions handed down in accordance with these provisions in its next report.***

Article 5. Monitoring mechanisms. The Committee notes ***with interest*** that, according to the information contained in the report of March 2007 on the ILO-IPEC subregional project on the commercial sexual exploitation of children, steps have been taken to strengthen the capacities of the Office of the Attorney General with regard to children. As a result, the Office is now in a better position to investigate cases of commercial sexual exploitation of children and to take steps to prevent and eliminate this worst form of child labour.

Article 7, paragraph 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. Referring to its previous comments, the Committee notes that, according to UNICEF statistics from 2006, the net attendance rate at primary school level is 80 per cent for girls and 77 per cent for boys, and at the secondary level, 36 per cent for girls and 29 per cent for boys. It also notes the information contained in a report of January 2008 on the ILO-IPEC project entitled "Elimination of child labour in Latin America. Phase III", according to which the goals of the plan on Education for All by 2015 will not be achieved. The Committee duly notes that, according to the document of the National Committee on the Gradual and Progressive Elimination of Child Labour (CNEGPT) on a second National Plan of Action for the gradual and progressive elimination of child labour in Honduras (2008–15) (the 2008 National Plan of Action), education is one of the components of the Plan. In this regard, it notes that the specific goal under this component is to promote access to education and ensure school attendance.

Although noting that the net rate of school attendance at the primary level is relatively high, the Committee expresses concern at the fact that the country will not achieve the goals on Education For All by 2015. It also expresses concern at the low net rate of school attendance at the secondary level. ***Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to step up efforts to improve the operation of the education system in the country. In this regard, it requests the Government to provide information on the time-bound measures taken during the implementation of the 2008 National Plan of Action to increase the rate of school attendance, both at the primary and secondary levels. The Committee requests the Government to provide information on the results achieved.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour. Commercial sexual exploitation. ILO-IPEC subregional project. Referring to its previous comments, the Committee duly notes the information provided by the Government that 134 girls and boys benefited from the ILO-IPEC subregional project on the commercial sexual exploitation of children in 2007. It also duly notes that, according to a 2007 report on that ILO-IPEC subregional project a system of assistance for victims of commercial sexual exploitation has been established. Furthermore, it notes that the National Plan of Action for the prevention and elimination of commercial sexual exploitation of girls, boys and adolescents in Honduras (2006–11) (the 2006 National Plan of Action) aims to: (a) prevent children from becoming victims of commercial sexual exploitation or trafficking for this purpose; and (b) provide the necessary and appropriate direct assistance for the removal of the child victims of these worst forms of child labour. ***The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the time-bound measures taken in the context of the implementation of the ILO-IPEC subregional project on the commercial sexual exploitation of children and the 2006 National Plan of Action. The Committee also requests the Government to provide information on the system of assistance for victims of commercial sexual exploitation, in particular concerning the measures taken in the context of this system to ensure the rehabilitation and social integration of victims of this worst form of child labour.***

Clause (d). Children at special risk. 1. Street children. In its previous comments, the Committee noted that, in its concluding observations of February 2007 (document CRC/C/HND/CO/3, paragraph 74), the Committee on the Rights of the Child, while noting the adoption of the National Plan of Action for the social integration of dependent children and women in the streets, expressed concern at the high number of street children and at the lack of information in this respect. The Committee notes that the Government does not provide any information on this subject. It reminds the Government that street children are particularly exposed to the worst forms of child labour. ***The Committee therefore requests the Government once again to provide information on the time-bound measures taken, in the context of the implementation of the National Plan of Action for the social integration of dependent children and women in the streets, to protect street children from the worst forms of child labour. Furthermore, the Committee requests the***

Government to provide information on the measures taken to ensure the rehabilitation and social integration of children who are actually removed from the streets.

2. *Indigenous children.* The Committee previously noted that, in its concluding observations of February 2007 (document CRC/C/HND/CO/3, paragraph 21), the Committee on the Rights of the Child expressed concern at the lack of information concerning the most vulnerable groups, including indigenous children. The Committee notes *with interest* that, according to the information provided by the Government, a programme of action aimed at contributing to the prevention and removal of indigenous girls, boys and adolescents from child labour benefited 300 persons between October 2007 and February 2008. The Committee also notes that, according to the information available to the ILO–IPEC, a study on indigenous children has been carried out in the country. ***Noting that indigenous children are often victims of exploitation, which may take on very different forms, and are at risk of being engaged in the worst forms of child labour, the Committee requests the Government to continue its efforts to protect these children, in particular by adopting measures to make them less vulnerable. It requests the Government to provide information in this regard.***

Clause (e). Special situation of girls. Child domestic labour. The Committee previously noted that, according to the statistics contained in a study carried out in 2003 by the ILO–IPEC entitled “Child domestic labour in Honduras”, 94.3 per cent were girls. The Committee notes that, according to the 2006 statistics contained in a document of the CNEGPTE on the second National Plan of Action for the elimination of child labour (2008–15), a high number of children, particularly girls, are engaged in domestic work. It emphasizes that children engaged in domestic work, particularly young girls, are often victims of exploitation, which may take on very diverse forms, and that it is difficult to supervise their conditions of employment. ***The Committee therefore requests the Government to take effective and time-bound measures, particularly in the context of the implementation of the 2008 National Plan of Action, to protect child domestic workers against the worst forms of child labour. It requests the Government to provide information on the measures taken in this regard.***

Article 8. International and regional cooperation. Commercial sexual exploitation. In its previous comments, the Committee noted that the ILO–IPEC subregional project on the commercial sexual exploitation of children provided for the strengthening of horizontal collaboration between countries participating in the project. The Committee held the view that cooperation between law enforcement agencies, particularly the judicial authorities and police forces, is indispensable to prevent and eliminate commercial sexual exploitation, and particularly the sale and trafficking of children for that purpose, through the collection and exchange of information and through assistance to detect and prosecute the individuals involved and to repatriate victims. The Committee notes that the Government’s report does not contain any information on this subject. ***It therefore expresses the hope once again that, in the context of the implementation of the ILO–IPEC subregional project on the commercial sexual exploitation of children, the Government will take measures to cooperate with the participating countries and therefore strengthen security measures, particularly on the common borders with El Salvador, Guatemala and Nicaragua, with a view to bringing an end to this worst form of child labour. It requests the Government to provide information on this subject in its next report.***

Furthermore, the Committee is also addressing a direct request to the Government concerning other points.

Indonesia

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 2, paragraph 1, of the Convention. Scope of application. 1. Self-employment. The Committee had previously noted the indication of the International Trade Union Confederation (ITUC), according to which child labour was widespread in Indonesia and most child labour took place in informal, unregulated activities, such as street vending, agricultural and domestic sectors. The Committee had also noted that Act No. 13 of 2003 (Manpower Act) appears to exclude from its application children who are engaged in self-employment or in employment without a clear wage relationship. The Committee notes the Government’s information that three workshops, with representatives from governmental and non-governmental organizations, as well as universities and the police force, were conducted in 2006 and 2007 to discuss appropriate solutions to deal with the situation of children working outside an employment relationship. The Government also indicates that a draft Government regulation on guidance concerning children working outside an employment relationship has been elaborated which aims to protect self-employed children, in accordance with section 75 of the Manpower Act. ***The Committee expresses the hope that the draft Government regulation on guidance concerning children working outside an employment relationship will be adopted in the very near future. It requests the Government to provide a copy of the draft Government regulation as soon as it has been adopted and to provide information on the progress made in this regard.***

2. *Domestic work.* The Committee had previously noted the ITUC’s allegation in its communication of 6 September 2005 that girls as young as 12 years routinely work 14–18 hours a day, seven days a week, without a day off. It had noted the ITUC’s information that, although Indonesia ratified the Minimum Age Convention, 1973 (No. 138), and national law sets the minimum age for employment at 15 years, girls were found typically entering domestic work between the ages of 12 and 15, and some begin work even earlier. The Committee had also noted that the ITUC had indicated that it appeared that the Government had failed to take meaningful action to protect domestic workers – who

number at a minimum 688,000 children – from exploitation and abuse, and that laws enacted to protect children from labour exploitation do not address child domestic labour.

The Committee notes that, according to the final report for the ILO–IPEC project entitled “Prevention and Elimination of Exploitative Child Domestic Work through Education and Training” (March 2004 – February 2006), the Association of Indonesia Domestic Workers Suppliers (APPSI) became involved in the movement to combat child domestic labour and, as a result, the project was able to reach out to the maximum number of potential child domestic workers and existing child domestic workers to protect their rights as children. However, the final report indicates that the Ministry of Manpower of Indonesia needs to be supported to set a legal framework for the protection of domestic workers. In this regard, the Committee notes the Government’s information that a draft Act on Domestic Workers’ Protection has been formulated, but that the elaboration of the final draft will take time because of the social, economic and cultural conditions in Indonesia. The Committee further notes the Government’s information that, in collaboration with non-governmental organizations, it has been making efforts to protect domestic workers, including emphasizing to APPSI the need to undertake to not supply children under 15 years of age for domestic work. The Committee once again expresses its deep concern at the situation of children under the age of 15 who work as domestic workers. ***It urges the Government to redouble its efforts to improve the situation and to ensure that children under 15 do not perform domestic work. It requests the Government to take all the necessary measures to ensure that the draft Act on Domestic Workers’ Protection is adopted in the very near future, so that child domestic workers benefit from the protection of the Convention. It also asks the Government to provide information in its next report on progress made in this regard.***

Article 7. Light work. The Committee had previously noted the Government’s statement that ongoing discussions were being held regarding the criteria for the types of light work activities that may be performed by children aged between 13 and 15 years. It notes the Government’s information that activities which may be performed by children between 13 and 15 years of age are regulated by section 71 of the Manpower Act and by Ministerial Decree No. Kep 115/MEN/VII/2004, which establish the conditions under which children may be employed for developing talents and interests. The Committee observes that section 15 of the Ministerial Decree establishes some conditions for the employment of children under 15 years of age: obligation of a written agreement; assignment to be undertaken outside school hours; maximum working period of three hours a day and 12 hours a week; and respect of occupational safety and health regulations. However, the Committee also observes that no minimum age is set for children employed for developing talents and interests. If the Government intends to define light work activities as being activities for developing talents and interests, the Committee must remind the Government that, according to *Article 7, paragraph 1*, of the Convention, national laws or regulations may permit persons from 13 to 15 years of age to undertake light work. ***The Committee therefore requests the Government to take measures to ensure that only children aged at least 13 years are allowed to work or be employed for light work activities, including activities for developing talents and interests. It asks the Government to provide information on developments in this regard.***

Article 9, paragraph 3. Keeping of registers. In its previous comments, the Committee had noted that there is no provision in the Manpower Act, or in any other available legislation, prescribing that a register be kept and made available by the employer. It had noted the Government’s information that the labour inspectorate ensures that employers keep registers of children employed for developing their talents and interests. The Committee further notes that, while the Government indicates that it has attached a copy of the register form to its report, no such form was in fact sent to the Office. ***Noting the lack of information in the Government’s report on this point, the Committee once again requests the Government to indicate whether – apart from the case of employers who employ children for developing their talents and interests – registers are kept by employers containing 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. If so, the Committee once again requests the Government to provide a copy of the register form. If not, it urges the Government to take the necessary measures to ensure that every employer, regardless of the number of the persons he/she employs and of the type of work, keeps a register indicating the name and age or date of birth, duly certified whenever possible, of persons whom he/she employs or who work for him/her and who are less than 18 years of age, in the very near future.***

Part V of the report form. Application of the Convention in practice. The Committee notes that, according to the ILO–IPEC project entitled “Enhancing national capacity in child labour data collection, analysis and dissemination through technical assistance to surveys, research and training”, due to be completed on 30 September 2010, reliable national-level information on children in the age group of 5 to 17 years engaged in economic activities does not exist in Indonesia. It notes that the project aims to conduct a nationwide child labour survey as an add-on to a regular nationwide survey implemented by the national statistical office, BPS-Statistics Indonesia. The project will promote more effective national responses to child labourers and at-risk children by building national capacity in the collection and use of data upon which these responses are based. ***The Committee requests the Government to provide statistical data on the employment of children and young persons once it is available. It also requests the Government to provide information on the manner in which the Convention is applied, including extracts from the reports of inspection services, information on the number and nature of contraventions reported and penalties applied.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 5 of the Convention. Monitoring mechanisms. The police and immigration officers. The Committee had previously noted that the police were carrying out investigations into prostitution areas in different provinces which sometimes resulted in the arrest of the perpetrators of trafficking and the finding and returning of victims to their places of origin. It had also noted that a two-year police training project was launched in August 2003, with the support of ILO-IPEC. The Committee had noted that 64 trafficking cases were filed in 2006 involving 177 children, of which 35 were before the courts while the rest were under investigation.

The Committee notes that, according to the technical proposal for the second phase of the National Plan of Action on the Elimination of the Worst Forms of Child Labour (NPA) of 25 July 2007 (“technical proposal”), law enforcement against traffickers increased in 2006, with arrests up from the previous year by 29 per cent, prosecutions up 87 per cent, and convictions up 112 per cent. It notes the Government’s information that, in 2007, 123 trafficking cases were filed involving 71 children, of which 49 are before the courts, 70 are under investigation and three are under observation. The Government also indicates that it is taking measures to enhance the capacities of the police, immigration officers and labour inspectors. In this regard, it has conducted training on human trafficking for 38 police officers and 20 immigration officers; on preventing human trafficking for 19 police officers and five immigration officers; on investigating human trafficking for 25 police officers; and on border crimes for public prosecutors, judges and the police. ***The Committee urges the Government to continue its efforts in strengthening the role of the police and of immigration officers in order to enable them to combat the trafficking of children for labour and sexual exploitation. It requests the Government to continue providing information on the number of investigations, prosecutions, convictions and penal sanctions applied in this regard. It once again requests the Government to supply, with its next report, extracts of the inspection reports specifying the extent and nature of violations detected involving the trafficking of children for labour and sexual exploitation.***

Article 6, paragraph 1. Programmes of action to eliminate the worst forms of child labour. 1. National Action Plan for Abolishing Women and Child Trafficking. The Committee had previously noted that a five-year National Action Plan for Abolishing Women and Child Trafficking (NAP against WCT) was endorsed through Presidential Decree No. 88/2002. It had noted that the Plan’s objective consists of reducing by half the number of child victims of trafficking by 2013, as well as increasing the number of crisis service centres for the rehabilitation and social integration of child victims of trafficking. The Committee had also noted the Government’s statement that, as a result of the NAP against WCT, up to 1,404 children were prevented from entering prostitution and 174 were removed, and 200 special centres for combating trafficking were established. ***Noting the absence of information on this point in the Government’s report, the Committee once again requests the Government to provide information in its next report on the results achieved by the NPA against WCT with regard to removing child victims of trafficking from labour or sexual exploitation and providing for their rehabilitation and social integration.***

2. ILO-IPEC TICSAs Project on combating child trafficking for sexual and labour exploitation in South and South-East Asia – Phase II (TICSAs II) and National Plan of Action on the Elimination of the Worst Forms of Child Labour (NPA). The Committee had previously noted that the subregional ILO-IPEC TICSAs Project was adopted in June 2003 to complement the ILO-IPEC Project of Support to the Indonesian NPA. The Committee notes the Government’s information that the TICSAs II Project in Indonesia has ended. It notes, however, that, in the framework of the ILO-IPEC project entitled “Support to the Indonesian National Plan of Action and the Development of the Time-bound Programme for the Elimination of the Worst Forms of Child Labour” (***TBP***), efforts continue to be made to combat child trafficking for sexual and labour exploitation. In that regard, the technical progress report of September 2006 to February 2007 for the ***TBP*** (technical progress report for the ***TBP***) indicates that 3,454 children were prevented from being trafficked and 142 were removed. It also notes that the technical proposal indicates that, in the second phase of the NPA (2006–10), it is planned that 5,000 children will be prevented from being trafficked for commercial sexual exploitation and 300 will be withdrawn. ***The Committee requests the Government to provide information on the impact of the second phase of the NPA in combating the sexual and labour exploitation of children under 18 years of age, once it has been implemented, and the results attained.***

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assisting the removal of children from these worst forms. 1. Commercial sexual exploitation of children. The Committee had previously noted the Government’s information that the National Plan of Action for the Elimination of the Commercial Sexual Exploitation of Children is implemented by the central and regional governments by sending children withdrawn from commercial sexual exploitation to rehabilitation centres (such as the Cipayang Rehabilitation Centre) and then back to their families. The Committee notes the Government’s information that, with ILO-IPEC support, as many as 4,935 were prevented from entering commercial sexual exploitation and 144 children removed, from 2002 to 2007. The Committee also notes that the ILO-IPEC action programme entitled “Combating commercial sexual exploitation of children and child trafficking in East Jakarta, Indonesia” (October 2006–September 2007) worked, in its first phase, with 43 young girls engaged in prostitution. Out of the 43 girls, 25 have exited prostitution and 18 others are still engaged in the trade. In its second phase, the action programme will continue to provide services for the girls targeted in the previous programme, and will also try to reach out to more young girls engaged in prostitution. However, the Committee notes with serious concern that, according to the summary outline for the action

programme, an estimated 5,100 sex workers under 18 years of age operate in Jakarta alone. ***The Committee urges the Government to redouble its efforts to protect children under 18 years from commercial sexual exploitation. It requests the Government to continue providing information on the number of children who have been removed from commercial sexual exploitation and rehabilitated through the implementation of the National Plan of Action for the Elimination of the Commercial Sexual Exploitation of Children and the various ILO–IPEC action programmes.***

2. *Children engaged in the sale, production and trafficking of drugs.* The Committee had previously noted that 15,000 children were involved in the sale, production and trafficking of drugs in Jakarta in 2003. The Committee notes that, according to the technical progress report for the **TBP**, as of 2007, 8,128 children were prevented from drug distribution and 476 withdrawn through implementation of the NPA and various ILO–IPEC action programmes. However, the Committee notes that the technical proposal indicates that various estimates suggest that between 500,000 and 1,200,000 young people below the age of 19 in Indonesia use drugs, and that as many as 20 per cent of drug users are involved in the sale, production or trafficking of drugs, suggesting that between 100,000 and 240,000 young persons might still be involved in the drug trade. In this regard, the technical proposal indicates that interventions on reintegration, rehabilitation and education will continue to be included within services targeted to that sector of worst forms of child labour. ***Expressing its serious concern at the high number of children and young persons involved in the drug trade, the Committee urges the Government to redouble its efforts to protect children under 18 years from the sale, production and trafficking of drugs. It requests the Government to provide concrete information on the number of children prevented from being engaged in the sale, production and trafficking of drugs, as well as those removed from this worst form of child labour.***

Clause (d). *Identifying and reaching out to children at special risk.* 1. *Children on fishing platforms.* The Committee had previously noted that more than 7,000 children were estimated to be engaged in deep-sea fishing in North Sumatra. It had noted the Government’s statement that one of the programmes adopted in implementing the NPA targets children working in the offshore fishery sector. In this regard, the Committee notes that, according to the technical progress report for the **TBP**, 417 children were withdrawn and 5,101 children were prevented from work in the fishing sector during the reporting period. Furthermore, the Committee notes that ILO–IPEC action programmes are still being implemented to protect children from this worst form of child labour. The programme entitled “Strengthening the Children’s Creativity Centre (CCC) of Bagan Asahan” aims to prevent 700 children from entering child labour in offshore fishing through the provision of a range of educational activities and services; the programme entitled “Strengthening Format CCC to eliminate and prevent child labour through collective learning in the child labour community” aims to prevent 300 children of Tanjung Tiram, Asahan, from becoming engaged in offshore fishing through a thematic learning programme; and the programme entitled “Preventing Worst Forms of Child Labour in the Fishing Sector through Improved Education and Skills Training and Community Action Against Child Labour” aims to combat child labour in the offshore fishing sector through the capacity building of schools and school committee members. ***The Committee requests the Government to provide information on the results achieved through the implementation of the TBP and ILO–IPEC action programmes on preventing children under 18 years from being engaged on fishing platforms, and withdrawing and rehabilitating those that are engaged in deep-sea fishing.***

2. *Child domestic workers.* The Committee had previously noted the allegations of the International Trade Union Confederation (ITUC) that child domestic workers in Indonesia suffered some form of sexual, physical or psychological abuse. The ITUC had added that the NPA identified children who are physically or economically exploited as domestic servants as being involved in a worst form of child labour. However, domestic work was not included in the first phase of the NPA. The Committee had noted the various measures that were taken by the Government or by society at large to prevent children from working as domestic workers, including the programme set up by the Committee of National Action on the Worst Forms of Child Labour aimed at preventing school-aged children from working as domestic workers, as well the implementation of the programme “Mobilizing action for the protection of domestic workers from forced labour and trafficking in South-East Asia”.

The Committee notes that, according to the technical proposal, the second phase of the NPA will target children in or at risk of entering exploitative work in child domestic service. In this regard, it intends to prevent 5,000 children and withdraw 2,000 children from child domestic labour. Furthermore, the Committee notes that, according to the final report for the ILO–IPEC project entitled “Prevention and Elimination of Exploitative Child Domestic Work through Education and Training” (March 2004–February 2006), the Association of Indonesia Domestic Workers Suppliers became involved in the movement to combat child domestic labour and, as a result, the project was able to reach out to the maximum number of potential child domestic workers and existing child domestic workers to protect their rights as children. However, the final report indicates the need for a legal framework for the protection of domestic workers. In this regard, the Committee notes the Government’s statement that a draft Act on Domestic Workers’ Protection has been formulated, but that the elaboration of the final draft will take time because of the social, economic and cultural conditions in Indonesia. ***The Committee requests the Government to take all the necessary measures to ensure that the draft Act on Domestic Workers Protection is adopted in the very near future, so that child domestics are protected from the worst forms of child labour. It also requests the Government to provide information on the impact of the second phase of the NPA on protecting child domestic workers from the worst forms of child labour and providing for their rehabilitation and social integration and the results achieved.***

The Committee is also addressing a direct request to the Government concerning other points.

Jordan

Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

Article 2, paragraph 1, of the Convention. Scope of application. In its previous comments, the Committee had noted that section 73 of the Labour Code of 1996 prohibits the employment of minors under 16 years of age. It had noted, however, that according to section 2 of the Labour Code, a person under 16 years of age who performs work outside the framework of an employment contract does not benefit from the protection laid down therein. It had further observed that, by virtue of its section 3, the Labour Code shall not apply to: (a) members of the family of the employer working in his/her enterprise without remuneration; (b) domestic workers, gardeners, cooks and the like; and (c) agricultural workers excluding those who shall be covered by the Labour Code pursuant to a decision taken by the Council of Ministers upon the recommendation of the Minister of Labour. The Committee had reminded the Government that the Convention shall apply to all kinds of work or employment, regardless of the existence of an employment relationship. The Committee notes that the Committee on the Rights of the Child also expressed its concern, in its concluding observations of 29 September 2006, that the “protection provided by the Labour Code does not apply for children working in the informal sector (for example, in small family enterprises, agriculture and domestic labour)” (CRC/C/JOR/CO/3, paragraph 88). The Committee notes the Government’s information that draft amendments to the Labour Code have been referred to the Council of Ministers, after consultation with the social partners. These draft amendments provide that workers in the domestic and agricultural sectors shall be governed by the provisions of the Labour Code, as well as by the regulations, instructions and orders promulgated pursuant to the Labour Code. ***The Committee trusts that the amendments to the Labour Code will ensure that children working in the informal sector, for example in small family enterprises as well as in the domestic and agricultural sectors, benefit from the protection laid down in the Convention. It requests the Government to supply a copy of the revised Labour Code, once the draft amendments have been adopted. Furthermore, noting the lack of information supplied by the Government on this point, the Committee requests it once again to provide information on the measures taken or envisaged to ensure that self-employed children also benefit from the protection of the Convention.***

Article 9, paragraph 1. Penalties. The Committee notes that section 77 of the Labour Code provides that any employer or manager who violates any section of chapter VIII of the Code, which includes section 73 on the minimum age for employment or work, is liable to a fine of no less than 100 and no more than 500 dinars. The fine is doubled every time the offence is repeated. However, according to the Committee on the Rights of the Child, in its concluding observations of 29 September 2006, “the employment of children has steadily grown in recent years, especially in agriculture” (CRC/C/JOR/CO/3, paragraph 88). Furthermore, according to the December 2006 ILO–IPEC study entitled “Rapid assessment on the worst forms of child labour in Jordan: Survey analysis”, official records suggest that there is a very weak enforcement of the articles of the Labour Code which deal with illegal employment of children. The Committee recalls that, by virtue of *Article 9, paragraph 1*, of the Convention, all necessary measures shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention. The Committee considers it necessary to ensure the application of the Convention by applying the penalties provided for in the legislation. ***It accordingly requests the Government to take the necessary measures to ensure that a person found to be in breach of the provisions relating to the employment of children is prosecuted and that adequate penalties are imposed. It asks the Government to provide information on the types of violations detected by the labour inspectors, the number of persons prosecuted and the penalties imposed.***

Part V of the report form. Practical application of the Convention. The Committee notes that a rapid assessment survey on child labour and its worst forms was completed and published in December 2006 by the Centre for Strategic Studies of the University of Jordan, in collaboration with ILO–IPEC. The survey was undertaken in various governorates and included selected areas of Amman, Zarqa, Balqa, Irbid, Madaba and Aqaba. A total of 387 children between the ages of 9 and 17 were interviewed. The Committee notes that, according to the study, the average age of working children is 15 years. The study also reveals that the total number of working children (10 to 17 years) is estimated to be nearly 18,400, which is 1.5 per cent of the labour force in Jordan. Most of the working children are aged between 12 and 17 years, 78 per cent of them being boys and 22 per cent girls. Furthermore, it was found that 55 per cent of the children are employed in carpentry, blacksmith and painting occupations, while 31.6 per cent are employed in activities such as construction, bus driving, tailoring and in barber shops. The Committee also notes the detailed information provided in the rapid assessment survey with regard to the conditions in which children work, as well as working hours, tasks and occupational hazards or abuses faced by them. Thus, the survey reveals that the working hours appear to be very long: on average, 90 per cent of the working children work eight to 12 hours a day, with nearly 60 per cent working more than ten hours daily. The Committee observes that child workers must often carry heavy objects, lie on the ground in unhealthy positions and can be exposed to dangerous chemicals or heavy shaking or noise. Finally, the Committee notes that, according to the March 2007 Technical Progress Report on the ILO–IPEC National Programme to Eliminate Child Labour in Jordan, a national survey on child labour is currently being prepared in cooperation with the Jordanian Department of Statistics and SIMPOC, which will provide more extensive and reliable information on the phenomenon. ***The Committee expresses its concern at the situation of children working in Jordan and urges the Government to redouble its efforts to improve the***

situation. Furthermore, it requests the Government to supply information on any progress made with regard to the national survey on child labour and to supply a copy of it once finalized. The Committee also requests the Government to continue to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of minors by age group, and information on the number and nature of contraventions reported.

Kenya

Minimum Age Convention, 1973 (No. 138) (ratification: 1979)

The Committee notes the Government's report. It notes the adoption of the newly enacted Employment Act of 2007 which was supplied by the Government along with its report.

Article 2, paragraph 1, of the Convention. Scope of application. 1. Branches of economic activity covered by the Convention. The Committee had previously noted that according to section 25(1) of the Employment Act, the prohibition on employing children (i.e. a person under 16 years of age according to section 2 of the Act) is limited to work performed in industrial undertakings. It had also noted the Government's information that the Employment Act was being revised and that the draft bill has extended the application of the minimum age for admission to employment to all sectors of the economy. It had requested the Government to provide information on the progress made in adopting the revised Employment Act. The Committee notes *with satisfaction* that section 56(1) of the Employment Act of 2007 extends the application of the minimum age for admission to employment to all undertakings.

2. Unpaid work. The Committee had previously noted that section 10(5) of the Children Act, 2001, defines the term "child labour" as any situation where a child provides labour in exchange for payment. It had observed that unpaid workers do not benefit from the protection laid down in the Children Act. Noting the Government's indication that it intended to harmonize all legislation dealing with children and child labour to conform to the provisions of this Convention, the Committee had expressed its hope that the necessary amendments would be adopted soon. The Committee notes *with satisfaction* that, according to section 56(1) of the Employment Act, except for light work, no person shall employ a child below 16 years of age whether gainfully or otherwise in any undertaking. It also notes the Government's information that the authoritative legislation on child labour will be the Employment Act of 2007.

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee had previously noted that, under section 7(2) of the Children Act, every child shall be entitled to free basic education which shall be compulsory. It had also noted that, according to the Child Labour Report 1998-99 and the "Child Labour Policy", primary education is compulsory from 6 to 13 years of age. The Committee had further noted the Government's statement that the draft legislation on compulsory schooling which would address the gap between the age of completion of compulsory schooling, (14 years of age) and the minimum age for admission to employment or work (16 years of age), was being prepared. Noting the Government's indication that there exists no texts that specifically fixes the age for compulsory schooling, the Committee had requested the Government to indicate whether it is envisaged to adopt legislation which would fix the age of completion of compulsory schooling.

The Committee notes the Government's information in its report that children in Kenya complete schooling at different ages and that the Government has not envisaged fixing the age of completion of compulsory schooling. In this respect, the Committee refers to the information provided by the Government of Kenya to the Conference Committee on the Application of Standards in June 2006 concerning the application of the Minimum Age Convention, 1973 (No. 138). The Government representative stated that it had appointed a committee to review the Education Act with a view to modifying, inter alia, the age of completion of compulsory schooling. The Conference Committee, while noting the Government's indication that it intended to adopt legislation dealing with children and child labour to conform to the provisions of Convention No. 138, recalled that this Convention had been ratified by Kenya more than 25 years ago. Considering that compulsory education is one of the most effective means of combating and preventing child labour, the Conference Committee urged the Government to ensure that legislation addressing the gap between the age of completion of compulsory schooling and the minimum age for admission to employment or work would be adopted shortly. ***The Committee urges the Government, in view of the commitment made by the Government representative to the Conference Committee over two years ago, to take without delay, the necessary measures to fix the age of completion of compulsory schooling at 16 years. It requests the Government to provide information on any developments made in this regard.***

Article 3, paragraph 2. Determination of hazardous work. The Committee had previously noted the Government's indication that it had developed a draft list of types of hazardous work in consultation with social partners and stakeholders. It had requested the Government to provide a copy of the list of types of hazardous work as soon as it was adopted. The Committee notes the Government's statement that the stakeholders have approved a list of the types of hazardous work which will be presented to the National Labour Board for final approval, before the Minister assents to it as part of legislation. The Committee further notes that, while the Government indicates that it has sent a copy of the list of types of hazardous work along with its report, no such list was in fact sent to the Office. ***The Committee therefore once again requests the Government to supply a copy of the list of the types of hazardous work as soon as it has been approved by the National Labour Board.***

Article 3, paragraph 3. Admission to hazardous work as from 16 years of age. The Committee had previously noted that section 10(4) of the Children Act provides that the Minister shall make regulations in respect of periods of work and establishments where children aged at least 16 years may work, including hazardous work. It had also noted the Government's indication that the competent Minister had issued regulations referred to in section 10(4) of the Children Act, which is an act of Parliament. The Committee had requested the Government to provide a copy of these regulations. **Noting that the Government has not provided a copy of the above regulations, the Committee once again requests the Government to supply a copy of the regulations issued under section 10(4) of the Children Act, along with its next report.**

Article 6. Apprenticeship. The Committee had previously noted that, by virtue of section 8(3) of the Industrial Training Act (Chapter 237), a minor (i.e. a person under 15 years of age according to section 2 of the Industrial Training Act) may enter into an apprenticeship with the authorization of his/her parents or guardian or, in the absence of such authorization, of a district officer or labour officer. It had also taken note of section 25(2) of the Employment Act, 1976, which exempts a child employed in an industrial undertaking under a deed of apprenticeship from the minimum age for admission to employment. Noting that the national legislation does not contain any provision which fixes a minimum age for apprenticeship, the Committee had hoped that the necessary amendments would be adopted to bring the legislation in conformity with *Article 6* of the Convention.

The Committee notes the Government's indication that the Industrial Training Act is being amended to bring the legislation into conformity with the Convention. The Committee notes that, according to section 58(1) of the Employment Act of 2007, no person shall employ a child of between 13 and 16 years of age, other than one serving under a contract of apprenticeship or indentured learnership in accordance with the provisions of the Industrial Training Act, in an industrial undertaking to attend to machinery. Similarly, section 57 of the Employment Act, which lays down the penalties for breach of the provisions of light work by children, exempts children between the ages of 13 and 16 years who are subject to the provisions of the Industrial Training Act relating to contracts of apprenticeship. The Committee observes that, according to the Employment Act of 2007, children between 13 and 16 years of age are allowed to take part in apprenticeship programmes subject to the provisions of the Industrial Training Act. In this regard, the Committee reminds the Government that *Article 6* of the Convention fixes a minimum age of 14 years for work done in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, and is an integral part of: (a) a course of education or training for which a school or training institution is primarily responsible; (b) a programme of training, mainly or entirely, in an undertaking, which programme has been approved by the competent authority; or (c) a programme of guidance or orientation designed to facilitate the choice of an occupation. **The Committee requests the Government to take the necessary measures to ensure that the amendments to the Industrial Training Act will be in conformity with Article 6 of the Convention. It asks the Government to provide information on any developments in this regard in its next report.**

Article 7, paragraph 1. Admission to light work. In its previous comments, the Committee had noted that under section 3(1) of the Employment (Children) Rules 1977, children may be permitted to work with the written permission of an authorized officer, except in bars, hotels, restaurants or clubs where intoxicating liquors are sold, or as a tourist guide. Recalling that *Article 7, paragraph 1*, of the Convention permits only children from 13 years to undertake light work, the Committee urged the Government to indicate the measures taken to ensure that light work may only be performed by children of 13 years of age. The Committee notes **with satisfaction** that, according to section 56(2) of the Employment Act of 2007, a child between the ages of 13 and 16 years may be employed to perform light work which is not likely to be harmful to the child's health or development; and not such as to prejudice the child's attendance at school, or his/her participation in vocational orientation or training programmes.

Article 7, paragraph 3. Determination of light work. The Committee had previously requested the Government to indicate the measures taken or envisaged to determine light work activities and to prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken by young persons of 13 years of age and above. The Committee notes that, according to section 56(3) of the Employment Act, the Minister may make rules prescribing light work in which a child of 13 years may be employed and the terms and conditions of that employment. The Committee notes the Government's information that the regulations governing light work are yet to be developed. **The Committee requests the Government to take the necessary measures to determine the light work activities that may be undertaken by children of 13 years of age and to prescribe the number of hours during which, and the conditions in which, such work may be undertaken.**

Article 8. Artistic performances. The Committee had previously noted section 17 of the Children Act, which provides that a child shall be entitled to leisure, play and participation in cultural and artistic activities. It had noted that the national legislation does not provide for permits to be granted to children participating in cultural artistic performances. Noting the Government's indication that this matter would be addressed during the revision of the Children Act, the Committee had asked the Government to provide information on the progress made in this respect. The Committee notes the Government's information that no consultations with the social partners with regard to the granting of individual permits for artistic performances have been so far undertaken. It further notes the Government's indication that this matter will be addressed in the subsidiary legislation yet to be undertaken. **The Committee expresses the firm**

hope that in its next report the Government will provide information on the progress made in the revision of national legislation in order to ensure that approval for young persons below 16 years of age to take part in artistic performances is granted in individual cases. It also reminds the Government that the permits so granted must prescribe the number of hours during which, and the conditions in which, such employment or work shall be permitted.

Article 1 and Part V of the report form. National policy and application of the Convention in practice. The Committee notes the Government's statement that it will endeavour to provide information on the practical application of the Convention, including statistical data on employment of children and inspection reports. The Committee notes that, according to the Kenya Integrated Household Budget Survey, 2005, a total number of 951,273 children were recorded as working, indicating a reduction compared to the 1.9 million working children between the ages of 5 to 17 years recorded in the 1998/99 Child Labour Report (National Plan of Action on the Elimination of Child Labour in Kenya, 2004–15, page 3, hereinafter National Plan of Action). This survey does not include children on the streets which are estimated to be over 700,000 in 2007, according to the UNICEF Review of Progress towards the World Fit for Children Plus 5 goals in Kenya. According to the report on the National Plan of Action, in Kenya, child labour is found in all sectors, especially in commercial and subsistence agriculture, domestic work and other sectors such as child prostitution and pornography, drug trafficking, hawking and herding. The Committee also notes that the National Plan of Action identified a number of factors which contribute to child labour, such as poverty, the HIV/AIDS pandemic, insecurity and conflicts, cultural practices which enhance child labour, weak institutions leading to challenges in enforcing legislations and implementation of policies, etc. The Committee notes that the Government signed a Memorandum of Understanding with ILO–IPEC in 1992, introducing a country programme on the elimination of child labour. It also notes that the Government developed a **Time-bound Programme (TBP)** in 2004 targeting the immediate elimination of the worst forms of child labour, and a National Policy on Child Labour in 2006. The Committee further notes that, within the context of the ILO–IPEC project “Building the Foundations for Eliminating the Worst Forms of Child Labour in Anglophone Africa” (Technical Progress Report, September 2005), a total of 453 children (216 girls and 237 boys) were withdrawn from the worst forms of child labour and supported to undergo skills training. According to the ILO–IPEC Technical Progress Report on sub-regional programme on Prevention, Withdrawal and Rehabilitation of Children Engaged in Hazardous Work in Commercial Agriculture in Eastern Africa (COMAGRI), 2004, a total of 2,363 children (1,069 girls and 1,294 boys) have been withdrawn from hazardous labour and placed in primary schools, as well as in vocational training facilities. While noting the efforts made by the Government to combat child labour, the Committee expresses serious concern at the situation of children under 16 years of age who are compelled to work in the country. ***The Committee, therefore, strongly encourages the Government to step up its efforts to progressively improve the situation of children under the age of 16 years who are compelled to work in Kenya. It also requests the Government to provide information on the National Policy on Child Labour and on the implementation of the National Plan of Action on Elimination of Child Labour and on the results achieved in terms of the progressive elimination of child labour. Furthermore, the Committee once again requests the Government to provide detailed information on the manner in which the Convention is applied in practice, as required under Part V of the report form, for instance, extracts from official reports, statistics and information on inspection visits made and contraventions reported.***

Malawi

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 1 of the Convention and Part V of the report form. National policy and practical application of the Convention. In its previous comments, the Committee had noted its serious concern at the situation of the considerable number of children under 14 years of age who were compelled to work (according to the Malawi Child Labour Survey of 2002, more than 1 million children worked, of whom approximately half were less than 9 years of age). Moreover, the Committee had noted the Government's indication that a National Plan of Action for Orphans and Other Vulnerable Children 2005–09 (NPA for OVC) and a Childhood Development Policy were established. More particularly, it had noted that, according to the NPA for OVC, around 500,000 children were orphans due to HIV/AIDS in 2004 and more than 1 million children were orphans in Malawi in 2005. The Committee had noted that the Government was aware of the consequences of HIV/AIDS on orphans, such as increased child labour and children dropping out of school. It had also noted that the Strategic Objective No. 3 of the NPA for OVC was “to protect the most vulnerable children through improved policy and legislation, leadership, efficient coordination at all levels”.

The Committee notes the Government's information that it is difficult to measure the impact of specific policies on child labour unless detailed scientific measurement studies are undertaken. However, according to the preliminary report of the Malawi Multiple Indicator Cluster Survey of 2006, the total child labour rate in Malawi dropped from 37 per cent in 2004 to 29 per cent in 2006. According to the same report, approximately 90 per cent of the total number of child orphans in Malawi is made up of children aged 0 to 14 years. The Committee therefore once again observes that HIV/AIDS has consequences for orphans, for whom there is an increased risk of being engaged in child labour.

The Committee notes the implementation of the ILO–IPEC Country Programme to combat child labour in Malawi, the objective of which is to contribute to the progressive elimination of child labour. According to the technical progress report of March 2007, two country projects were launched on 26 February 2007: the ILO HIV/AIDS Workplace

Education Programme and the HIV/AIDS in the Transport Sector. The ILO–IPEC Country Programme also features four action programmes, the objectives of which are to enhance community empowerment and awareness to prevent child labour and to train teachers to ensure an improvement in school retention rates and, consequently, contribute to the elimination of child labour. The Committee also notes the Government’s information, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that a National Action Plan on Child Labour is currently being developed and that a Child Labour Network, comprising all key organizations involved in the fight against child labour, has been formed to strengthen and increase the impact of child labour programmes.

While noting the improvement made in reducing child labour rates, the Committee nevertheless urges the Government to redouble its efforts to ensure the progressive abolition of child labour. It also requests the Government to provide information on the progress made in the elaboration of the National Action Plan on Child Labour and asks the Government to supply a copy of it as soon as it is adopted. Furthermore, the Committee requests the Government to continue providing information on the other measures it has taken, such as the ILO–IPEC programmes and the HIV/AIDS country projects and their impact towards abolishing child labour. Finally, the Committee also once again requests the Government to continue providing information on the application of the Convention in practice, including, for example, statistics on the employment of children and young persons, extracts from the reports of the inspections services and information on the number and nature of the contraventions reported and sanctions imposed.

The Committee is also addressing a direct request to the Government on other points.

Malaysia

Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

Article 2, paragraph 1, of the Convention. Minimum age for admission to employment or work. The Committee had previously noted that the provisions of the Children and Young Persons (Employment) Act of 1966 (CYP Act), with regard to the minimum age for employment or work, were not in conformity with the age specified by the Government when ratifying the Convention. Indeed, although the Government, at the time of ratifying the Convention, declared 15 years as the minimum age for admission to employment, section 2(1) of the CYP Act provides that no “child” – who is a person under 14, according to section 1(A) – shall be engaged in any employment. The Committee had also noted the Government’s information that a tripartite committee would review the labour legislation, taking into consideration the possibility of increasing the minimum age for admission to employment. The Committee had asked the Government to provide information on developments concerning this legislative review, especially with regard to the measures taken to bring the minimum age for admission to employment (14 years) into conformity with the one declared (15 years). The Committee notes the Government’s information that the CYP Act does not outlaw child labour, but rather governs and protects children who work. The Committee recalls that, by virtue of *Article 2, paragraph 1*, of the Convention, no one under the age specified by the Government when ratifying the Convention shall be admitted to employment or work in any occupation. The Committee notes that, according to the Committee on the Rights of the Child in its concluding observations of 25 June 2007, Malaysia is still in the process of amending the CYP Act to provide better protection for working children (CRC/C/MYS/CO/1, paragraph 90). *Noting that the Government has referred to the legislative review of the CYP Act for a number of years, the Committee requests the Government to take the necessary measures in the very near future to ensure that the minimum age for employment or work is raised to 15 years, as specified by the Government at the time of ratification.*

Article 3, paragraphs 1 and 2. Minimum age for admission to, and determination of, hazardous work. In its previous comments, the Committee had noted that the relevant legislation does not contain any provisions prohibiting young people under 18 years of age from being employed in types of work likely to jeopardize their health, safety or morals. The Committee had noted the Government’s statement that efforts would be undertaken to ensure that *Article 3* of the Convention is complied with. In this regard, the Committee notes that, in its report, the Government refers to two prohibitions provided for in the CYP Act for children and young people: (i) managing or being in close proximity to machinery; and (ii) working underground. The Committee observes that section 2(5) of the CYP Act provides that no child or young person shall be, or required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machinery Act 1967 or the Electricity Act 1949 or in any employment requiring them to work underground. The Committee notes that section 1A(1) of the CYP Act defines a “child” as being any person who has not completed their 14th year of age, and a “young person” as being any person who has not completed their 16th year of age. The Committee once again reminds the Government that, by virtue of *Article 3, paragraph 1*, of the Convention, the minimum age for hazardous work shall not be less than 18 years. The Committee also once again reminds the Government that, by virtue of *Article 3, paragraph 2*, of the Convention, the types of hazardous work to which *paragraph 1* of this Article applies, shall be determined by national laws or by the competent authority after consultations with the organizations of employers and workers concerned. *The Committee once again requests the Government to take the necessary measures to ensure that no one under 18 years of age is authorized to perform hazardous work, in accordance with Article 3, paragraph 1, of the Convention. Furthermore, the Committee requests the Government to take the necessary measures to include in national legislation provisions determining types of hazardous work to be prohibited to people below 18 years of age, in accordance with Article 3, paragraph 2, of the Convention. Finally, the*

Committee also once again requests the Government to provide information on the consultations held with the organizations of employers and workers concerned with this subject.

Article 3, paragraph 3. Admission to hazardous work as from 16 years. The Committee had previously noted that certain provisions of the CYP Act allow young people of 16 years and above to perform types of hazardous work under certain conditions. The Committee reminded the Government that, under the terms of *Article 3, paragraph 3*, of the Convention, national laws or regulations may, after consultation with the organizations of employers and workers concerned, authorize the performance of types of hazardous work by young people between 16 and 18 years of age, on condition that the health, safety and morals of the young people concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. It also recalled that this provision of the Convention consists of a limited exception to the general rule of the prohibition placed upon young people under 18 years of age, and not a total authorization for the performance of types of hazardous work from the age of 16 years. ***Noting the absence of information in the Government's report on this point, the Committee requests the Government to take the necessary measures to ensure that the performance of types of hazardous work done by young people between 16 and 18 years of age is only authorized in accordance with the requirements of Article 3, paragraph 3, of the Convention.***

Article 7. Light work. The Committee had previously noted that section 2(2)(a) of the CYP Act allows people under 14 years of age to be employed in light work which is adequate to their capacity, in any undertaking carried on by their family. It had, however, noted that the legislation does not specify a minimum age for admission to light work. The Committee had reminded the Government that *Article 7, paragraph 1*, of the Convention, provides for the possibility of admitting young people of 13 years of age to light work. The Committee had also recalled that, according to *Article 7, paragraph 3*, the competent authority shall determine and prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. With regard to the definition of light work, the Committee drew the Government's attention to Paragraph 13(b) of the Minimum Age Recommendation, 1973 (No. 146). Paragraph 13(b) states that, in giving effect to *Article 7, paragraph 3*, of the Convention, special attention should be given to the strict limitation of 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 (including the time needed for homework), for rest during the day, and for leisure activities.

The Committee notes the Government's information that the CYP Act permits children and young people to work in just about any establishment that adults can be found in, including hotels, bars and other places of entertainment, if their parents or guardian own or work in the same establishment. The Committee shares the concern of the Committee on the Rights of the Child, in its concluding observations of 25 June 2007, that the provisions of the CYP Act concerning light work permit, among other things, employment involving light work without detailing the acceptable conditions of performing such work (CRC/C/MYS/CO/1, paragraph 90). ***Accordingly, the Committee once again requests the Government to take the necessary measures to ensure that national law and practice are in conformity with the requirements of the Convention on the following points: (i) that the minimum age of 13 years for light work be established by legislation; and (ii) that, in the absence of a definition of light work in the legislation, the competent authority should determine what is light work and should prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken.***

Parts III and V of the report form. Application of the Convention in practice. The Committee notes the Government's information that the responsibility of the enforcement of the CYP Act rests solely with the Ministry of Human Resources. The Ministry has a legal duty to ensure that employers comply with the minimum standards and hours of work, rest times and places of work. However, the Committee notes that the Committee on the Rights of the Child expressed concern, in its concluding observations of 25 June 2007, that the enforcement of Convention No. 138 remains weak (CRC/C/MYS/CO/1, paragraph 90).

Furthermore, the Committee once again notes the Government's statement that statistical data is not available. In this regard, the Committee on the Rights of the Child expressed its regret at the lack of a national data collection system and at the insufficient data on working children. Accordingly, the Committee on the Rights of the Child recommended that Malaysia strengthen its mechanisms for data collection by establishing a national centre database on children (CRC/C/MYS/CO/1, paragraphs 25 and 26). ***The Committee requests the Government to take the necessary measures to ensure that the provisions giving effect to the Convention are effectively enforced. It also strongly urges the Government to take the necessary measures to ensure that sufficient data on the situation of working children in Malaysia is available. It once again asks the Government to provide information on the application of the Convention in practice including, for example, statistics on the employment of children and young people and extracts from the reports of inspection services, as soon as this information becomes available.***

The Committee also once again urges the Government to redouble its efforts to ensure that, during its review of the CYP Act by the tripartite committee set up for this purpose, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention. The Committee once again requests the Government to provide information on any progress made in the review of the CYP Act in its next report and once again invites the Government to consider seeking technical assistance from the ILO.

[The Government is asked to supply full particulars to the Conference at its 98th Session and to reply in detail to the present comments in 2009.]

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances. The Committee had previously noted that section 17(1) and (2) of the Child Act of 2001 only refers indirectly to the use, procuring or offering of a child for the production of pornography or for pornographic performances and that there appear to be no specific provisions that explicitly prohibit and punish such acts committed by persons other than the child's parents, guardian or extended family. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations of 25 June 2007, expressed regret at the absence of specific legislation against Internet-related sexual offences, including child pornography (CRC/C/MYS/CO/1, paragraph 99). **Noting the lack of information on this point, the Committee requests the Government to take immediate measures to ensure that the use, procuring or offering by anyone of a child under 18 years of age for the production of pornography or for pornographic performances is prohibited, as a matter of urgency.**

Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee had previously noted that section 32 of the Child Act of 2001 punishes anyone who causes or procures or allows any person *under 18 years of age* to be on any street, premises or place for the purposes of "carrying out illegal hawking, illegal lotteries or gambling, or other illegal activities detrimental to the health or welfare of the child". However, the Committee had noted that there seem to be no specific provisions which explicitly prohibit the use, procuring or offering of a child for the production and trafficking of drugs. It had accordingly asked the Government to provide information on the meaning of "illegal activities detrimental to the health or welfare of the child" pursuant to section 32. **Noting the absence of information on this point, the Committee once again requests the Government to take immediate measures to ensure that 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, is prohibited, as a matter of urgency.**

Clause (d) and Article 4, paragraph 1. Hazardous work and determination of hazardous work. The Committee had previously noted that the relevant legislation does not contain any provisions prohibiting young people *under 18 years of age* from being employed in types of work likely to harm their health, safety or morals. The Committee had also noted that the Children and Young Persons (Employment) Act of 1966 (CYP Act) does not provide for a list of types of hazardous work to be prohibited for children under 18 years of age. It had reminded the Government that *Article 4, paragraph 1*, of the Convention states that the types of work referred to under *Article 3(d)* shall be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). The Committee had noted the Government's statement that Paragraph 3 of Recommendation No. 190 will be analysed and incorporated into the review of the CYP Act carried out by the tripartite committee set up for this purpose, after consultations with employers' and workers' organizations.

The Committee notes that, in its report under the Minimum Age Convention, 1973 (No. 138), the Government refers to two prohibitions provided for in the CYP Act, for children and young persons: (i) managing or being in close proximity to machinery; and (ii) working underground. The Committee observes that section 2(5) of the CYP Act provides that no child or young person shall be, or required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machinery Act, 1967, or the Electricity Act, 1949, or in any employment requiring them to work underground. The Committee notes that section 1A(1) of the CYP Act defines a "child" as being any person who has not completed their *14th year of age*, and a "young person" as being any person who has not completed their *16th year of age*. Furthermore, the Committee observes that, in its concluding observations of 25 June 2007, the Committee on the Rights of the Child expressed alarm at the high number of migrant domestic workers, including child domestic workers, who work under conditions that are hazardous and interfere with the child's education, and are harmful to the child's health and physical, mental, spiritual, moral or social development (CRC/C/MYS/CO/1, paragraph 91). The Committee once again reminds the Government that, by virtue of *Article 3(d)* of the Convention, hazardous work constitutes one of the worst forms of child labour and consequently shall be prohibited for children *under 18 years of age*. **The Committee requests the Government to take immediate measures to ensure that children under 18 years of age do not carry out work which is likely to harm their health, safety or morals, as a matter of urgency. It also requests the Government to take immediate measures to adopt a list of types of hazardous work in the very near future and to provide a copy of the list once it has been adopted, after consultations with the organizations of employers and workers concerned.**

Article 4, paragraph 2. Identification of hazardous work. The Committee had previously requested the Government to provide information on the measures taken or envisaged to identify where the types of hazardous work exist, in consultation with the organizations of employers and workers concerned. **Noting the lack of information on this point, the Committee once again requests the Government to provide information on whether hazardous types of work have been identified by the Department of Safety and Health pursuant to Article 4, paragraph 2, of the Convention.**

Article 5. Monitoring mechanisms. The Committee had previously noted that, by virtue of section 3 of the Child Act of 2001, a "coordinating council for the protection of children" will be established. The Committee notes the Government's information that the Coordinating Council for the Protection of Children (CCPC) was indeed established, which is the main body mandated to advise the Minister of Women, Family and Community Development on all aspects of child protection. The CCPC also provides advice on the management of child protection teams throughout the country. The Committee further notes the Government's information that the National Advisory and Consultative Council for

Children (NACCC), that was established in 2001, acts as a focal point for children's well-being and development, in line with the Convention on the Rights of the Child and the National Action Plan for Children. ***The Committee requests the Government to provide information on the measures taken by the CCPC and the NACCC to secure the prohibition and elimination of the worst forms of child labour.***

Article 6. Programmes of action. The Committee had previously noted that the Ministry of Human Resources was working with other authorities to design a national plan of action for children. It notes that, according to the concluding observations of 25 June 2007 of the Committee on the Rights of the Child, a National Plan of Action for Children by the Ministry of Women, Family and Community Development is currently under way and will be streamlined with the National Child Policy (CRC/C/MYS/CO/1, paragraph 17). ***The Committee requests the Government to provide information on the National Plan of Action for Children and on any relevant impact on the elimination of the worst forms of child labour.***

Article 7, paragraph 1. Penalties. The Committee had previously noted that sections 32(b), 43 and 48 of the Child Act of 2001, and sections 367, 370 and 372–374 of the Penal Code, establish sufficiently effective and dissuasive penalties of imprisonment and fines for breach of the provisions prohibiting: the sale and trafficking of children for the purposes of sexual and labour exploitation; the procuring of a child for the purpose of begging or carrying out illicit activities; the kidnapping or abduction of a person for the purpose of slavery; and the exploitation and the incitement of a person for the purpose of prostitution. The Committee notes the concern expressed by the Committee on the Rights of the Child, in its concluding observations of 25 June 2007, that the enforcement of ILO Convention No. 182 remains weak. The Committee reminds the Government that, by virtue of *Article 7, paragraph 1*, of the Convention, ratifying countries are required to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions. ***It accordingly requests the Government to take the necessary measures to ensure that a person found to be in breach of the provisions relating to the worst forms of child labour mentioned above is prosecuted and that adequate penalties are imposed. It once again requests the Government to provide information on the application of these penalties in practice including the number and nature of infringements reported, investigations, prosecutions, convictions and penalties applied.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Prevention of the engagement of children in the worst forms of child labour. Education. The Committee notes that, according to the concluding observations of the Committee on the Rights of the Child of 25 June 2007, the enrolment rate of girls and boys in primary education is relatively equal. However, the Committee on the Rights of the Child expressed regret that, according to estimates, 200,000 children of primary-school age are not attending school. The Committee on the Rights of the Child also expressed concern at the regional disparities in the drop-out rates. For example, the proportion of children reaching grade 5 in Sabah has decreased significantly. Furthermore, the Committee on the Rights of the Child also expressed its regret that many children, in particular boys, drop out from secondary education (CRC/C/MYS/CO/1, paragraph 73). ***In view of the fact that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to take measures to ensure free basic education and to keep children in school. The Committee also asks the Government to supply updated data on the enrolment and drop-out rates in school.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Child victims of trafficking. In its previous comments, the Committee had noted that the Trafficking in Women and Children Report of the Human Rights Commission of Malaysia (SUHAKAM) of 2004, shows that Malaysia is considered primarily a destination country for victims of trafficking, so that the majority of child victims of trafficking in Malaysia are foreign girls. The findings of the report showed that, even if the trafficking involved mostly women over 18 years of age, a number of girls between 14 and 17 years of age were also reported to be victims of trafficking. The Committee had noted that, according to this source, a "Forum on Trafficking in Women and Children – A Cross-Border and Regional Perspective" was organized and held by SUHAKAM in April 2004, in order to forge a national and regional collaborative response to trafficking. The central aim of the Forum was to facilitate discussion on steps taken or required at the national and regional levels against the backdrop of developments and various measures and programmes were envisaged.

The Committee notes the Government's information that the Ministry of Women, Family and Community Development has undertaken steps to address issues relating to human trafficking since 2005, with the collaboration of other ministries, agencies and non-governmental organizations, including establishing shelter homes for women and child victims of trafficking and training enforcement officers. The Committee notes that, according to the Committee on the Rights of the Child, in its concluding observations of 25 June 2007, a Coordinating Committee on Trafficking was established in July 2006 (CRC/C/MYS/CO/1, paragraph 95). Furthermore, the Government indicates in its report that the Anti-Trafficking in Persons Bill was passed by Parliament on 24 May 2007, and published in July 2007. Under the Anti-Trafficking in Persons Act, a Council for Anti-Trafficking in Persons shall be established to, among other things, coordinate the implementation of the Act, formulate and oversee the implementation of a national plan of action on the prevention and suppression of the trafficking of persons and provide care, support and protection to victims of trafficking. However, the Committee notes the grave concern expressed by the Committee on the Rights of the Child on the absence of a specific law and policy to combat *inter-country* trafficking (CRC/C/MYS/CO/1, paragraph 95). ***The Committee requests the Government to provide information on the concrete impact of the abovementioned measures on the***

rehabilitation and social integration of children under 18 who are victims of trafficking, and the results attained. The Committee also asks the Government to take effective and time-bound measures to ensure that children under 18 years of age who are victims of inter-country trafficking are rehabilitated and integrated, and to provide information on progress made in this regard.

Article 8. International cooperation and assistance. Regional cooperation. The Committee had previously noted that a Memorandum of Understanding (MOU) between Malaysia and Thailand was proposed as a beginning to reduce the flow of young girls into Malaysia and allow for an exchange of information in order to monitor traffickers' actions. *Noting the lack of information on this point, the Committee once again asks the Government to provide further information on this MOU and its impact towards eliminating the trafficking of children under 18 years of age for labour or sexual exploitation.*

Parts IV and V of the report form. Application of the Convention in practice. The Committee notes that, in its concluding observations of 25 June 2007, the Committee on the Rights of the Child expressed regret that Malaysia could not present studies on the extent and nature of the problem of children living and/or working in the streets, particularly in Sabah (CRC/C/MYS/CO/1, paragraph 93). The Committee on the Rights of the Child also expressed regret at the insufficient data on child victims of trafficking for exploitative purposes and the sexual exploitation of children (CRC/C/MYS/CO/1, paragraph 25). The Committee notes the Government's information that the Council for Anti-Trafficking of Persons that shall be established under the Anti-Trafficking in Persons Act will collect data, information and research on the prevention and suppression of trafficking in persons. *The Committee urges the Government to take measures to ensure that sufficient data on the phenomena of child trafficking, the commercial sexual exploitation of children and street children is available. The Committee also once again requests the Government to supply, as soon as this information becomes available, copies or extracts from official documents including inspection reports, studies and inquiries.*

The Committee also urges the Government to ensure that, during its review of national legislation including the CYP 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 this regard in its next report and once again invites the Government to consider seeking technical assistance from the ILO.

Mexico

Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1956)

Article 2, paragraph 1, of the Convention. Period during which night work is prohibited. In its previous comments, the Committee pointed out that, by defining night work as work performed between 8 p.m. and 6 a.m., i.e. a period of ten hours, section 60 of the Federal Labour Act fails to give effect to *Article 2, paragraph 1*, of the Convention, which defines "night" as a period of at least 12 consecutive hours.

In its report, the Government indicates that the national legislation on night work has not been amended. It further indicates that the labour inspectorate carried out more than 35,600 inspections of workplaces likely to be concerned by the application of the federal labour legislation governing night work and that they found no minors working at night in these enterprises. The Committee reminds the Government that, according to *Article 2* of the Convention, the term "night" signifies a period of at least 12 consecutive hours, and that during this period work by young persons is prohibited. This 12-hour period includes different intervals, prescribed according to age, for the purpose of exceptions that may be allowed to the prohibition on night work for young persons under 18 years of age. While noting that section 175 of the Federal Labour Act prohibits night work by young persons under 18 years of age in industry, in accordance with Articles 3(d) and 4 of Convention No. 182, the Committee again observes that section 60 of the Federal Labour Act, by providing that "night" is the interval between 8 p.m. and 6 a.m., establishes a period of ten hours during which work by minors is prohibited. By so doing, section 60 of the Federal Labour Act is inconsistent with *Article 2, paragraph 1*, of the Convention, which imposes a period of at least 12 consecutive hours. *The Committee notes with regret that, despite the request which it has repeatedly made since 1972, no measures have been taken to give effect to the Convention. It urges the Government to take the necessary steps as soon as possible to bring the Federal Labour Act into line with the Convention and practice on this point.*

Netherlands

Aruba

Minimum Age Convention, 1973 (No. 138)

Article 2, paragraph 3, of the Convention. Age of completion of compulsory schooling. In its previous comments, the Committee had noted that the Government of Aruba had made a commitment to ensure that all children receive

compulsory education up to the age of 17 years. The Committee notes the Government's information that the State Ordinance on Compulsory Education has not yet been approved and that it will supply a copy of the Ordinance once it has been adopted. The Committee trusts that the State Ordinance on Compulsory Education will be in conformity with *Article 2, paragraph 3*, of the Convention. **Considering that there is presently no specified age of completion of compulsory schooling in Aruba and that the Government has been referring to the enactment of the State Ordinance on Compulsory Education for a number of years, the Committee urges the Government to take the necessary measures to ensure that it is adopted in the very near future.**

Article 3, paragraphs 1 and 2. Hazardous work. In its previous comments, the Committee had noted that section 17(1) of the Labour Ordinance provides that it is prohibited to cause women and juvenile persons to perform night work or work of a hazardous nature, which is to be described by a state decree. Section 4 of this Ordinance defines juveniles as persons who have reached the age of 14, but not yet the age of 18. The Committee had requested the Government to indicate any progress made towards the enactment of the state decree to specify the types of hazardous work that should not be assigned to young persons under 18 years of age. It had noted the Government's information that one of the tasks of the Committee for the Modernization of Labour Legislation (CMLL) is to fill the existing voids in the legislation, creating the state decrees (which have yet to be formalized) referred to in the Labour Ordinance. The Committee notes the Government's information that discussions within the CMLL are still in progress. **Considering that the Government has been referring to the enactment of the state decree provided for under section 17(1) of the Labour Ordinance determining the types of hazardous work for a number of years, the Committee requests the Government to take the necessary measures to ensure that it is adopted in the very near future. It requests the Government to provide a copy of said state decree once it has been adopted.**

Article 6. Vocational training and apprenticeship. In its previous comments, the Committee noted the Government's indication that the state decree provided for under section 16(a) of the Labour Ordinance allows exemptions for certain tasks which are necessary for the learning of a trade or profession, and can be done by children of 12 years or over who have completed the sixth class of primary school. It had also noted the Government's information that there were no instances recorded to indicate that children between 12 and 14 years of age are employed for training purposes. **Noting the Government's information that it will supply a copy of the state decree specifying the employment permitted for vocational education or technical training purposes once it has been elaborated and enacted, the Committee requests it to provide a copy thereof once it has been adopted.**

Article 7. Light work. In its previous comments, the Committee had requested the Government to provide information on the progress made with regard to the state decree provided for under section 16(b) of the Labour Ordinance to specify certain tasks which can be carried out by children of 12 years of age and above who have completed the sixth class of primary school. The Committee had recalled that *Article 7, paragraph 3*, of the Convention requires that the competent authority determine the activities allowed as light work in which young persons between 12 and 14 years of age may be permitted to participate, and to prescribe the number of hours of work and the conditions of employment or work. It notes the Government's information that it will supply a copy of the state decree on light work activities once it has been elaborated and enacted. **The Committee expresses the firm hope that the state decree provided for under section 16(b) of the Labour Ordinance will be adopted at the earliest possible date and requests the Government to provide information on all progress made in this regard.**

Part V of the report form. Practical application of the Convention. The Committee notes the Government's information that the labour inspection did not report any violations with regard to national legislation on child labour or the provisions of the Convention. **The Committee requests the Government to provide more detailed information on the manner in which the Convention is applied in practice including statistical data disaggregated by sex and age on the nature, extent and trends in child labour and extracts from the reports of inspection services, information on the number and nature of contraventions reported and penalties applied.**

Nicaragua

Minimum Age Convention, 1973 (No. 138) (ratification: 1981)

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee noted that the Committee on the Rights of the Child, in its concluding observations of June 2005 (CRC/C/15/Add.265, paragraph 61), expressed concern at the information that child labour has increased consistently in Nicaragua in the last years due to migration from the countryside and the intensification of poverty. The Committee also noted that, according to the statistics contained in the national report on child labour, compiled by the Statistical Information and Monitoring Programme on Child Labour (SIMPOC) and published by ILO-IPEC in April 2003, around 253,057 children between the ages of 5 and 17 are engaged in economic activity. While observing that there appear to be difficulties in the application of the Regulations on Child Labour and that child labour constitutes a problem in practice, the Committee noted that the Government was drawing up a National Strategic Plan for the Progressive Elimination of Child Labour and the Protection of Young Workers (2006–10) and that a study on child labour in the country was due to be prepared in November 2005.

The Committee notes that according to the national study on child labour of 2005 (ENTIA, 2005), 239,220 children between the ages of 5 and 17 years were engaged in work in the country. The Committee notes *with interest* that, according to the final evaluation report of the National Strategic Plan for the Prevention and Elimination of Child Labour and the Protection of Young Workers (2001–05) (Strategic Plan 2001–05) of October 2006, child labour has decreased by around 6 per cent since 2000. According to this final report, over 100,000 children in poor families received direct or indirect assistance from the various actors in civil society who were engaged in the implementation of the Strategic Plan 2001–05. Furthermore, 14,075 children benefited from action programmes on the worst forms of child labour implemented by ILO–IPEC in the country.

The Committee notes the draft Decent Work Country Programme for Nicaragua and observes that measures are envisaged to improve the application of standards relating to child labour and to continue efforts for the progressive elimination of child labour by 2015, with particular reference to the worst forms of child labour. Furthermore, the Committee notes the information provided by the Government according to which a second National Strategic Plan for the Prevention and Elimination of Child Labour and the Protection of Young Workers (2007–16) is under preparation. The Committee expresses appreciation of the measures adopted by the Government for the abolition of child labour, which it considers to be an affirmation of the political will to develop strategies to combat this problem. ***It therefore strongly encourages the Government to pursue its efforts to combat child labour and requests it to provide information on the measures that will be taken for the elimination of child labour in the context of the Decent Work Country Programme. Furthermore, the Committee requests the Government to provide information on the second National Strategic Plan for the Prevention and Elimination of Child Labour and the Protection of Young Workers (2007–16) and the programmes of action that are implemented in the context of this Plan, as well as on the results achieved in terms of the progressive abolition of child labour. It also invites the Government to continue providing information on the application of the Convention in practice including, for example, statistical data on the employment of children and young persons and extracts of the reports of the inspection services.***

Article 2, paragraph 1. 1. Scope of application. In its previous comments, the Committee noted that, despite the amendments made to sections 130 and 131 of the Labour Code by Act No. 474 of 21 October 2003, the Labour Code still does not apply to employment relationships that are not derived from an employment contract, such as work performed by children on their own account. The Committee reminded the Government that the Convention applies to all sectors of economic activity and that it covers all forms of employment or work, whether or not an employment contract exists and whether or not the work is paid. It requested the Government to provide information on the manner in which the protection envisaged by the Convention is ensured in the case of children engaged in an economic activity that is not covered by an employment relationship, such as work performed on their own account.

The Committee notes the information provided by the Government according to which Ministerial Agreement JCHG-008-05-07 on the implementation of Act No. 474 provides that the General Directorate of Labour Inspection shall be responsible for the implementation of Act No. 474 and the organization of a system of inspection for the prevention of child labour and its supervision in accordance with the rights of young persons engaged in work in the formal and informal sectors. The Committee also notes the Government's indication that, with a view to increasing labour inspection activities in the informal economy, and particularly to eliminating child labour, the labour inspection system has been strengthened through links with various governmental and non-governmental organizations. Accordingly, the labour inspectorate for children and the general labour inspectorate will collaborate with a view to protecting children from work, and from the worst forms of child labour, and removing them from exploitation. ***Taking due note of the information provided by the Government, the Committee requests it to provide information on the measures adopted by the labour inspection service for children and the general labour inspectorate to protect and remove children from child labour who are not bound by an employment relationship, such as those who work on their own account.***

2. Minimum age for admission to light employment and work. In its previous comments, the Committee noted that section 134 of the Labour Code does not regulate the performance of light work by children between the ages of 12 and 14 years, as envisaged in *Article 7* of the Convention. Furthermore, it noted the statistics on work by children under 14 years of age contained in the report on child labour compiled by SIMPOC and published by ILO–IPEC in April 2003, which indicate that in practice a considerable number of children engaged in work are under 14 years of age. In view of the situation prevailing in the country, the Committee invited the Government to establish a system regulating the employment of children aged between 12 and 14 years on light work, in accordance with the conditions set out in *Article 7* of the Convention.

In its report, the Government indicates that Act No. 474 regulates work by children and establishes 14 years as the minimum age for admission to employment, without any exception to this age being envisaged. While noting the Government's indications, the Committee notes once again that, according to ENTIA, 2005, a certain number of children aged between 12 and 14 years, which is below the minimum age for admission to employment, are engaged in work. ***The Committee recalls that under Article 2, paragraph 1, of the Convention, no one under the minimum age shall be admitted to employment or work in any occupation, with the exception of light work, and it requests the Government to provide information on the measures that it intends to take to bring an end to work by children under 14 years of age.***

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee notes that, according to UNESCO statistics, 86 per cent of girls and 88 per cent of boys attend primary school, compared with 46 per cent of girls

and 40 per cent of boys attend secondary school. The Committee notes that, according to the final evaluation report of the Strategic Plan 2001–05, a special school enrolment plan resulted in the re-enrolment of over 3,455 boys and 2,742 girls in primary school in 2005, and over 50,000 children in 2006. However, according to this report, over 150,000 children between the ages of 7 and 12 years are not enrolled in school each year. Furthermore, the report notes an increase in the school drop-out rate over the past six years, particularly due to poverty which constrains children, and particularly boys, to work. Despite the efforts made by the Government, the Committee expresses concern at the low attendance rates for secondary school. It observes that poverty is one of the primary causes of child labour and that, when combined with a deficient education system, it hinders the development of the child. **Considering that education is one of the most effective means of combating child labour, the Committee requests the Government to take the necessary measures to increase the school attendance rate and reduce the school drop-out rate so as to prevent children under 14 years of age to work, particularly on their own account. It also requests the Government to intensify its efforts to combat child labour by reinforcing measures that allow child workers to be integrated into the school system, whether formal or informal, or into vocational training, provided that the minimum age criteria with regard to employment or work are respected.**

Article 3, paragraph 2. Determination of hazardous types of work. Further to its previous comments, the Committee notes **with satisfaction** the adoption of Ministerial Agreement No. VGC-AM-0020-10-06 respecting the list of hazardous types of work applicable in Nicaragua of 14 November 2006, which was drawn up in consultation with the organizations of employers and workers and civil society, and contains a detailed list of hazardous types of work.

Nigeria

Minimum Age (Underground Work) Convention, 1965 (No. 123) (ratification: 1974)

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

The Committee recalls that for a number of years, it has been requesting the Government to indicate measures taken to give effect to the Convention (*Article 4, paragraph 5*), under which the employer shall make available to the workers' representatives, at their request, lists of the persons who are employed in work underground and who are less than two years older than the minimum age specified by the Government which is 16 years. The lists should contain the dates of birth of persons aged between 16 and 18 years and the dates at which they were employed or worked underground in the undertaking for the first time.

The Committee noted that under section 62 of the Labour Act, every employer is required to keep a register of all young persons in his employment with particulars of their ages, the date of employment and the conditions and nature of their employment and to produce the register for inspection when required by an authorized labour officer. The Committee further noted that under section 91(1) of the same Act, "young person" means a person under the age of 18 years and "industrial undertaking" includes mines, quarries and other works for the extraction of minerals from the earth. **The Committee therefore once again requests the Government to take the necessary measures to ensure that section 62 of the Labour Act is amended so that such registers may also be made available to workers' representatives, at their request. The Committee once again asks the Government to provide information on progress made in this regard in its next report.**

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

Pakistan

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the Government's report and the communications of the All Pakistan Federation of Trade Unions (APFTU) of 30 March 2007 and of the Pakistan Workers' Federation (PWF) of 2 May 2007.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children. The Committee had previously noted the allegations of the International Trade Union Confederation (ITUC), according to which trafficking in persons is a serious problem in Pakistan, including the trafficking of children. Women and children reportedly arrive from Bangladesh, Myanmar, Afghanistan, Sri Lanka and India, many to be bought and sold in shops and brothels. The Committee had also noted that the ITUC's allegations that several hundred boys from Pakistan were trafficked to the Gulf States to work as camel jockeys. Moreover, in some rural areas, children are sold into debt bondage in exchange for money or land. The Committee had noted that the ILO-IPEC launched in 2000 the subregional project to combat child trafficking (TICSA) in Bangladesh, Nepal and Sri Lanka and that the project was subsequently extended to Pakistan, Indonesia and Thailand. According to the project report of September 2002 (pages 14–15), approximately 100,000 women and children were internally trafficked in Pakistan, and approximately 200,000 women and children were trafficked from Bangladesh to Pakistan between 1990 and 2000. The Committee had also noted that the Committee on the Rights of the Child (CRC/C/15/Add.217, 27 October 2003, paragraph 76), while noting the serious efforts undertaken by the State party to prevent child trafficking, had expressed its deep concern at the very high incidence of trafficking in children for the purposes of sexual exploitation, bonded labour and camel jockeying.

The Committee had observed that sections 2(f) and 3 of the Prevention and Control of Human Trafficking Ordinance of 2002 provide that human trafficking for the purpose of exploitative entertainment (i.e. activities in connection with sex), slavery or forced labour is prohibited. Section 370 of the Penal Code also prohibits the sale and trafficking of persons for the purpose of slavery.

The Committee notes that, according to the Technical Project Report of March 2006 for the second phase of the TICSAs project (TICSAs-II), a regional legal review was commissioned in early 2005 and has been completed to contribute to the improvement of national capacity to make legal reforms in the light of the international instruments to combat trafficking and towards effective enforcement of relevant laws and regulations to combat child trafficking for sexual and labour exploitation. By reviewing the Prevention and Control of Human Trafficking Ordinance of 2002, it was observed that the definition of “human trafficking” fails to recognize the transfer and transportation of persons as important parts of the trafficking process. Moreover, the definition focuses only on transportation in and out of Pakistan and ignores trafficking within Pakistan, which is prevalent in the country. The Committee notes that in order to discuss the findings of the review, a tripartite regional workshop was organized and that recommendations were made to amend the legislation and strengthen implementing and monitoring mechanisms.

The Committee consequently observes that, although national legislation exists to prohibit the trafficking of children for labour or sexual exploitation, it is not comprehensive and trafficking remains an issue of concern in practice. ***The Committee requests the Government to take immediate measures to ensure that the transfer and transportation of children under 18 years of age for labour and sexual exploitation, as well as the internal trafficking of children under 18 for the same purposes, is effectively prohibited in national legislation. The Committee also once again invites the Government to redouble its efforts to improve the situation and to take the necessary measures to eliminate the internal and cross-border trafficking of children under 18 for labour and sexual exploitation. It once again asks the Government to provide information on progress made in this regard.***

2. *Debt bondage.* In its previous comments, the Committee had noted the ITUC’s indications that Pakistan has several million bonded labourers, including a large number of children. Debt slavery and bonded labour are mostly reported in agriculture, construction (in particular in rural areas), brick kilns and carpet-making sectors. The Committee had also noted that the Federal Cabinet approved a National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers (National Policy for the Abolition of Bonded Labour) in September 2001, but that its implementation has been slow. The Committee had noted that, by virtue of section 4(1) of the Bonded Labour System (Abolition) Act (BLSA), 1992, “the bonded labour system shall stand abolished and every bonded labourer shall stand free and discharged from any obligation to render any bonded labour”. Section 4(2) of the BLSA states that no one shall make an advance under or in pursuance of the bonded labour system or other forms of forced labour.

The Committee notes that, in its report submitted under Convention No. 29, the Government specifies recent initiatives against bonded labour it is taking or contemplating, apparently within the framework of its National Policy for the Abolition of Bonded Labour, including the establishment of a legal aid service and the incorporation of the issue of child bonded labour into the syllabi of the judicial, police and civil service academies. The Committee also notes that an ILO project to promote the elimination of bonded labour in Pakistan (PEBLIP) is being implemented for the period of March 2007 to April 2010 as an expansion and continuation of ongoing technical cooperation undertaken by the ILO in Pakistan since 2001. One of the key strategies of this project is to focus on policy and law revision to create a national conducive environment and to develop institutional capacity for its effective implementation, while the key implementation mechanism will be the National Committee on Bonded Labour, a tripartite-plus standing committee established under the National Policy on Abolition of Bonded Labour. The project aims to protect bonded labourers, prevent women and men who are at risk of falling into bondage and assist the families that have been released from bondage.

The Committee once again reminds the Government that, by virtue of *Article 3(a)* of the Convention, child debt bondage is prohibited, and that under *Article 1* of the Convention, it is obliged to take *immediate* measures to prohibit and eliminate this worst form of child labour. ***While recognizing the initiatives taken by the Government pursuant to the National Policy on Abolition of Bonded Labour, the Committee requests the Government to continue to take measures to ensure its effective implementation. The Committee also requests the Government to indicate the impact of the ILO PEBLIP project on the situation of child bonded labourers in Pakistan, notably with regard to the removal of children under 18 from bonded labour and their rehabilitation.***

Article 3(d), and Article 4, paragraph 1. Hazardous work. The Committee had previously noted that article 11(3) of the Constitution states that “no child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment”. The Committee had also noted that sections 2 and 3 of the Employment of Children Act of 1991 provide that children under 14 years of age shall not be employed in the occupations listed in Parts I and II of the Schedule of the Employment of Children Act which provide for a detailed list of the types of work that children under 14 years of age shall not perform. Section 12 of the Employment of Children Rules of 1995 also provides for types of work that shall not be performed by children under 14. The Committee had also observed that night work between 7 p.m. and 8 a.m. is prohibited for children under 14 years of age under section 7 of the Employment of Children Act of 1991. The Committee had further noted the Government’s indication that the Ministry of Labour, Manpower and Overseas Pakistanis was working on the consolidation and rationalization of labour laws which will include amending the definition of a child

so as to bring its legislation into line with the Convention. The Government had added that the process requires the approval of Parliament, which takes time.

The Committee notes that, according to the information provided by the Government, the Employment of Children Act, as amended by Act No. 1280(1) of 2005, includes in the list of types of hazardous work prohibited to children under 14 years of age “work in underground mines and quarries including blasting and assisting in blasting”. The Committee once again recalls that, under *Article 3(d)* of the Convention, children *under 18* shall not perform work which, by its nature of the circumstances in which it is carried out, is likely to harm their health, safety or morals. ***The Committee accordingly requests the Government to take immediate measures as a matter of urgency to ensure that the legislation is amended to raise the minimum age for admission to hazardous work to 18. It also once again asks the Government to take the necessary measures to ensure that the types of hazardous work, in particular those provided in Parts I and II of the Schedule of the Employment of Children Act, are prohibited to children under 18 years of age.***

Article 5. Monitoring mechanisms. 1. Local vigilance committees. The Committee had noted, in its previous comments, the ITUC’s indication that the BLSA prohibits bonded labour but remains ineffective in practice. It had also noted that local vigilance committees were constituted to monitor the implementation of the BLSA but that there were reports of serious corruption within these committees. The Committee had noted that the vigilance committees are composed of the deputy commissioner of the district, representatives of the police, the judiciary, the legal profession, the municipal authorities; and under the recommendation of the ILO Conference Committee on the Application of Standards, membership was extended to include workers’ and employers’ representatives. The Committee had also noted the Government’s statement that efforts were being made to implement the BLSA with an Anti-Corruption Strategy that was formulated in 2003. The Committee notes that, in the framework of the 2007 ILO PEBLIP project, the vigilance committees will also ensure better on-ground implementation of project activities. Furthermore, according to the Government’s report submitted under Convention No. 29, one of the recent initiatives taken by the Government within the framework of the National Policy for the Abolition of Bonded Labour is to organize training workshops for key district government officials and other stakeholders to enhance their capacity and enable them to draw up district-level plans to identify bonded labourers and activate the district vigilance committees. ***The Committee requests the Government to provide information on the concrete measures taken by the local vigilance committees to ensure the effective implementation of the BLSA and of the ILO PEBLIP project to promote the elimination of bonded labour, and the results achieved. It also requests the Government to indicate whether the Anti-Corruption Strategy has contributed to improving the implementation of the BLSA.***

2. Labour inspection. The Committee had noted, in its previous comments concerning the application of the Labour Inspection Convention, 1947 (No. 81), the measures taken by the Government in cooperation with ILO–IPEC to reinforce labour inspection so as to efficiently combat child labour. The Committee had noted, however, the ITUC’s indications that the number of inspectors is insufficient, that they lack training and are reported to be open to corruption. The ITUC had added that inspections do not take place in undertakings employing less than ten employees, where most child labour occurs. The Committee notes the indication of the PWF, according to which the Government of Pakistan should take more effective measures to monitor the use of child labour in the informal sector with the cooperation of the “Independent Labour Inspection Machinery”. Furthermore, in communications sent to the Office with the Government’s report under Convention No. 81, the PWF indicates that the governments of the two largest provinces of the country, namely Sindh and Punjab, have no system for supervising the application of the legislation. According to the PWF, these governments apply a policy of not inspecting a business for one year following its establishment. The PWF, in a communication of May 2007, further indicates that in the two abovementioned provinces, inspectors may not enter a workplace without prior permission from the employer or prior notice on the employer. The Committee also notes that, in its communication of 21 September 2008, the PWF observes that the Employment of Children Act of 1991 needs to be implemented more effectively. In this regard, the PWF indicates that it held a bilateral dialogue with the Federal Minister and the provincial governments to enforce the provisions of this Act through an effective labour inspection mechanism.

The Committee notes that, according to the Technical Progress Report of March 2007 for the ILO–IPEC project to combat child labour in the carpet industry, the ILO’s external monitoring system is in place in each district of Pakistan and independent verification of the child labour situation is being done continuously through the ILO’s external monitoring system. In the case of the carpet weaving industry, the Committee notes that 4,865 monitoring visits have been made to 3,147 workplaces in the project areas, while 2,569 visits have been made to non-formal education centres to verify that children who were prevented or withdrawn from carpet weaving were actually attending schools. The Committee also notes that, according to the information available to the Office under Convention No. 81, a tripartite workshop organized jointly with the ILO–IPEC on “Revitalizing Labour Inspections System in Punjab” was held on 22 and 23 August 2007 in Lahore. In the course of the workshop, various issues were addressed including the Government’s labour inspection policy. The Committee nevertheless notes the information provided by the Government that 49,547 inspections were carried out in 2005, 9,286 in 2006 and 322 in 2007. It observes with concern that, according to those statistics, the number of inspections has decreased dramatically from 2005 to 2007. ***The Committee requests the Government to continue taking measures to train labour inspectors and provide them with adequate human and financial resources in order to enable them 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 and, more specifically, to strengthen the monitoring systems in the***

Punjab and Sindh provinces. It also requests the Government to provide more information on the number of workplaces investigated per year, and on the findings of labour inspectors with regard to the extent and nature of violations detected concerning children involved in the worst forms of child labour.

Article 6. Programmes of action. TICSА-II project. The Committee had previously noted that the subregional project to combat child trafficking (TICSА) aimed at, amongst other things, determining the demand side of trafficking of children and women in Pakistan for labour and sexual exploitation. The Committee notes that, according to the Technical Project Report of March 2006 for the second phase of the TICSА project (TICSА-II), the regional study on the demand side of trafficking in Asia has been completed. The Committee also notes that an Information Kit on Human Trafficking was developed in English and Urdu to provide training to district officials, representatives of workers' and employers' organizations, non-governmental organizations and other relevant groups in the districts of Sindh and Punjab. **The Committee requests the Government to provide information on the measures taken as a result of the regional study on the demand side of trafficking in Asia and information on the use and efficacy of the Information Kit on Human Trafficking.**

Article 7, paragraph 1. Penalties. The Committee had previously noted the ITUC's indication that persons found guilty of violating child labour legislation are rarely prosecuted and that when they are prosecuted, the fines imposed are usually insignificant. The Committee notes the APFTU's indication, in its recent communication, that, although child labour is prohibited by national legislation, the reality of the situation shows that child labour and its worst forms are still widespread.

The Committee notes that, according to the information provided by the Government, the number of prosecutions decreased from 377 in 2005, to 55 in 2006, to none in 2007. The Committee observes that the statistics provided by the Government offer no particular indication as to whether the prosecutions that were reported relate to cases which involved the engagement of children under 18 years of age in the worst forms of child labour. The Committee once again recalls that, by virtue of *Article 7, paragraph 1*, of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the application of dissuasive sanctions. **The Committee once again emphasizes the importance of taking the necessary measures to ensure that whoever violates the legal provisions giving effect to the Convention is prosecuted and to press for the imposition of sufficiently effective and dissuasive penal sanctions. It also once again requests the Government to provide information on the practical application of the laws, including the number of infringements reported of the abovementioned provisions, investigations, prosecutions, convictions and penal sanctions applied.**

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Bonded labour. The Committee had previously noted that, according to the Rapid Assessment Studies on Bonded Labour in Different Sectors in Pakistan of 2004, workers in the brick kiln sector were not aware of the general legislation that applies to bondage. It notes that, in the framework of the 2007 ILO PEBLIP project, one of the followed strategies is to field-test tripartite models for the prevention of bonded labour, in particular through pilot initiatives in the brick kiln sector in Punjab. The project also aims to launch a national-level programme on awareness raising. **The Committee requests the Government to supply information on the impact of the ILO PEBLIP project on preventing children under 18 years of age from being engaged in bonded labour, especially in the brick kiln sector.**

Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. 1. Child victims of trafficking. The Committee notes that, according to the Technical Progress Report of March 2006 for the ILO-IPEC TICSА-II project, the Child Protection and Rehabilitation Bureau (CPRB) that has been established in Lahore to rehabilitate street children has also been assigned the task of housing returned camel jockeys from the United Arab Emirates and of facilitating their reintegration within their families and communities. The Committee also notes that the Regional Child Friendly Guidelines for the Rehabilitation of the Victims of Trafficking have been developed in the framework of the TICSА-II project. The objective of this activity is to contribute to the improvement of the overall services at the rehabilitation shelters during the process of recovery and rehabilitation of the child victims of trafficking. **The Committee requests the Government to provide information on the number of child victims of trafficking for labour or sexual exploitation who were effectively withdrawn and rehabilitated by the CPRB or other rehabilitation shelters.**

2. Child bonded labourers. The Committee had previously noted that the European Union and the ILO were assisting the Government in the setting up of 18 community education and action centres for combating exploitative child labour through prevention, withdrawal and rehabilitation of former child bonded labourers. The Committee had also noted that the Government had established a "Fund for the education of working children and rehabilitation of freed bonded labourers". The Committee notes that the 2007 ILO PEBLIP project to promote the elimination of bonded labour in Pakistan aims to provide social and economic assistance to the families that have been released from bondage to help them re-establish their lives. **The Committee requests the Government to provide information on the impact of the abovementioned measures on removing children from bonded labour and on providing for their rehabilitation and social integration.**

3. Children working in the carpet industry. The Committee had previously noted the ITUC's indication that 1.2 million children were reported to work in the carpet industry, which is a hazardous industry. It had noted that the Pakistan

Carpet Manufacturers' and Exporters' Association (PCMEA) and ILO–IPEC launched in 1998 a project to combat child labour in the carpet industry which had, so far, contributed to the withdrawal of 13,000 carpet-weaving children (83 per cent of whom were girls) from hazardous working conditions. The Committee notes that, according to the March 2007 Technical Progress Report for the second phase of the ILO–IPEC project to combat child labour in the carpet industry, a baseline survey on child labour in the carpet weaving industry in the province of Sindh has been completed. According to this survey, there are over 25,752 carpet weaving households in the Sindh province with an estimated 33,735 carpet weaving children, out of which 24,023 are estimated to be below 14 years of age and 9,712 are between 14 and 18 years of age. The Committee notes *with interest* that 11,933 children (8,776 girls and 3,157 boys) have been withdrawn from carpet weaving and enrolled in non-formal education centres. ***The Committee once again encourages the Government to pursue its efforts to rehabilitate children under 18 years of age who undertake hazardous work in the carpet weaving industry and to provide information on the results achieved.***

4. *Children working in the surgical instruments industry.* The Committee had previously noted the ITUC's indication that children constitute about 15 per cent of the workforce in the surgical instruments industry, which is one of the most hazardous industries. The Committee had also noted that the ILO–IPEC, with the assistance of the Italian social partners and the Surgical Instruments Manufacturers' Association of Pakistan, launched in 2000, a project to combat hazardous and exploitative child labour in surgical instruments manufacturing through prevention, withdrawal and rehabilitation. Under its direct action programmes, 1,496 children employed in surgical instruments production workshops had received non-formal education and pre-vocational training. The Committee had noted that this project had been extended up to 2006 to cover a larger number of children. It notes that, according to the progress report for the second phase of the ILO–IPEC project of January 2005 to May 2006, 2,033 children working in the surgical instruments industry received non-formal education through their placement in non-formal education centres or non-formal education cells with mobile teaching systems. The Committee notes *with interest* that, of these children, 633 were mainstreamed from the non-formal education centres to neighbouring schools, thereby withdrawn completely from work, while 137 children have left the surgical trade due to other project interventions. ***The Committee encourages the Government to pursue its efforts to withdraw and rehabilitate children under 18 years of age performing hazardous types of work in the surgical instruments industry and to provide information on the results achieved.***

Clause (d). Children at special risk. 1. Child bonded labourers in mines. The Committee had previously noted that, according to the Rapid Assessment Studies on Bonded Labour in Different Sectors in Pakistan (Chapter 4 on the mining sector, pages 1, 24 and 25), some miners ask their children of 10 years of age to work with them in mines to lighten the burden of *peshgi* (i.e. any advance whether in cash or in kind made to the labourer). Thus, in Punjab and in the North-West Frontier Province (NWFP), children are usually assigned the job of taking donkeys underground and bringing them out laden with coal. The rapid assessment also indicates that children working in mines are sexually abused by miners. ***The Committee once again asks the Government to take the necessary effective and time-bound measures to eliminate child debt bondage in mines, as a matter of urgency.***

2. *Children working in brick kilns.* The Committee had previously noted that nearly half of children aged 10–14 working in brick kilns work more than ten hours a day without any safeguards and that working in the kilns is a particularly hazardous occupation for children. The Committee notes that, according to the Technical Progress Report of March 2007 for the ILO–IPEC project to combat child labour in the carpet industry, 3,315 children have been withdrawn from trades, including agriculture, scavenging and the brick kilns industry. ***The Committee requests the Government to pursue its efforts to protect children under 18 engaged in the brick kilns sector from hazardous work and to provide information on progress made in this regard.***

Article 8. International cooperation and assistance. Regional cooperation. The Committee had previously noted that Pakistan participates in the South Asian Association for Regional Cooperation (SAARC). The Committee had noted that the Government signed the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002. It had noted that according to the ILO–IPEC TICSAs report of September 2002, the signatories had committed themselves to develop a regional plan of action and to establish a regional task force against trafficking. The Committee had also noted that, according to the ILO–IPEC Technical Progress Report of September 2004, Pakistan signed Memoranda of Understanding with Thailand and Afghanistan to promote bilateral cooperation and address various issues of mutual interest including human trafficking. The Committee notes that, according to the March 2006 Technical Progress Report for the ILO–IPEC TICSAs-II project, national governments in the Asia–Pacific region increasingly recognize the interrelationship between unregulated labour migration and child trafficking and this new realization is leading towards an approach in dealing with the human trafficking issues within the migration framework. According to the report, newly signed bilateral agreements could contribute positively to efforts to combat child trafficking. ***The Committee once again asks the Government to provide information on the progress achieved in the launching of a regional plan of action and regional task force against trafficking. It also once again asks the Government to provide information on the impact of the Memoranda of Understanding signed with Afghanistan and Thailand, as well as of any other bilateral agreement, on the elimination of child trafficking.***

Part V of the report form. Practical application of the Convention. In its previous comments, the Committee pointed out that accurate data on the extent of bonded labour is essential to develop effective programmes to eliminate debt bondage. ***The Committee once again encourages the Government to undertake a nationwide survey in cooperation***

with employers' and workers' organizations and with human rights institutions and organizations to determine the extent of child debt bondage and its characteristics.

The Committee is also addressing a direct request to the Government concerning other points.

Peru

Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1962)

Article 6 of the Convention. Vocational guidance and physical and vocational rehabilitation of children and young persons found to be unsuited to work. In its previous comments, the Committee noted the information provided by the Government that there is a policy in the country to develop programmes which guarantee adequate standards of living for children and young persons, ensure that they receive the necessary protection when they are at risk and provide for their physical and mental rehabilitation. It noted that none of these programmes makes specific provision for measures to be taken 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 handicaps or limitations.

In its report, the Government indicates that section 1 of General Act No. 27050 respecting persons with disabilities provides that the objective of the law is to establish a legal regime of protection and care in relation to health, work, education, rehabilitation, social security and prevention so that persons with disabilities can develop and achieve social, economic and cultural integration. It adds that, under section 33 of Act No. 27050, as amended by Act No. 28164, the Ministry of Labour and Employment Promotion, in collaboration with the National Council for the Integration of Persons with Disabilities, supports measures for the development of work and special programmes for persons with disabilities. Under the terms of this provision, the executive, its decentralized bodies, state enterprises, regional governments and municipal authorities are under the obligation to employ a quota of 3 per cent of persons with disabilities. Furthermore, the Government refers to the establishment of a register of enterprises that are favourable to persons with disabilities and the establishment of a free medical certificate of incapacity. It also refers to the adoption of the Plan on Equality of Opportunities for Persons with Disabilities.

While taking due note of the detailed information provided by the Government, the Committee notes that it does not give effect to the Convention. Indeed, these measures are intended to implement a policy of the development and integration of persons with disabilities, especially through employment, but do not concern children and young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations. In this respect, the Committee reminds the Government that, under the terms of *Article 6, paragraph 1*, of the Convention, the competent authority must take appropriate 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. Under the terms of *Article 6, paragraph 2*, cooperation shall be established between the labour, health, educational and social services, and effective liaison shall be maintained between these services. In this respect, the Committee refers to Paragraphs 9 and 10 of Recommendation No. 79, which contains additional indications on the measures to be taken by the national authority for the implementation of this Article of the Convention. ***The Committee urges the Government to take the necessary 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. It also requests the Government to provide information on the measures adopted or envisaged to establish cooperation between the labour, health, educational and social services concerned, and effective liaison between these services.***

Part V of the report form. Application of the Convention in practice. The Committee requests the Government to provide information on the application of the Convention in practice. It notes that the Government's report does not contain any information in this respect. The Committee notes that, in its concluding observations of March 2006 (CRC/C/PER/CO/3, paragraph 62), the Committee on the Rights of the Child expressed deep concern at the information that hundreds of thousands of children and adolescents are in the labour market, marginalized from education and victims of exploitation and abuse. The Committee on the Rights of the Child further noted with concern that legislative provisions protecting children from economic exploitation are often violated and that children are exposed to dangerous or degrading work. ***In view of the above, the Committee once again requests the Government to provide information on the application of the Convention in practice, including statistical data on the number of children and young persons engaged in work and who have undergone the medical examinations provided for in the Convention, extracts of the reports of the inspection services and information on the number and nature of the infringements reported.***

Noting the absence of information in the Government's report, the Committee once again requests it to confirm whether Supreme Decree No. 006-73-TR of 5 June 1973 establishing measures which give effect to most of the Articles of the Convention, is still in force.

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1962)

With regard to Article 6 of the Convention and Part V of the report form, the Committee requests the Government to refer to the comments made under Convention No. 77.

Article 7, paragraph 2. Supervision of the enforcement of the system of medical examination for fitness for employment of children engaged either on their own account or on account of their parents. In its previous comments, the Committee noted that the Code of Children and Young Persons does not contain provisions respecting the identification measures necessary to supervise the implementation of the system of medical examinations for fitness for employment of young persons who, either on their own account or on account of their parents, are engaged in itinerant trading or any other occupation carried on in the streets or in places to which the public have access. It requested the Government to indicate the provisions of the national legislation envisaging the identification measures necessary to supervise the application of the system of medical examinations for young persons, and thereby guaranteeing the application of the Convention.

The Committee notes that, in its concluding observations of March 2006 (CRC/C/PER/CO/3, paragraph 65), the Committee on the Rights of the Child expressed appreciation of the programme *Educadores de Calle*, a programme which seeks to save children and young persons who live and work in the streets and who are exposed to exploitation, especially of an economic nature. The Committee on the Rights of the Child however expressed concern at the high number of street children, mostly due to socio-economic factors, as well as at abuse and violence in the family. The Committee once again reminds the Government that, under *Article 7, paragraph 2(a)*, of the Convention, measures of identification have 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 account of their parents in itinerant trading or in any other occupation carried on in the streets or in places to which the public have access (for example, the person concerned should be in possession of a document referring to the medical examination). ***The Committee accordingly requests the Government to take the necessary measures in the very near future to ensure supervision of the application of the system of medical examination for fitness to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried on in the streets or in places to which the public have access, in accordance with Article 7, paragraph 2(a), of the Convention.***

Russian Federation

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. The Committee had noted that, according to the communication of the International Trade Union Confederation (ITUC), thousands of persons are trafficked from the Russian Federation to other countries, including Canada, China, Germany, Israel, Italy, Japan, Spain, Thailand and the United States. Internal trafficking within the Russian Federation is also taking place; women are generally forced to work as prostitutes while men are trafficked into agricultural or construction work. There are said to be confirmed cases of children being trafficked for sexual exploitation. The Committee had further noted that the Committee on the Rights of the Child in its concluding observations (CRC/C/15/Add.274 of 30 September 2005, paragraph 80) while welcoming the recent introduction of norms prohibiting the trafficking of human beings in the Criminal Code, was concerned that not enough was being done to effectively implement these provisions. The Committee on the Rights of the Child also expressed its concern that protection measures for victims of trafficking of human beings were not fully in place and that reported acts of complicity between traffickers and state officials were not being fully investigated and punished.

The Committee had observed that section 127.1 of the Criminal Code prohibits the sale and trafficking in human beings, defined as the purchase and sale of persons or their recruitment, transport, transfer, hiding or receipt, if committed for the purposes of exploitation. Subsection (2) of section 127.1 provides for a higher penalty when this offence is committed in relation to a known minor (defined in section 87 as a person aged 14 to 18 years). The Committee had also noted that subsection (2) of section 240 of the Criminal Code prohibits transporting another person across the state border of the Russian Federation for the purposes of engaging that person into prostitution or illegal detention abroad. A higher penalty is provided when this offence is committed against a minor. The Committee had noted the Government's information that, in 2002, ten cases of criminal proceedings for trafficking in minors were instituted, and 21 in 2003. In 2004, three cases of trafficking in minors were uncovered, of which two involved children aged between 1 and 3 years, and the other involved a child of 16 years.

The Committee had also noted the Government's information that during the period 2003–05, work had been under way on a draft Law on Combating Trafficking in Human Beings which is based on the Palermo Protocol and provides for appropriate measures to ensure legal protection and social rehabilitation for victims of trafficking. However, the Committee now notes that, according to information available at the Office, specific trafficking victim assistance legislation, pending before the Duma, was neither passed nor enacted in 2006.

The Committee further notes that, according to the Report of the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in Ukraine of 24 January 2007 (A/HRC/4/31/Add.2, paragraphs 48–49), the Russian Federation is also a destination country for boys and girls aged between 13 and 18 years trafficked from Ukraine. According to this report, half of the children trafficked across borders from Ukraine go to neighbouring countries, including the Russian Federation. The children trafficked across borders are exploited in street-vending, domestic labour, agriculture, dancing, employed as waiters/waitresses or to provide sexual services. Furthermore, according to the same

report (paragraph 52), as of 30 June 2006, 120 unaccompanied children were repatriated to Ukraine from nine countries, among which the Russian Federation was mentioned in particular.

The Committee notes once again that, although the trafficking of children for labour or sexual exploitation is prohibited by law, it remains an issue of concern in practice. It also once again recalls that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children is considered to be one of the worst forms of child labour and is therefore prohibited for children under 18 years of age. ***The Committee once again requests the Government to take the necessary measures as a matter of urgency to ensure that persons who traffic in children for labour or sexual exploitation are in practice prosecuted and that sufficiently effective and dissuasive penalties are imposed. In this regard, it once again requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of the legal prohibitions on the sale and trafficking of children. The Committee also asks the Government to provide information on the status of the draft Law on Combating Trafficking in Human Beings and on the progress made in its enactment, if still pending before the Duma.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. The Committee had previously noted the Government's information that efforts are being made to improve collaboration between the media and non-governmental organizations in combating cross-border trafficking in women and children. Thus, it was becoming increasingly common for the major television networks to broadcast programmes on trafficking in women and children, shedding light on this problem and explaining the work done by internal affairs officials to identify and prosecute traffickers in accordance with the new provisions of the Criminal Code. The Committee had also noted that, in 2004, the organization "Independent voluntary assistance centre for victims of sexual assault" ("Sisters") helped to conduct a series of one-day training sessions on the theme of "Making general use of Russian and international experience in combating trafficking in persons". The Committee had further observed that the association of women's crisis centres, "Let's stop violence!", has opened a national information line on the problem of preventing trafficking in persons. Its purpose is to provide information on Russian and international organizations that provide assistance to victims of trafficking in the Russian Federation and abroad, Russian embassies and consulates abroad and personal security plans for persons travelling abroad. ***Noting the absence of information in the Government's report, the Committee once again asks the Government to provide information on the impact of the above measures on preventing the sale and trafficking of children.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee had previously noted the Government's detailed information on a system of social institutions which provide for the rehabilitation and social integration of children engaged in the worst forms of child labour. In particular, it had noted that, compared to 2003, the number of establishments functioning within the social protection bodies of the constituent units of the Russian Federation and local self-government bodies had increased by 144, reaching 3,373 by 1 January 2005 (the corresponding figures were 3,059 in 2002 and 3,229 in 2003). It had also noted that social rehabilitation centres for minors, centres to provide social assistance to families and children, social shelters for children and adolescents, centres for children left without parental care, telephone hotlines for emergency psychological assistance and other measures were being actively developed. The development of social rehabilitation centres for minors was stepped up in 2004 (with the addition of 163 new centres compared to the year 2002). The Committee had also noted the Government's information that, in recent years, the Russian law enforcement authorities have been collaborating closely with organizations which help victims of violence. For example, the National Central Office of Interpol receives information from crisis centres on cases of unlawful detention and sexual exploitation abroad of Russian women, including under-age girls. ***Noting the absence of information in the Government's report, the Committee once again requests the Government to provide information on effective and time-bound measures taken to assist child victims of trafficking and to provide for their rehabilitation and social integration.***

Article 8. International cooperation and assistance. 1. International cooperation. The Committee had previously noted that the Russian Federation is a member of Interpol, which helps cooperation between countries in the different regions especially in the fight against trafficking of children. The Committee had also noted that the Russian Federation has ratified the United Nations Convention against Transnational Organized Crime and its supplementary Protocols against Smuggling of Migrants by Land, Sea and Air, as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. ***Noting the absence of information in the Government's report, the Committee once again asks the Government to provide information on any steps taken to assist other member States or on assistance received giving effect to the provisions of the Convention through enhanced international cooperation and assistance on the issue of combating the trafficking of children.***

2. Regional cooperation. The Committee had noted the Government's information that, since 1998, joint operations have been under way with the countries of the Council of Baltic Sea States with a view to preventing cross-border smuggling of children. Under the auspices of that body's executive committee, so-called "contact officers", including some from the Russian Ministry of Internal Affairs, deal with specific cases requiring action to prevent trafficking in children for the purpose of sexual exploitation. The Committee had noted that, following a decision by the Interpol Operative Committee for the Baltic Sea States, available data on the cross-border smuggling of children for the purpose of prostitution were being analysed and the principal trafficking routes were being mapped. ***Noting the absence of information in the Government's report, the Committee once again asks the Government to provide information on***

regional cooperation with the countries of the Council of Baltic Sea States with a view to preventing cross-border trafficking of children.

The Committee is also addressing a direct request to the Government concerning other points.

[The Government is asked to supply full particulars to the Conference at its 98th Session and to reply in detail to the present comments in 2009.]

Senegal

Night Work of Young Persons (Industry) Convention, 1919 (No. 6) (ratification: 1960)

Article 2 of the Convention. Night work in industrial undertakings. In the comments which it has been formulating for over 30 years, the Committee noted that sections 3 and 7 of local Order No. 3724/IT of 22 June 1954 concerning the work of children, which allows exceptions to the prohibition of night work for children under the age of 18 years, are not in conformity with *Article 2* of the Convention. In its report of 2000, the Government recognized the non-conformity of these sections and undertook to bring its regulations into conformity with international instruments. The Committee noted the information sent by the Government to the effect that, further to a number of seminars organized with the assistance of the Office, draft legislation to apply the new Labour Code had been drawn up, including a draft order laying down particular conditions for the work of children. The Committee asked the Government to supply information on all developments concerning the entry into force of the draft order laying down particular conditions for the work of children. The Committee notes *with satisfaction* the adoption of Order No. 3748/MFPTEOP-DTSS of 6 June 2003 concerning the work of children (hereinafter “Order of 6 June 2003 concerning the work of children”) which gives full effect to the Convention. In particular, the Committee notes that, under section 3(2) of the Order of 6 June 2003 concerning the work of children, children may not be employed in any night work as defined by section L.140 of the Labour Code, namely between 10 p.m. and 5 a.m. Furthermore, under section 1 of the same order, the term “children” means any person under 18 years of age.

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

The Committee notes the observations by the National Confederation of Workers of Senegal (CNTS) set out in a communication of 1 September 2008.

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee had noted with interest that the Government is participating in an ILO–IPEC project entitled “Contribution to the abolition of child labour in French-speaking Africa”, the overall objective of which is to contribute to abolishing child labour. It had also noted with interest that the Government is participating in the ILO–IPEC *Time-bound programme (TBP)* on the worst forms of child labour. It had observed that in the context of these two projects, the Government has adopted a strategy for the implementation of national initiatives to combat child labour through education, vocational training and apprenticeship. Lastly, it had noted that a national child labour survey was carried out in Senegal and that the data collected were being analysed.

The Committee notes the Government’s information that, as a result of the implementation of the abovementioned ILO–IPEC project and the *TBP*, 6,208 children have been prevented from entering the labour market too early. The Government further indicates that in the context of the ILO–IPEC projects, two action programmes have been implemented and have prevented 6,023 children from working through the provision of education services. The Committee further notes that the Government has sent a number of statistics published in the 2007 analysis report on the national survey of child labour in Senegal carried out in 2005. It notes that of an estimated 3,759,074 children aged from 5 to 17 years, 1,378,724 (36.7 per cent) are involved in some activity or work in Senegal and that in 2005 more than two out of ten (21.4 per cent) children aged from 5 to 9 years had already worked. The Government also states that boys appear to be more affected by child labour since 26.4 per cent of boys 5 to 9 years of age, as opposed to 15.9 per cent for girls, and 51.7 per cent of boys of 10 to 14 years of age, as compared to 36.2 per cent for girls, are working. The report also showed that, overall, 1,739,571 children are forced to engage in housework, i.e. 46.3 per cent of all children aged from 5 to 17 years. Furthermore, in addition to the housework performed by some children, and regardless of their age or sex, the great majority of child workers are to be found in the agricultural sector (75.4 per cent) followed by the stockbreeding and fisheries sectors (8 per cent), handicrafts and work on looms (4 per cent), domestic and household jobs (3.1 per cent), sales and services to private persons (5.5 per cent), construction and public works (2.5 per cent), other (1.4 per cent). *While noting the measures taken by the Government to abolish child labour, the Committee expresses concern at the number and percentage of children still working in the various sectors and requests the Government to redouble its efforts to combat child labour. It further asks the Government to continue to send information on the impact of the action programmes currently under way in terms of the numbers of children prevented from entering the labour market too early and the number of children withdrawn from work.*

Article 2, paragraph 1. 1. Scope of application. In its previous comments, the Committee noted the Government’s statement that self-employed workers are treated as traders and that children may not be self-employed because their status as minors precludes their entering freely into contracts. It had further noted that although the national legislation

excludes all forms of self-employment by children, in practice, poverty has facilitated the development of such activities among children (shoe cleaners, hawkers), who engage in them illegally.

The Committee notes the allegations of 1 September 2008 by the CNTS that even if children working on their own account can be regarded as traders, the minimum age is not well-observed in the informal sector. The CNTS accordingly asks the Government to indicate what policy it intends to apply in order to protect such children, most of whom have had no basic education and are in no kind of training.

In this regard, the Government indicates that, in collaboration with ILO-IPEC, it has carried out a number of activities with a view to withdrawing self-employed children from work. They include:

- (a) taking charge of children working in the handicrafts sector, in refuse scavenging at the Mbeubess dump, and street children;
- (b) giving families access to replacement income and assisting them in developing income-generating activities;
- (c) raising public awareness through surveys, media reports and audiovisual documents, as well as displays, brochures and flyers, in French and the national languages, about child labour;
- (d) improving children's access to and maintenance in school;
- (e) providing children with basic training and training in skills that afford them better work prospects.

The Committee requests the Government to provide information on the impact of the abovementioned measures in terms of the number of children who are not bound by an employment relationship, such as those working on their own account, who have been withdrawn from work.

2. *Minimum age of admission to employment or work.* In its previous comments, the Committee had noted that section L.145 of the Labour Code allowed waivers from the minimum age of admission to employment by order of the Minister in charge of labour, taking account of local circumstances and the tasks to be performed. The Committee had reminded the Government that it had specified a minimum age of 15 years upon ratifying the Convention and that the waiver allowed by section L.145 of the Labour Code was inconsistent with this provision of this Convention. The Committee had noted the information from the Government to the effect that it was revising the legislation in order to make the necessary amendments. It had noted that a legislative study had been carried out in the context of the ILO-IPEC *TBP*, which identified shortcomings in Senegal's legislation in relation to the Convention. The findings of the study were submitted to the competent authorities so that they could take the appropriate action. The Committee had also noted that, according to the Government, no orders had been issued granting waivers from the minimum age for admission to employment or work and determining the nature of the light work that may be carried out in a family context.

The Committee notes the information sent by the Government to the effect that the matter is still under study by the competent authorities. ***The Committee urges the Government to take steps to ensure that the competent authorities' work leads to the amendment of section L.145 of the Labour Code in the near future to bring it into line with the Convention by allowing waivers from the minimum age for admission to employment or work only in the instances set forth in the Convention. It requests the Government to provide information on all developments in this respect in its next report.***

Article 3, paragraph 3. Admission to hazardous work from the age of 16 years. In its previous comments, the Committee had noted that section 1 of Order No. 3748/MFPTEOP/DTSS of 6 June 2003 on child labour provided for a minimum age of 18 years for admission to hazardous work. It had observed, however, that according to Order No. 3750/MFPTEOP/DTSS of 6 June 2003 determining types of hazardous work prohibited for children and young persons ("Order No. 3750 of 6 June 2003"), certain types of hazardous work could be performed by persons under 16 years of age. For example, section 7 of Order No. 3750 of 6 June 2003 allows work in underground mines, quarries and other mineral extraction plants by male children under 16 years of age. The Committee had also noted that children 16 years of age were allowed to perform the following types of work: work using circular saws provided that authorization in writing has been obtained from the labour inspector (section 14), operation of vertical wheels, winches and pulleys (section 15), operation of steam valves (section 18), work on mobile platforms (section 20) and the performance of hazardous feats in public performances in theatres, cinemas, cafes, circuses and cabarets (section 21). The Committee had observed that the requirements set forth in *Article 3, paragraph 3*, of the Convention appeared not to be fulfilled. It had noted the information supplied by the Government to the effect that in the course of the ongoing amendment of the laws and regulations, all these issues and inconsistencies would be remedied so as to harmonize the Convention and the national legislation. The Committee had also noted that on the matter of children's safety and health, 13 texts were in the process of adoption under the Labour Code to take account of the situation of children authorized to work.

The Committee notes the Government's information that the work in underground mines, quarries and other mineral extraction plants which may be done by male children under 16 years of age pursuant to section 7 of Order No. 3750 of 6 June 2003 consists of light work such as the sorting and loading of ore, the handling and haulage of trucks within the weight limits set by section 6 of the same Order, and the overseeing or handling of ventilation equipment. The Government adds that permits for young people of 16 years or more for work with circular saws are issued only after an inquiry and may be revoked. Lastly, the Government indicates that the jobs provided for in section 15, 18, 20 and 21 of Order No. 3750 of 6 June 2003 which may be performed by young people of at least 16 years of age, are authorized in full

observance of the letter and spirit of the Convention. The Committee notes that, according to the Government, all the other provisions that are inconsistent with the Convention are to be remedied in the context of the legislative revision, which is still ongoing, and account taken of the Committee's comments.

The Committee reminds the Government that under *Article 3, paragraph 3*, of the Convention, hazardous work, such as the tasks provided for in Order No. 3750 of 6 June 2003, may be performed by young persons of over 16 years of age provided that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee requests the Government to take measures to ensure that, as part of the ongoing legislative revision, the minimum age for admission to work underground in mines, quarries and other mineral extraction plants is 16 years both for girls and for boys. It also asks the Government to take the necessary measures to ensure that the conditions set in Article 3, paragraph 3, of the Convention are fully ensured for young persons aged 16 to 18 years engaged in the jobs provided for in sections 14, 15, 18, 20 and 21 of Order No. 3750 of 6 June 2003. It requests the Government to provide copies of the 13 texts on occupational safety and health that take account of the situation of children authorized to work, as soon as they are adopted. Lastly, the Committee expresses the hope that the legislative revision will be completed in the near future, and asks the Government to provide information on progress made in this regard.***

The Committee is addressing a direct request to the Government on one specific point.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes the communication of the National Confederation of Workers of Senegal (CNTS) of 1 September 2008.

Article 3 of the Convention. Worst forms of child labour. Clause (a). Forced or compulsory labour. Begging. In its comments, the CNTS indicates that the Government needs to indicate clearly the action that it intends to take to eradicate the exploitation of children, and particularly the phenomenon of child *talibés*, which may be considered as one of the worst forms of child labour. The CNTS adds that persons responsible for such exploitation of children are easily identifiable.

According to the UNICEF report on trafficking in persons, especially women and children, in West and Central Africa, published in 2006, internal trafficking exists in Senegal from rural to urban areas, particularly in the case of child *talibés*, who beg in the streets of Dakar. Child *talibés* from Guinea, Guinea-Bissau, Gambia and Mali are also exploited in the large cities of Senegal. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations on the second periodic report of Senegal in October 2006 (CRC/C/SEN/CO/2, paragraphs 60 and 61), expressed concern at the large number of working children and in particular the current practices of Koranic schools run by marabouts who use the *talibés* for economic gain by sending them to agricultural fields or to the streets for begging and other illicit work that provides money, thus denying them access to health, education and good living conditions.

The Committee notes that section 3(1) of Act No. 02/2005 of 29 April 2005 prohibits any person who, for economic gain, organizes another person to beg or who employs, procures or deceives a person with a view to delivering such person to beg or who exerts pressure on a person to beg or to continue to beg. Under subsection (2) of this section, there shall be no suspension of the implementation of the sentence where the offence is committed in relation to a minor.

The Committee observes that, although the legislation is in conformity with the Convention on this point, the phenomenon of child *talibés* remains a concern in practice. The Committee expresses concern at the use of these children for purely economic purposes. ***It requests the Government to take the necessary measures to give effect to the national legislation on begging and to punish marabouts who use children for purely economic purposes. The Committee also asks the Government to provide information on the time-bound measures adopted to prevent young persons under 18 years of age from becoming victims of forced or compulsory labour, such as begging. Furthermore, it asks the Government to indicate the effective and time-bound measures adopted to protect these children against forced labour and to ensure their rehabilitation and social integration.***

The Committee is also addressing a direct request to the Government concerning other points.

Sierra Leone

Minimum Age (Industry) Convention (Revised), 1937 (No. 59) (ratification: 1961)

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

In its previous comments, the Committee had taken note of the draft Employment Act prepared with the ILO's technical assistance. The Committee noted the information provided by the Government that section 34(4) of the draft Employment Act provides that "no child under the age of 18 years may work or be employed to perform any work that is likely to jeopardize his/her health, safety, or physical, mental, spiritual, moral or social development, or to interfere with his/her education. No employer shall continue to employ such a child after being notified in writing by a labour officer that the employment or work is injurious to health or dangerous". The Committee observed that this section 34(4) of the draft Employment Act gives effect to *Article 5 of the Convention*. ***It once again expresses the hope that the new Act will be adopted in the very near future in order***

to ensure complete conformity of the national legislation with the Convention on this point. The Committee requests the Government to communicate the text of the new Employment Act as soon as it is adopted.

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

Sudan

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

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

Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery and practices similar to slavery. Abduction and the exaction of forced labour. In its previous comments under Convention No. 29, the Committee had noted the International Trade Union Confederation's (ITUC) allegation that the report on the situation in Darfur issued by Amnesty International in July 2004 indicates cases of abduction of women and children by the Janjaweed militia, including some cases of sexual slavery. Abductions had continued in 2003 and 2004. The ITUC also indicated that, according to the Dinka Chiefs Committee (DCC) and the Committee for the Eradication of Abduction of Women and Children (CEAWC), there were some 14,000 people who had been abducted. The Committee had also noted the Government's information that, during the period from March to May 2004, the CEAWC was able to retrieve, with the Government's funding, more than 1,000 abductees who rejoined their families, including those in the areas controlled by the Sudan People's Liberation Army (SPLA).

The Committee noted the Government's information during the Conference Committee discussion of June 2005 according to which the CEAWC has dealt with 11,000 of the 14,000 cases of abduction and about 7,500 persons have been retrieved in 2004–05 compared with 3,500 from 1999 to 2004.

The Committee also noted the information contained in the ITUC's communication of 7 September 2005 that the signing of a comprehensive Peace Agreement in January 2005, the inauguration of a new Government on 9 July 2005 and the adoption of the interim Constitution provide an historic opportunity for the new Government of Sudan to resolve the problem of abductions, but it will not automatically lead to an end of abductions and the exaction of forced labour. With regard to the Government's statement during the Conference Committee of 2005 that "the case was closed and there were no more abductions", the ITUC alleges that it has been informed about abductions leading to forced labour and repeated rape amounting to sexual slavery and forced prostitution. The Committee also took note of the Government's reply of November 2005, according to which 108 abducted children have been retrieved by the CEAWC.

The Committee noted that article 30(1) of the Constitution of the Transitional Sudan Republic of 2005 prohibits slavery, the slave trade in all its forms and forced labour (unless sanctioned by the tribunal). It noted the Government's information that section 32 of the Act on the Child of 2004 specifically prohibits "the employment of children in forced labour, sexual or pornographic exploitation, illegal trade, or armed conflict". The Committee also noted that various provisions of the Penal Code prohibit forced labour (section 311), including abductions for that purpose (section 312).

The Committee noted the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the practices of abduction and the exaction of forced labour from children. The Committee observed that, while there have been positive and tangible steps to combat the forced labour of children, which include the conclusion of the Comprehensive Peace Agreement of 2005 and the results achieved by the CEAWC, there is no verifiable evidence that the forced labour of children has been abolished. Therefore, although the national legislation appears to prohibit abductions and the exaction of forced labour, this remains an issue of concern in practice. In this regard, the Committee reminded the Government that, by virtue of *Article 3(a)* of the Convention, forced labour is considered as one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee expressed its deep concern over the situation of children under 18 years who continue to be abducted and subject to forced labour. ***It once again urges the Government to redouble its efforts to improve the situation and to take the necessary measures to eradicate abductions and the exaction of forced labour from children under 18 years. It also requests the Government to provide information on the effective and time-bound measures taken to remove children from situations of abduction and forced labour and to provide for their rehabilitation and social integration.***

2. Forced recruitment of children for use in armed conflict. The Committee noted that, according to the Government's Periodic Report to the Committee on the Rights of the Child of 6 December 2001 (CRC/C/65/Add.17, paragraph 39), the National Service Law of 1992 stipulates that any Sudanese person having attained 18 years of age and who is not older than 33 years of age may be subject to conscription. Section 10(4) of the People's Armed Forces Act of 1986 states that all those who are capable of bearing arms are regarded as a reserve force and may be called upon to serve in the armed forces whenever the need arises. Subsection (5) of section 10 further states that, without prejudice to the provisions of subsection (4), the President of the Republic may require any person who is capable of bearing arms to undergo military training and thus be prepared as a member of a reserve force in accordance with the conditions specified by any law or decree in force. Furthermore, the government-run Popular Defence Forces established as a paramilitary force by the Popular Defence Forces Act of 1989, are allowed to recruit 16-year-olds.

The Committee noted that, according to the information available at the Office, the government armed forces, including the paramilitary Popular Defence Forces (PDF), the government-backed militias, the SPLA and other armed groups, including tribal groups not allied to government or armed opposition groups, have forcibly recruited child soldiers in the north and the south of Sudan. Recruitment took place predominantly in Western and Southern Upper Nile, Eastern Equatoria and the Nuba Mountains. An estimated 17,000 children remained in the government, SPLA and militia forces in 2004. In some cases, they were made to attack their own or neighbouring communities. The Committee also noted that in April 2003, the United Nations High Commissioner for Human Rights expressed concern at the continued recruitment and use of children in Sudan, in violation of international law. The Committee also noted that the Committee on the Rights of the Child, in its Concluding Observations of 9 October 2002 (CRC/C/15/Add.190, 2002, paragraphs 59 and 60) expressed deep concern that children are used as soldiers by the Government and opposition forces, and recommended the State party to end all recruitment and use of children as soldiers, in

accordance with applicable international standards, complete demobilization and rehabilitate those children who are currently working as soldiers, and to comply with the Commission on Human Rights resolution 2001.

The Committee noted the Government's information that section 9(24) of the Sixth Protocol of the Comprehensive Peace Agreement requires "the demobilization of all child soldiers in the span of six months as from the date on which the Comprehensive Peace Agreement is signed". Section 9(1)(10) of the Protocol considers the conscription of children a violation of the provisions of the Agreement. If such a violation occurs, the joint military committee shall decide on the appropriate disciplinary measures to be taken which include: "declaring or announcing the parties which are involved in the conflict, exposing or denouncing the culprit, or deciding on imposing a harsh penalty if the culprit is involved in serious violations, recommending that the individual culprit or parties involved be referred to a tribunal be it civil, criminal or military, as the case may be". The Committee also noted the Government's information that a Committee was set up after the Peace Agreement which is specialized in disarmament, demobilization and reintegration. It formulated a draft policy framework for the demobilization and reintegration of children linked to the armed forces groups.

The Committee noted the adoption of the Comprehensive Peace Agreement in January 2005. However, it considers that the prohibition of forcibly recruiting children should not be confined to the scope of the said Agreement. Hence, the Committee observed that, according to the legislation in force, children under 18 years may be recruited as "reserve forces" as well as members of the Popular Defence Force (from 16 years of age). ***The Committee therefore once again requests the Government to take the necessary measures, as a matter of urgency, to prohibit in the national legislation the compulsory recruitment of children under 18 years including as "reserves", in any military force, governmental or not, and to adopt appropriate penalties for contraventions of the prohibition. It also requests the Government to provide information on the time-bound measures taken to demobilize all child soldiers, including information on the number of children under 18 years who have been rehabilitated and reintegrated in their communities.***

Article 7. Penalties. Forced labour. In its previous comments under Convention No. 29, the Committee had noted that the CEAWC was of the opinion that legal action was the best measure to eradicate abductions, while the tribes, including the DCC, had requested the CEAWC not to resort to legal action unless the amicable efforts of the tribes had failed.

The Committee noted the ITUC's allegation that the impunity that those responsible for abductions and the exaction of forced labour have enjoyed – illustrated by the absence of any prosecutions for abductions in the last 16 years – has been responsible for the continuation of this practice throughout the civil war and more recently in Darfur. The Committee noted the Government's reply of November 2005 according to which, the main reasons for which all the tribes concerned, including the DCC, have requested the CEAWC not to resort to legal action unless the amicable efforts of the tribes are not successful, are that: legal action is very long and expensive; it may threaten the life of young abductees; and it will not build the peace among the tribes concerned.

The Committee noted that the Penal Code of 2003 contains various provisions which provide for sufficiently effective and dissuasive penalties of imprisonment and fines for anyone who commits the offence of forced labour. It also noted the Government's information that section 67(d) of the Child Act of 2004, states that any person who violates section 32 prohibiting forced labour, shall be punished by imprisonment for a maximum period of 15 years and by a fine decided upon by the tribunal.

The Committee noted that the Committee on the Rights of the Child, in its Concluding Observations of 9 October 2002 (CRC/C/15/Add.190, paragraph 62) recommended the State party to prosecute those persons engaged in the abduction, sale and purchase or illegal forced recruitment of children. The Committee considered that the lack of enforcement of the penal provisions prohibiting the forced labour of children under 18 years, while sometimes ensuring that victims are effectively retrieved, has the effect of ensuring impunity for perpetrators instead of punishing them. The Committee reminded the Government that, by virtue of *Article 7, paragraph 1*, of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions. ***The Committee once again requests the Government to take the necessary measures to ensure that those engaged in the abduction and exaction of forced labour from children under 18 years are prosecuted and that sufficiently effective and dissuasive penalties are imposed on them. It also requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

The Committee is also addressing a direct request to the Government concerning other points.

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

Tajikistan

Minimum Age Convention, 1973 (No. 138) (ratification: 1993)

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

The Committee recalled that the minimum age of 16 years for admission to employment or work was specified under *Article 2, paragraph 1, of the Convention* as regards Tajikistan. It noted, however, that section 174 of the new Labour Code (Act of 15 May 1997) only prohibits the employment of persons under the age of 15 in contrast to the previous Code which fixed the minimum age of 16 years. The Committee recalled that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise the minimum age as provided by *Articles 1 and 2(2)*. It also recalled that *Article 7* of the Convention allows, as an exception, the employment or work of persons 13 to 15 years of age on only light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school. Other than such light work, work done by children under 16 years of age, must be prohibited. ***Therefore, the Committee again asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under Article 2 of the Convention, to ensure that access to employment of children of 15 years of age may be allowed, exceptionally, only for work meeting the criteria set out in Article 7 of the Convention.***

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

Thailand

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

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

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. The Committee noted with satisfaction that the draft Prevention and Suppression of Human Trafficking Act has been adopted by the National Legislative Assembly in November 2007. This Act defines "human trafficking" as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or the use of force or other forms of coercion, abduction, fraud, deception, of the abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The consent of a child or woman victim of trafficking to the intended exploitation should be irrelevant where any of the abovementioned means have been used. Key elements of the Act include, amongst others, protective and rehabilitative measures (physical, psychological, legal, and educational services) provided to the victims of trafficking. **The Committee requests the Government to provide a copy of the Prevention and Suppression of the Human Trafficking Act with its next report.**

Article 5. Monitoring mechanisms. 1. The police and public officials. The Committee noted the Government's information on various measures aimed at training and raising public officials' awareness on preventing and eliminating child trafficking and commercial sexual exploitation. In particular, the Department of Labour Protection and Welfare has carried out various seminars on collaboration between concerned agencies aimed at raising the awareness of public officials in preventing, eliminating and punishing unfair labour practices concerning children and women. The seminars were attended by 50 officers, including the Immigration Bureau and Juvenile Aid Subdivision under the Office of the Royal Thai Police. Moreover, the various measures promoted by the Subcommittee to Coordinate Combating Trafficking in Children and Women (SCTCW) to implement the National Policy and Plan of Action on Preventing, Suppressing and Combating Domestic Transnational Trafficking of Children and Women (NPA on Trafficking in Children and Women 2003–07) include the following: (a) promoting cooperation with the Royal Thai Police to establish a specific unit responsible for combating trafficking of children and women (Suppression of Offences against Children, Youth and Women Division); (b) organizing workshops for officers responsible for protecting children, women and disadvantaged persons. **The Committee requests the Government to provide information on the concrete measures taken by the newly established Division on the Suppression of Offences against Children, Youth and Women, to combat child trafficking.**

2. Protection and Occupational Development Committee (PODC). The Committee had previously noted that the Prostitution Act of 1996 established a Protection and Occupational Development Committee (PODC), composed of representatives of various ministries as well as representatives of the police and central and juvenile court police (section 14). The PODC was responsible for coordinating plans of action, projects, working systems and determining action plans to be implemented jointly by government agencies and the private sector involved in preventing and suppressing prostitution (section 15 of the Prostitution Act). **Noting that the Government provides no information on the concrete measures taken by the PODC as well as their impact on preventing and eliminating child prostitution, the Committee requests the Government to provide information on this point in its next report.**

Article 6. Programmes of action to eliminate the worst forms of child labour. 1. The ILO-IPEC TICW project and the National Plan on Prevention and Resolution of Domestic and Cross-border Trafficking in Children and Women (NPA on Trafficking in Children and Women 2003–07). The Committee had previously noted that the ILO-IPEC project to combat trafficking in children and women in the Mekong subregion (TICW project) was launched in 2000 and covered Thailand, Lao People's Democratic Republic, Viet Nam, Cambodia and Yunnan (province of China). In Thailand, the first phase of the project (2000–03) focused on rural communities in the provinces of Phayao, Chiang Mai, Chiang Rai and Nong Khai. The second phase of the project (2003–08) would expand project interventions to cover the complete perspective of Thailand as a source, transit and destination country of trafficking victims with the objectives of: (i) enhancing the capacity of governmental agencies, civil society organizations and community-based groups to combat and monitor human trafficking; (ii) providing direct assistance to vulnerable groups (including people living in poor rural areas, tribal and migrant peoples); and (iii) increasing the role of the organizations of employers and workers in combating the trafficking of children and women. In the framework of the second phase of the TICW project, the National Committee on Combating Trafficking in Children and Women launched, in 2003, its first National Policy and Plan of Action on Preventing, Suppressing and Combating Domestic Transnational Trafficking of Children and Women (NPA on Trafficking in Children and Women 2003–07), focusing on prevention, with short-term and long-term interventions, as well as on research, monitoring and evaluation systems. The Committee noted the Government's information that the following activities have been carried out at the national level in implementing the NPA: (a) signing of memorandum of understandings (MOUs) for nine northern provinces on common guidelines of practices for agencies in addressing trafficking in children and women; (b) MOU on the common guidelines and practice for government agencies concerned with cases of trafficking of children and women; (c) MOU on the procedural cooperation between governmental and non-governmental agencies concerned with cases of trafficking of children and women; (d) MOU on the operational guidelines of NGO agencies concerned with cases of trafficking of children and women. The Committee further noted the information contained in the TICW, phase II (TICW-II), progress report of 2007 that the Operational Centre for the Prevention and the Protection of Trafficking in Women and Children and the concerned governmental and non-governmental agencies signed the domestic MOU on trafficking among 19 north-eastern provinces (3 July 2006). The MOUs will be expanded to cover all 17 northern provinces in the first half of 2007. **The Committee requests the Government to continue to provide information on the concrete measures taken at the national level in implementing the second phase of the TICW and the NPA on Trafficking in Children and Women 2003–07, and their impact on eliminating child trafficking.**

2. Child prostitution. In its previous comments, the Committee had noted that the Office of the National Commission on Women's Affairs estimated that there were between approximately 22,500 and 40,000 prostitutes under 18 years of age (representing approximately 15–20 per cent of the overall number of prostitutes). These estimates did not include foreign child prostitutes. It had also noted that, according to UNICEF, estimates of the number of children engaged in prostitution varied from 60,000 to 200,000, with 5 per cent of them being boys (*Official summary of the state of the world's children 2005*). The Committee had noted that the National Plan of Action on the Elimination of the Worst Forms of Child Labour (2004–09), aims at preventing and eliminating the worst forms of child labour, including child prostitution and had asked the Government to provide information on the concrete measures taken under the National Plan of Action. The Committee is very concerned about the

absence of information from the Government on this point. It observes that although the commercial sexual exploitation of persons under 18 is prohibited by law, it remains an issue of concern in practice. ***It once again requests the Government to provide information on the concrete measures taken under the National Plan of Action to eliminate the use, procuring or offering of a child under 18 for prostitution, and the results achieved.***

Article 7, paragraph 1. Penalties. 1. Statistical information on child victims of trafficking and commercial sexual exploitation, prosecutions, convictions and penalties. The Committee had previously noted that the enforcement of the existing penalties was very ineffective. It noted the Government's information that, according to the statistical figures of the Office of the Court of Justice, in the period 2003–04 there were 823 prosecutions concerning the offences of procuring and trafficking children for the purposes of prostitution and sexual abuse under the Penal Code. The Committee also noted that the Government mentions the difficulty of collecting precise statistics on the worst forms of child labour, especially on national and international trafficking through illegal channels. This is especially due to the unwillingness of victims of trafficking to identify themselves or their perpetrators, as well as the unwillingness of some citizens to become involved. Therefore, Thailand's next attempt is to improve and produce a more comprehensive system of data collection and analysis, disaggregated by sex, age, region and other socio-economic categories. The Committee considered that the issues of improving data collection on the number of children involved in trafficking and the effective enforcement of the penalties for child trafficking are linked. It welcomed the willingness of the Government to improve the system of data collection and analysis on trafficked children. ***In view of the high number of children under 18 years who are victims of trafficking and prostitution, the Committee requests the Government to redouble its efforts to ensure that persons who traffic in children or exploit children in prostitution are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. The Committee also encourages the Government to pursue its efforts to improve the system of data collection and analysis on children involved in the worst forms of child labour, especially in trafficking and commercial sexual exploitation. In this regard, it requests the Government to provide, in its next report, statistical information on the number of children involved in trafficking and commercial sexual exploitation, and on infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

2. Measures aimed at securing compensation for victims of trafficking. The Committee noted that the Government has taken a number of measures aimed at securing justice and compensation for victims of trafficking, including children, and protecting victims of trafficking during the trial period. In particular, it noted that the Prevention and Suppression of Human Trafficking Act, has been adopted in order to improve the judicial system to ensure justice for victims of trafficking and prosecute the offenders. More specifically, this Act covers the following aspects: (a) the possibility of prosecuting every offender of human trafficking, no matter where the offence has been committed; (b) the protection of victims of trafficking and witnesses during the trial; (c) the possibility for victims of trafficking to claim compensation from the offenders; and (d) the provision of funds amounting to 500 million baht set up by the Government under the draft Prevention and Suppression of Human Trafficking Act, for the rehabilitation, occupational training and development of victims of trafficking. In this regard, the Government adds that the Accused Act, BE 2544 (2001) states that children who are deceived into trafficking, prostitution, or forced labour, shall receive compensation. The Committee further noted the Government's information that the Central Juvenile and Family Court, in order to give effect to the provisions of the Convention, has taken several measures aimed at training court officers to deal with children involved in trials. ***The Committee requests the Government to indicate in its next report the number of former child victims of trafficking who have received compensation either from the offenders or through funds set up by the Government under the Accused Act BE 2544 (2001) or the Prevention and Suppression of Human Trafficking Act, pursuant to its adoption.***

Article 7, paragraph 2. Time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Trafficking of children. The Committee had previously noted that the Government, with the assistance of ILO-IPEC and collaboration of the social partners and NGOs decided, on 17 January 2005, to establish, under the TICW, joint forces in Chiang Mai, Chaing Rai and Phayao. The objectives of the joint forces were to collect data concerning the supply of and demand for trafficked individuals, to establish victim-support hotlines, raise awareness about the dangers of human trafficking, strengthen networks, develop provincial and district mechanisms for the prevention of trafficking, and promote community and school "watchdogs". The action programme would last 16 to 24 months and was expected to benefit 12,000 children and women from Chiang Mai, Chaing Rai and Phayao, who were at heightened risk of being trafficked. The Committee noted that, according to the TICW-II progress report of 2007, a provincial-level database has been developed, which contains data from various sources on persons and communities at risk of trafficking, victims of trafficking (especially for sexual exploitation), workplaces considered vulnerable to trafficking, and lessons learned. Moreover, the following activities have been carried out to raise awareness on child trafficking issues: (a) a seminar aimed at increasing the media's knowledge on trafficking and migration issues; (b) a campaign to stop violence against women and children; (c) the establishment of watchdog systems in the vulnerable communities of Phayao, Chiang Rai, and Chiang Mai; (d) the distribution of a safe migration guide for foreign migrant workers in the subregion. The Committee noted with interest that, according to the same report, 1,786 boys, 2,765 girls, and 921 young women have been prevented from trafficking through the provision of educational services or training opportunities. Furthermore, 396 boys, 286 girls, and 1,511 young women have been prevented from trafficking through the provision of other non-education-related services.

Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. 1. TICSIA project. The Committee noted that, according to the TICSIA, Phase II, progress report of 2006, TICSIA-II and the Centre for the Protection of Children's Rights jointly initiated the documentation of the "Multi Disciplinary Approach to Rehabilitation of the Victims of Trafficking". This systematic approach to rehabilitation with the support of a group of experts (physicians, psychologists, lawyers, police), has proven to be successful in various shelters. Moreover, as the "Case Information Management System" (a computer software that improves the capacity of collecting data of trafficked victims – CIMS), developed and implemented at two Government shelters, was successful, the Ministry of Social Development and Human Security (MSDHS) has planned to set up a computerized database at its shelters in other provinces.

2. Measures adopted by the Ministry of Social Development and Human Security (MSDHS). The Committee noted with interest the Government's information that the MSDHS has adopted the following measures to protect and assist children and women who are trafficked both into and out of Thailand:

- (a) establishment of the Operation Centre on Human Trafficking at the provincial, national and international levels, aimed at coordinating the concerned organizations to protect and assist the victims of trafficking;
- (b) provision of welfare protection to child and women victims of trafficking;

- (c) establishment of 99 welfare homes (the most important is the Kredtrakarn Protection and Occupational Development Centre) in 75 provinces to provide temporary assistance to Thai and non-Thai child and women victims of trafficking;
- (d) establishment of reception homes for women, and welfare protection and occupational development centres for women, in order to provide trafficked women with rehabilitative services;
- (e) provision of counselling on human trafficking concerns, especially through the telephone helpline “1300”;
- (f) development of return and reintegration programmes with Cambodia, Lao People’s Democratic Republic, Myanmar, and Yunnan Province in China.

The Committee noted the Government’s information that the number of foreign victims assisted and housed in the MSDHS’s shelters from 1999 to 2004 was 1,633. Moreover, according to the record of the MSDHS from 2000 to 2005, 3,062 foreign trafficking victims have been protected in Thai shelters and repatriated to their home countries. These include: 959 Cambodians, 567 Burmese, 501 Laotians, 20 Chinese, 12 Vietnamese, nine persons of other nationalities and four of unidentified nationality. **The Committee requests the Government to specify how many of these victims of trafficking are children under 18 years. It also requests the Government to continue providing information on the number of child victims of trafficking, including Thai children, who have been rehabilitated and reintegrated in their communities.**

Clause (d). Children at special risk. 1. Children from ethnic minorities. The Committee had previously noted that, according to the ILO–IPEC’s report of December 2004 on TICW, ethnic communities in the north of Thailand are particularly vulnerable to trafficking and labour exploitation. **Noting the absence of information on this point in the Government’s report, the Committee once again requests the Government to provide information on the measures taken or envisaged to protect children under 18 years of age of ethnic minorities from trafficking for labour or sexual exploitation, particularly from prostitution.**

2. Migrant workers. The Committee noted the information contained in the TICW, phase II, progress report of 2007 (page 16), that the document “The Mekong challenge – underpaid, overworked and overlooked: The situation of young migrant workers in Thailand”, based on a research project targeting migrant workers in agriculture, fishing, fish-processing, small-scale manufacturing, and domestic work underlines several human rights violations, such as the forced labour and hazardous work of young migrant workers. However, ILO–IPEC is starting a new project entitled “Support for national action to combat child labour and its worst forms in Thailand”. The project, which started in 2006 and will end in 2010, primarily targets migrant children found in the worst forms of child labour and will promote improved education and training policies. **The Committee requests the Government to provide information on the impact of the ILO–IPEC project “Support for national action to combat child labour and its worst forms in Thailand” on protecting child migrant workers from the worst forms of child labour.**

Article 8. International cooperation and assistance. 1. Regional cooperation. The Committee noted that, according to the Government’s report, the following measures have been taken to combat child trafficking at the regional level: (a) the UN inter-agency project on trafficking in women and children in the Mekong subregion (UNIAP) has conducted meetings under the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) to strengthen cooperation and coordination among countries to deal more effectively with human trafficking; (b) a draft MOU on cooperation against trafficking in persons in the greater Mekong subregion has been proposed; and (c) the MSDHS has maintained coordination with five countries in the Mekong subregion through governmental, non-governmental, international organizations, embassies in Thailand and embassies in those countries, for providing assistance to foreign children and female victims of trafficking. In particular, physical and psychological rehabilitation is being provided for the foreign trafficking victims while maintaining coordination with the relevant agencies in the countries of origin in order to trace the families of the victims and assess how well prepared they are for the reintegration of the woman or child victim in the society. **The Committee requests the Government to continue providing information on the concrete measures taken to eliminate the cross-border trafficking of children for labour and sexual exploitation, and the results achieved.**

2. Bilateral agreements. The Committee had previously noted that Thailand and Cambodia signed, on 31 May 2003, an MOU on bilateral cooperation for eliminating trafficking in children and women and assisting victims of trafficking, targeting the repatriation process, the prosecution process, and collecting and exchanging information. Moreover, an MOU on bilateral cooperation for the elimination of trafficking in children and women and assistance to victims of trafficking between Thailand and Lao People’s Democratic Republic was signed on 13 July 2005. Finally, a draft MOU between Thailand and Viet Nam, based on the model MOU between Thailand and Cambodia, has been drawn up. **The Committee requests the Government to provide information on the concrete measures adopted under the bilateral MOUs and the results achieved with regard to eliminating the trafficking of children between the countries parties to the bilateral agreements.**

3. Poverty alleviation. The Committee noted the Government’s information that, according to the report of the Office of the National Economic and Social Development Board (NESDB), proactive and socio-economic measures have been employed to integrate human trafficking strategies with development and poverty eradication. These include the policies of allocating 1 million baht to each village to use as a credit facility, and offering microfinance which would enable Thai women to have more opportunities to gain more income and diminish their risk of being trafficked to foreign countries. The economic cooperative strategy project has been promoted in neighbouring countries to mitigate the cases of trafficked women and children sent to Thailand. Moreover, the mobile unit “Poverty Eradication Caravan” has been set up by the Ministry of Labour to give advisory services to the poor in order to eradicate poverty and combat the worst forms of child labour. **The Committee requests the Government to provide information on the impact of the microfinance credits, the economic cooperative strategy project, and the Poverty Eradication Caravan, on the effective reduction of poverty among children removed from trafficking and commercial sexual exploitation.**

The Committee is also addressing a direct request to the Government concerning certain other points.

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

Turkey

Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee had noted the indication of the Confederation of Turkish Trade Unions (TÜRK-IS) that no national policy was being pursued in Turkey to ensure the effective abolition of child labour and that the number of child workers was increasing. TÜRK-IS had added that the effectiveness of a national policy to eliminate child labour depends entirely on the elimination of the causes of child labour, namely the employment and employment stability of adults, but that government policy was not designed along those lines.

The Committee had also previously noted that, in addition to the elimination of the worst forms of child labour within ten years, one of the objectives of the national ***Time-Bound Policy and Programme Framework (TBPPF)*** was also to establish a coherent policy for the elimination of child labour. In this respect, it had noted that the Child Labour Unit (CLU), established by the Ministry of Labour and Social Security with a mandate to gather and disseminate information on child labour, ensure coordination among cooperating parties and develop policies related to child labour, had developed a Policy Framework for the Elimination of Child Labour in Turkey, which was presented for comment to the various parties concerned by child labour.

The Committee notes the information provided by the Government in its report, particularly with regard to the programmes of action implemented in collaboration with ILO-IPEC. Furthermore, the Committee notes ***with interest*** that, according to the Biannual Interim Report of 27 November 2006 to 31 May 2007 on the ILO-IPEC project “Eradicating the worst forms of child labour in Turkey”, this project aims to help make a significant reduction in child labour, in line with the Government’s strategy of eliminating the worst forms of child labour by 2015. One of the main objectives of the project is to enhance the national and regional capacity of the CLU. To that end, many measures have been taken by the Government, including training programmes on child labour monitoring and child labour and education, awareness-raising events and guidance and referral services to working children, children at risk and their families.

The Committee also notes that a third Child Labour Survey was conducted by the Turkish Statistics Institution, with ILO-IPEC’s support, in the period from October to December 2006. It notes ***with interest*** that according to the results of this survey, the proportion of working children (aged 6 to 17 years) has dropped from 10.3 per cent in 1999 to 5.9 per cent in 2006. Furthermore, according to the Biannual Interim Report, a comprehensive and integrated child labour monitoring system (CLM) was established which includes two components: (1) the monitoring itself, and (2) the provision of social support for rehabilitation and referral according to the needs of the children withdrawn from work. As a result of the monitoring system, 4,209 children in various sectors of work, worst forms and otherwise, have been identified during the October–December 2006 reporting period, of which 3,611 have been either withdrawn from work or prevented from starting to work. Nevertheless, the Committee notes that, according to the Child Labour Survey, 320,000 children in the 6–14 age group were working in 2006. ***While noting the measures adopted by the Government to eliminate child labour, the Committee encourages the Government to redouble its efforts to progressively improve this situation. It requests the Government to provide detailed information on the results achieved by the implementation of the abovementioned ILO-IPEC programmes in eliminating child labour and its worst forms. Finally, it also requests the Government to provide information on the application of the Convention in practice, including statistical data on the employment of children and young persons, extracts of inspection reports, as well as the number and nature of contraventions reported and penalties imposed.***

Article 3, paragraph 3. Authorization to work from the age of 16 years. In its previous comments, the Committee had noted that the regulations on hazardous and arduous work of 1973 define the types of work considered to be hazardous and arduous and those to which young persons between the ages of 16 and 18 years may be admitted. It had also noted the adoption of Regulations No. 25494 on hazardous and arduous work of 16 June 2004 which include, in Appendix 1, a detailed list of hazardous types of work which may be performed by young workers between 16 and 18 years of age. It had also noted that, under the terms of section 4 of Regulations No. 25494, the conditions set out in *Article 3, paragraph 3*, of the Convention are respected, namely that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity.

The Committee notes ***with satisfaction*** the Government’s information that the Regulations on hazardous and arduous work of 1973 have been repealed by a decision of the Council of Ministers of 7 April 2006 and by the publication of this decision in the Official Gazette No. 26152 of 28 April 2006. It also notes that various employers’ and workers’ organizations (the TISK, TÜRK-IS, HAK-IS and DISK confederations) were consulted at the time of the enactment of Regulations No. 25494 in 2004.

Article 4. Exclusion from the application of the Convention of limited categories of employment or work. In its previous comments, the Committee had noted that the categories of employment or work which have been excluded from the scope of application of the Convention, by virtue of the flexibility clause contained in *Article 4*, consist of limited categories of employment or work. It had further noted that under the terms of section 4(1) of the Labour Act, No. 4857 of 22 May 2003 (Labour Act), the following activities and categories of workers are not covered by the Act: (a) sea and air transport businesses; (b) enterprises carrying out agricultural and forestry works and employing fewer than 50 workers; (c)

all building work related to agriculture within the limits of the family economy; and (d) domestic service. It had noted that the Act on Turkish civil aviation regulates the working conditions of personnel on aircrafts and that the minimum age for admission is 18 years, but that Maritime Labour Act No. 854 does not contain a provision establishing the minimum age for admission to employment or work. The Committee had reminded the Government that *Article 5, paragraph 3*, of the Convention enumerates the sectors of economic activity to which it shall be applicable as a minimum, which include maritime transport.

The Committee notes the Government's information that the minimum age required for admission to employment as a seafarer is provided for in the Regulations for Seafarers, published in the Official Gazette No. 24832 of 31 July 2002. The Committee notes *with satisfaction* that, according to these Regulations, the minimum age required for work as a seafarer at the lowest levels, including as deck boys, wipers and cadets, is 16 years of age.

The Committee is also addressing a direct request to the Government concerning another precise point.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children for commercial sexual exploitation. In its previous comments, the Committee noted the indication of the International Trade Union Confederation (ITUC) that Turkey is a transit and destination country for trafficked children. These children originate from the following countries: Armenia, Azerbaijan, Georgia, Republic of Moldova, Romania, the Russian Federation, Ukraine and Uzbekistan. The ITUC added that Turkey is a transit country, mainly for children from Central Asia, Africa, the Middle East and The former Yugoslav Republic of Macedonia, who are then sent to European countries. The ITUC also indicated that trafficked children are forced into prostitution or debt bondage.

The Committee had noted that the new Penal Code (Act No. 5237 of 26 September 2004) contains new provisions on, among other matters, the trafficking and sexual exploitation of children, including the prostitution of children, as well as more severe penalties for these crimes. It had requested the Government to provide information on the application of the penalties in practice.

The Committee notes that the Child Protection Law, which entered into force on 3 July 2005, aims at integrating international standards into the procedures and principles regarding children in need of protection. It also notes that, according to the 2006 concluding observations of the Committee on the Rights of the Child in consideration of the report submitted by the Government under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC/C/OPSC/TUR/CO/1, paragraph 4), the National Task Force to Combat Trafficking in Human Beings was established, and a National Plan of Action was accordingly adopted in 2003. However, the Committee on the Rights of the Child expressed its concern that there is no specific plan of action on the sale of children in Turkey. Furthermore, according to the Committee on the Rights of the Child, there is a lack of information on the actual situation of the sale of children (CRC/C/OPSC/TUR/CO/1, paragraph 15). In this regard, the Committee recalls that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children is considered as one of the worst forms of child labour, and that by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. **Consequently, the Committee requests the Government to provide information on the measures taken to ensure that the sale and trafficking of children under 18 years for commercial sexual exploitation is eliminated. The Committee also once again requests the Government to take the necessary measures to ensure that the offenders are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, it requests the Government to take measures to withdraw child victims of trafficking from commercial sexual exploitation and to ensure their rehabilitation and social integration, as a matter of urgency.**

Article 7, paragraph 1. Penalties. Inciting or using a child for begging. The Committee had previously noted with satisfaction that section 229 of the new Penal Code prohibits the use of children for begging and establishes a penalty of one to three years' imprisonment. It notes the Government's information that 252 families, who insisted on inciting their children to beg despite being provided with various professional and social services, were penalized. The 305 children identified in such conditions were afterwards taken from their families and placed in a foster home or an institution suitable to their gender and age. The Committee also notes that the Government indicates that it has attached statistical data on the number of cases and convictions which were imposed in this regard. However, no such information was actually joined to the Government's report. **Consequently, the Committee requests the Government to provide this information with its next report, as well as to continue providing information on the application of the penalties in practice.**

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Necessary direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Children working in the agricultural sector. The Committee had previously noted that the protection afforded by the Labour Code does not cover children who work in agricultural undertakings employing fewer than 50 workers. It had also noted that, of the 1,008,000 children between the ages of 6 and 14 years who worked in 2000, 77 per cent were in agriculture (report on the implementation of labour inspection policy in Turkey, June 2000, page 2). The Committee had also noted that, according to the Labour Inspection Board, 87 per cent of children who work are employed in small enterprises with between one and nine workers. In that regard, the Committee noted that, to ensure the protection of young persons under

18 years of age who work in the agricultural sector from the worst forms of child labour, a programme on the elimination of the worst forms of child labour in commercial seasonal agriculture through education was being implemented, the objective of which was to achieve the school attendance of children concerned.

The Committee notes that the more recent available information indicates that 41 per cent of the 958,000 children between the ages of 6 and 17 years who worked in 2006 were employed in agriculture (2006–07 ILO–IPEC Biannual Interim Report on the EWFCLT, page 2). It notes that, according to the summary outline for the Action Programme on Child Labour in Seasonal Commercial Agriculture of 2005, work in seasonal commercial agriculture, and especially in cotton harvesting, has been identified as a worst form of child labour. The Action Programme, which was extended until June 2007, therefore targeted 2,750 boys and girls, 1,000 of whom would be withdrawn and 1,750 prevented from entering this worst form of child labour. Furthermore, the Action Programme aimed to provide 2,000 of these boys and girls with educational and training services, while the remaining 750 would be provided other non-education related services. The Committee notes the Government's information that, within the scope of this programme and as of 8 March 2007, 2,458 children have been identified, 1,128 of them girls and 1,330 of them boys. These children have been settled in boarding primary regional schools and neighbouring schools. Moreover, a Project for Combating Child Labour through Education (2004–08) has been implemented by the firm IMPAQ, under the coordination of the CLU and the Ministry of National Education, to increase access to basic and vocational education for children employed in agriculture, particularly children engaged in, or at risk of engaging in, seasonal work as migrant labourers. According to the Government, this project targets 10,000 children and a significant number have already been reached. *The Committee encourages the Government to continue its efforts to ensure that children under 18 years are protected from working in seasonal commercial agriculture, identified as a worst form of child labour. It requests the Government to provide more information on results attained by the implementation of the Action Programme, more specifically on the final number of children who were prevented or withdrawn from being engaged in seasonal commercial agriculture and then rehabilitated by being provided with educational, vocational or other services. Finally, the Committee asks it to provide more detailed information on the impact of the Project for Combating Child Labour through Education in this regard.*

Clause (d). Children at special risk. Children living or working on the streets. In its previous comments, the Committee had noted the indication of the TISK that children who work on the streets are not registered and work under dangerous conditions without protection. The Committee had also noted the ITUC's report that nearly 10,000 children were working on the streets of Istanbul and nearly 3,000 in Gaziantep. The ITUC had added that street children can be classified into two groups: the first is composed of children who go out onto the streets during the day to sell all kinds of items and return home in the evening, the second consists of children who live and work on the streets. The latter are engaged in garbage collection and sorting, and are often involved in drug abuse, street gangs and violence. The Committee had also noted that, according to a rapid assessment conducted by ILO–IPEC on street children working in Adana, Istanbul and Diyarbakir, street children who work are between the ages of 7 and 17 years, with an average age of 12 years.

The Committee had noted the implementation, in the context of the *Time-Bound Policy and Programme Framework (TBPPF)*, of the December 2004 Programme for the Elimination of Child Labour in Street Trades in 11 provinces. The Committee had noted that the Programme directly targeted 6,700 boys and girls, 2,700 of whom were to be removed from the worst forms of child labour and 4,000 to be prevented from becoming engaged in work. It had also noted that an estimated 6,000 children would benefit indirectly from the Programme. The Committee had requested the Government to provide information on the impact of the Programme and the results achieved.

The Committee notes that, according to the Biannual Interim Report of 27 November 2006 to 31 May 2007 on the ILO–IPEC project “Eradicating the worst forms of child labour in Turkey” (EWFCLT), a comprehensive child labour monitoring and reporting mechanism was established in 13 provinces which permitted the identification of 4,209 working children for the period covered. The Committee notes *with interest* that, of these 4,209 children, 1,699 were found working on the streets and were consequently withdrawn and provided with services. *The Committee requests the Government to continue its efforts to ensure that young persons under 18 years of age who live and work on the streets are not engaged in work which, by its nature, is likely to harm their health, safety or morals, and to provide information on the results achieved. It also requests the Government to provide information on the impact of the ILO–IPEC Programme for the Elimination of Child Labour in Street Trades, especially in terms of the number of street children who were prevented or withdrawn from the worst forms of child labour and rehabilitated.*

Article 8. International cooperation and assistance. In its previous comments, the Committee had noted that the issue of the worst forms of child labour was included in the short-term priorities of the Accession Partnership (2003–04), in which it was stated that efforts to address the problem would be continued. The Committee notes that the Accession Partnership has been revised in 2006, so as to allow it to evolve as Turkey progresses. It notes the Government's statement that the European Union has been supporting the *TBPPF* in a way to enhance the institutional capacities to combat child labour, notably in the context of projects on children working on the streets, in dangerous work or in the agricultural sector. However, the Committee observes that the Government does not provide information on the cooperation or assistance measures adopted or envisaged with the European Union or with other countries to eliminate, in particular, the trafficking of children for the exploitation of their labour or for sexual exploitation. *The Committee requests the Government to provide this information in its next report.*

The Committee is also addressing a direct request to the Government concerning certain other points.

United States

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery and practices similar to slavery. Sale and trafficking of children. The Committee had previously noted with satisfaction the Government's information that, on 19 December 2003, Congress enacted the Trafficking Victims Protection Reauthorization Act (TVPRA), which reauthorized the Trafficking Victims Protection Act of 2000 (TVPA) in 2003 and 2005 and added responsibilities to the United States Government's anti-trafficking portfolio. The TVPRA of 2003 mandated new information campaigns to combat sex tourism, enhanced anti-trafficking protection under federal criminal law and created a new civil action that allows trafficking victims to sue their traffickers in federal district courts. The TVPRA of 2005 extended and improved prosecutorial and diplomatic tools, provided for new grants to state and local law enforcement agencies, and expanded the services available to certain family members of victims of severe forms of trafficking. The Committee had noted that, as of May 2004, the Government estimated that 14,500 to 17,500 people were trafficked annually into the United States. This estimate covered men, women and children who were victims of severe forms of trafficking as defined in the TVPA. Most trafficked victims are employed in the sex sector, migrant farm work and low-wage industries, such as the restaurant and hotel industries. The Committee had also noted several measures taken to combat trafficking in children for labour and sexual exploitation, such as additional research and studies, funding of projects and the drafting of a model anti-trafficking statute for states.

The Committee notes the information provided by the Government in its report, which, inter alia, refers to the Attorney-General's Annual Report to Congress on US Government Activities to Combat Trafficking in Persons. According to the Attorney-General's Annual Report of May 2007, the measures that were undertaken to combat trafficking are ongoing. In 2006, for example, the United States Government obligated approximately US\$74 million to fund 154 projects in about 70 countries to support foreign government and non-governmental organizations' efforts to combat human trafficking. Furthermore, the Government continues to adopt measures for domestic and international law enforcement training, for public awareness campaigns and street outreach, as well as for the provision of social services to trafficking victims. ***The Committee strongly encourages the Government to pursue its efforts to eliminate the trafficking of children under 18 years of age for labour and sexual exploitation. It requests the Government to continue providing information on the measures taken in this regard and the results attained.***

Article 3(d) and Article 4, paragraph 1. Hazardous work. The Committee had previously noted the AFL-CIO's indication that between 300,000 and 800,000 children are employed in agriculture under dangerous conditions. Many work for 12 hours a day and are exposed to dangerous pesticides, suffer rashes, headaches, dizziness, nausea and vomiting, often risking exhaustion or dehydration due to lack of water, and are often injured. The Committee had noted that, as an exemption from section 213 of the Fair Labour Standards Act (FLSA), in agriculture, 16 is the minimum age under section 213(c)(1) and (2) of the FLSA for employment in occupations (outside family farms) that the Secretary of Labor finds and declares to be "particularly hazardous for the employment of children". It had observed that, while *Article 4, paragraph 1*, of the Convention allows the types of hazardous work to be determined by national laws or regulations or the competent authority after consultation with the social partners, section 213 of the FLSA authorizes children aged 16 and above to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health or well-being by the Secretary of Labor.

The Committee had noted that, according to the AFL-CIO and the National Institution for Occupational Safety and Health (NIOSH), during the period from 1992 to 1997, a total of 403 children under 18 years were killed while working. One third of the occupational deaths were associated with tractors. The industry that had by far the highest number of fatalities – 162, or 40 per cent – was agriculture, forestry and fishing, even though only 13 per cent of children under 18 worked in this sector. This high rate of fatal injuries was confirmed by the fact that youth of 15–17 years of age working in agriculture appear to have over four times the risk of injury than youth working in other industries. The AFL-CIO had pointed out that, according to the General Accounting Office (GAO) "Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and their Children" of 2000 (GAO's report of 2000), over 75 per cent of pesticides are used in agriculture and children are much more vulnerable to harm from pesticides. However, eventual changes to Hazardous Orders (HOs) could not be expected to have an impact on the injuries of young workers of 16 and 17 years who fall outside the coverage of the FLSA.

The Committee had noted the Government's statement that the FLSA, which was developed through a process open to the participation of employers' and workers' representatives, does not authorize the Secretary of Labor to restrict young persons of 16 years and older from working in agriculture. Moreover, in determining types of hazardous work pursuant to *Article 3(d)* and *Article 4, paragraph 1*, of the Convention, Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), allows ratifying countries to permit 16- and 17-year-olds to engage in types of work referred to by *Article 3(d)* on conditions that the health, safety and morals of the children are fully protected. Therefore, the Congress had determined that it is safe and appropriate for children at 16 to perform work in the agricultural sector, in conformity with *Article 3(d)* and *Article 4, paragraph 1*, of the Convention. The Committee had noted the Government's statement that it continues to seek ways to better protect the health and safety of children working in the agricultural industry and had noted the several programmes adopted for that purpose, including programmes to protect farm workers

and their children from pesticides, such as the Environmental Protection Agency's (EPA) review of the Worker Protection Standard (WPS), launched in response to the GAO's report of 2000.

With regard to this programme, the Committee notes the Government's information that the work of the WPS assessment is ongoing and that new regulations should be proposed in 2008. Furthermore, on 3 April 2006, the administrator of EPA issued a response to a review of pesticide-related health risks to farm workers made by the Children's Health Protection Advisory Committee (CHPAC). The CHPAC raised concern about farm workers under the age of 16 handling certain pesticides, and the EPA agreed that an age limitation on pesticide-handling activities is worthy of consideration. The Committee further notes that the CHPAC also expressed concern that EPA labelling requirements do not address fit-testing for young workers aged 16 and above who need to use respirators in handling pesticides.

The Committee notes that, according to the worker member of the United States at the Conference Committee on the Application of Standards at the 95th Session of the International Labour Conference of June 2006, among 15–17-year-olds, child workers in agriculture accounted for at least 25 per cent of all fatalities experienced by young workers. The Committee once again shares the concern expressed by many speakers with regard to the hazardous and dangerous conditions that were and could be encountered by children under 18, and indeed in some cases under 16, in the agricultural sector. Consequently, the Committee emphasizes that, by virtue of *Article 3(d)*, work which, by its nature and the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, constitutes one of the worst forms of child labour and applies to all young persons under 18 years of age. It also recalls that Paragraph 4 of Recommendation No. 190 addresses the possibility of authorizing the employment or work of young persons as from the age of 16 under strict conditions that their health and safety be protected and that they receive adequate specific instruction or vocational training in the relevant branch of activity. In the present case, considering the significant number of injuries and fatalities suffered by children under 18 years working in the agricultural sector, it would appear that the conditions of protection and prior training, as set out in Recommendation No. 190, are not fully met in all circumstances. ***The Committee accordingly once again strongly encourages the Government to take the necessary measures to ensure that work performed in the agricultural sector is prohibited to children under 18 years where it is hazardous within the meaning of the Convention. However, where such work is performed in the agricultural sector by young persons between 16 and 18 years of age, the Committee urges the Government to take the necessary measures to ensure that this work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that the health and safety of such young persons be protected and that they receive adequate specific instruction or vocational training. The Committee requests the Government to provide information on progress made in this regard in its next report.***

Article 4, paragraph 3. Examination and periodical revision of the types of hazardous work. The Committee had previously noted that 28 HOs adopted by virtue of the FLSA determine the types of work or activities that children under 18 shall not perform. It had also noted that these Orders were established in 1939 and 1960 with regard to non-agricultural occupations and 1970 for agricultural occupations. It had noted the Government's indication that it was in the final stages of rule-making on several HO recommendations by the NIOSH: those relating to driving and operating balers and compactors, roofing and handling explosive materials. The Committee also noted the AFL-CIO's allegation of June 2005 that the NIOSH issued recommendations for changing the existing agricultural HOs.

The Committee notes the Government's information that, in 2004, the Department of Labor (DOL) issued a final rule addressing six of the 35 NIOSH report recommendations relating to non-agricultural HOs. Furthermore, it notes the Government's information that the DOL published a Notice of Proposed Rulemaking (NPRM) and Advance Notice of Proposed Rulemaking (ANPRM) on 17 April 2007, both of which address the remaining 29 non-agricultural HO recommendations. The modifications proposed by the NPRM include changes to: (i) HO 7, which proposes to prohibit minors under 18 from working from cherry pickers, scissor lifts and bucket trucks; (ii) HO 10, to prohibit work in all meat products manufacturing industries for young persons under 18, including poultry slaughtering and processing and meat manufacturing; and (iii) HO 14, to prohibit the use of chain saws and wood chippers, as well as reciprocating saws, for young persons under 18. The Committee also notes the Government's statement that the DOL intends to give the HOs for agricultural occupations the same attention it has given the other NIOSH recommendations relating to non-agricultural occupations. ***The Committee requests the Government to provide information on the amendments to the existing HOs that are effectively adopted pursuant to the recommendations of the NIOSH. Noting that the proposed amendments only address the NIOSH recommendations in respect of non-agricultural occupations, the Committee expresses the firm hope that the Government will take the necessary measures to address the NIOSH's recommendations for changing the existing agricultural HOs. It also requests the Government to provide information on the amendments envisaged or already adopted for the agricultural HOs, and on any progress made in this regard.***

Article 5. Monitoring mechanisms. Hazardous work and agriculture. The Committee had previously noted the AFL-CIO's indication that an estimated 100,000 children suffer agriculture-related injuries annually in the United States and that very few inspections take place in agriculture. It had observed that the GAO recommended that steps be taken to ensure that the procedures specified in the existing agreement among the DOL's Wages and Hour Division (WHD) and other federal and state agencies, especially with regard to joint inspections and exchange of information, are being followed. The Committee had noted the Government's information that, in 2004, the WHD concluded over 1,600 investigations in the agricultural industry and found 42 minors illegally employed in 26 cases. Four minors were

found illegally employed in violation of the agricultural HOs. It had noted the Government's information that the EPA revised the national WPS inspection guidance for conducting routine use inspections on agricultural establishments. Moreover, it had noted that WHD, OSHA and NIOSH have partnered to reduce occupational deaths and injuries to youth on farms through compliance assistance and awareness. However, the Committee had expressed its concern at the decreasing number of child labour investigations conducted in the agricultural sector from 2004 to 2005 which, according to the AFL-CIO, had decreased by 31.5 per cent.

The Committee notes from the Government's report that, in 2005, the WHD conducted 1,449 investigations of agricultural employers, throughout which 61 minors were found illegally employed in 35 cases. In 2006, the WHD conducted 1,410 investigations of agricultural employers and found 51 minors illegally employed in 23 cases. The Committee further notes the Government's statement that OSHA conducts on-site inspections whenever it receives a complaint which gives it reasonable grounds to believe that a serious violation or hazard exists and that workers under 18 years of age are exposed to that hazard, particularly if it relates to construction, manufacturing or agriculture. The Government indicates that, between September 2005 and August 2007, the OSHA and its state partners conducted 4,268 inspections of agricultural employers and found 8,952 violations in 2,637 cases. However, the Committee notes that, according to the Government representative at the Conference Committee on the Application of Standards of the 95th Session of the International Labour Conference of June 2006, although child labour violations across industries continued to decrease, violations in agriculture had increased in the previous year. ***The Committee strongly encourages the Government to continue to strengthen the role of the institutions responsible for the enforcement of child labour laws in agriculture, especially with regard to hazardous work. It requests the Government to continue to provide information on the inspections carried out and on the number and nature of violations detected with regard to children under 18 employed in the worst forms of child labour and, particularly, in agriculture.***

Article 7, paragraph 1. Penalties. The Committee had previously noted that the Secretary of Labor proposed to raise the maximum penalty from US\$11,000 to US\$50,000 for any kind of child labour violation which results in death or maiming. In addition, the Secretary of Labor proposed to raise the maximum penalty for wilful or repeated violations that lead to the death or serious injury of a child. The Committee had noted the Government's information that the President's budget for the 2004–06 fiscal years included proposals to increase civil monetary penalties for violations of the FLSA's youth employment provisions that result in the death or serious injury of a young worker.

The Committee notes the Government's statement that the Bill which expects to increase the civil monetary penalty from US\$11,000 to US\$50,000 would also raise to US\$100,000 the maximum penalty per wilful or repeated violation that causes the death or serious injury of a child employed in violation of FLSA child labour provisions. The Government indicates that the Bill was passed by the House of Representatives on 12 June 2007 and received by the Senate on 13 June 2007, which referred it to the Committee on Health, Education, Labor and Pensions for consideration. ***The Committee requests the Government to supply a copy of the Bill once it has been adopted.***

Parts III, IV and V of the report form. Application of the Convention in practice. The Committee had previously noted the Government's information that the TVPA, as amended by the TVPRA, requires that the Attorney-General submit an annual report to Congress assessing the impact of United States Government activities to combat trafficking in persons which include, among others, information on: the number of trafficking victims who received government benefits and services; and the number of investigations and prosecutions of trafficking in persons.

The Committee notes that, according to the Attorney-General's Annual Report to Congress on US Government Activities to Combat Trafficking in Persons of May 2007, the Department of Justice (DOJ) Civil Rights Division's anti-trafficking efforts resulted in a record number of defendants charged and convicted in a single year, while the number of investigations increased more than 20 per cent over the fiscal year 2005. In 2006, DOJ initiated prosecutions against 111 traffickers, which is higher than the number charged in 2005 (96) and more than twice the number charged in 2004 (47). The Committee also notes that the US Immigration and Customs Enforcement (ICE), which investigates the sexual exploitation of children overseas by US citizens, has conducted over 299 investigations of child sex tourism. In addition, ICE operates "Operation Predator" to safeguard children from foreign national sex offenders, international sex tourists, Internet child pornographers and human traffickers. Since 2003, the initiative has resulted in more than 9,000 arrests, of which 2,381 occurred in 2006. Furthermore, in 2006, the FBI's Crime Against Children Unit, which initiated in 2003 the "Innocence Lost National Initiative" in partnership with DOJ's Criminal Division to address the problem of children exploited in prostitution, conducted 103 open investigations, 157 arrests, and 43 convictions. Since the inception of the "Innocence Lost National Initiative", in 2003, more than 300 children have been recovered. ***The Committee takes due note of this information and requests the Government to continue providing information on the worst forms of child labour through copies of, or extracts from, official documents, including inspection reports, studies and inquiries, and information on the nature, extent and trends of the worst forms of child labour, and more specifically on children involved in trafficking for sexual or labour exploitation or performing hazardous work in agriculture, the number of children covered by the measures giving effect to the Convention, the number and nature of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

Zambia

Minimum Age Convention, 1973 (No. 138) (ratification: 1976)

The Committee notes the Government's report of September 2008. It also notes the information supplied by the Government representative of Zambia at the Conference Committee on the Application of Standards in June 2008 concerning the application of Convention No. 138.

Article 2, paragraph 1, of the Convention. Scope of application. The Committee had previously noted that section 7(1) of the Employment of Women, Young Persons and Children's Act (hereinafter, the EWYPCA) of 1967 authorizes the employment of persons under 16 years of age in an undertaking where only members of the same family are employed. It had noted that draft amendments to the EWYPCA extend its scope of application to undertakings in which members of the family are employed and to domestic workers. Accordingly, the Committee had requested the Government to supply a copy of the EWYPCA (Amendment) of 2004.

The Committee notes *with satisfaction* that section 4A of the Employment of Young Persons and Children (Amendment) Act of 2004 (hereinafter EYPC (Amendment) Act of 2004) prohibits the employment of a child (defined as a person under 15 years of age) in any covered site. Section 3 of the EYPC (Amendment) Act of 2004 defines a "covered site" as any public or private undertaking, including any commercial, agricultural or domestic worksite and any undertaking in which only members of the same family are employed.

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee had previously observed the International Trade Union Confederation's (ITUC) allegation that 25 per cent of primary-school age children do not receive any schooling and that in 1999 less than 29 per cent of children reached the secondary school level. The Committee had noted the Government's indication that it is making tremendous efforts to ensure that the minimum age for admission to employment is not less than the age of completion of compulsory schooling. It had also noted the Government's indication that a number of bursary schemes for orphaned and vulnerable children, a return to school policy for pregnant teenage girls, and skills training programmes for children withdrawn from streets as well as from child labour were being introduced.

The Committee notes the information provided by the worker members at the Conference Committee in June 2008 that Zambia does not yet have a system of free, compulsory, formal, public education and therefore it would not be able to succeed in eliminating child labour. The worker members also stated that due to the abolition of school fees the total enrolment rates at school had increased, and the number of out-of-school children had fallen from 760,000 to 228,000 between 1999 and 2005. However, disadvantaged children were still two to three times less likely to be in school than other children. The Conference Committee had welcomed the Government's commitment to implement the Convention through various measures, including through the provision of inclusive education and appropriate training opportunities, the construction of additional classrooms, the recruitment of additional qualified teachers in rural areas and the establishment of district child labour committees. However, considering that free, compulsory education is one of the most effective means of combating and preventing child labour, the Conference Committee had urged the Government to ensure that legislation fixing the age of completion of compulsory schooling which corresponds to the minimum age for employment of 15 years be adopted shortly. Further, the Conference Committee had strongly encouraged the Government to continue its efforts to provide free and compulsory education for all children.

The Committee notes the Government's information in its report that there had been a remarkable decline in the number of out-of-school children. According to the Education Statistical Bulletins of 2006, only 11.2 per cent of out-of-school children between the ages of 7 and 18 were recorded in 2006. The Education Statistical Bulletins of 2006 revealed that during the period from 2006 to 2007, the number of schools offering primary education increased from 4,021 to 4,269 and the number of schools offering secondary education increased from 2,221 to 2,498. The Government states that the gross enrolment ratio for grades one to nine has increased steadily from 2003 to 2007. The Government also indicates that it has adopted a policy to upgrade primary schools into basic schools in order to ensure that children have access to basic education up to grade nine.

The Committee also notes the information provided by the Government in its report under Convention No. 182 that it has developed a national HIV/AIDS policy to address the situation of children affected and orphaned by HIV/AIDS. Within the framework of this policy, an increased number of children have been prevented and withdrawn from HIV/AIDS-induced child labour and integrated into formal and informal schools. The Committee also notes the Government's statement that primary education has been made free and compulsory and the various policies in place have encouraged parents to send their children to school.

The Committee notes that according to the Child Labour Survey Report of 2005, about 1,185,033 children between the ages of 5 and 17 were in school (624,417 boys and 560,616 girls) out of which 49 per cent were child labourers. It also notes the incidence of child labour which was estimated at 895,000 of which 46 per cent were children between the ages of 10 to 14. The results indicated that child labour is predominantly a rural phenomenon with 92 per cent of all working children residing and working in rural areas. The Committee further notes the statistics provided by the Educational Statistical Bulletin of 2006 which reveals that there were 93,451 out-of-school children between the ages of 7 and 15. According to the UNESCO report entitled "Education for All by 2015: Will we make it?", in Zambia the primary net

enrolment rates have increased by more than 20 per cent between 1999 and 2005. The Committee appreciates the efforts made by the Government and observes that poverty is one of the prime causes of child labour and that the HIV/AIDS pandemic has left a lot of children parentless. The Committee is nevertheless concerned by the number of out-of-school children as well as the number of children attending school who are involved in child labour in the country. ***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 redouble its efforts to improve the functioning of the education system, including through the introduction of compulsory schooling up to 15 years, by increasing the school enrolment rates and reducing school drop-out rates, especially among child orphans of HIV/AIDS and children in the rural areas so as to prevent the engagement of these children in child labour. It requests the Government to continue providing information on the measures taken to this end and the results achieved. The Committee also requests the Government to indicate the legal provisions establishing free compulsory education at the primary level and to provide a copy thereof along with its next report.***

Article 3, paragraph 2. Determination of hazardous work. The Committee had previously noted that the EYPC (Amendment) Act of 2004 does not contain a list of types of “work that, by its nature or circumstances in which it is carried out, is likely to harm the health, safety or morals of children or young persons” (section 4(d) of the Act). It had noted the Government’s indication that a “statutory instrument” was formulated to enforce the EYPCA (Amendment) Act of 2004, as well as to serve as Zambia’s hazardous work list. The Committee notes ***with interest*** the information provided by the Government in its report under Convention No. 182 that, the proposed “statutory instrument on hazardous work” prohibits work in a covered worksite in any of the following types of occupations: excavation/drilling; stone crushing; block/brick making; building; roofing; painting; tour guiding; selling/serving in bars; animal herding; fishing; working in tobacco and cotton fields; spraying of pesticides, herbicides and fertilizers; handling farm machinery and processing in industries. It further notes that section 3(a) of the EYPC (Amendment) Act of 2004 defines a child as a person under the age of 15 years and section 3(e) defines a young person as a person aged between 15 and 18 years. It finally notes the Government’s indication that the social partners and all stakeholders were consulted in drafting the above list of types of hazardous work. ***The Committee expresses the firm hope that the statutory instrument containing the list of types of hazardous work will be adopted soon and requests the Government to provide a copy of the same once it has been adopted.***

Article 7. Light work. The Committee had previously noted the Government’s indication that the statutory instrument determining light work activities has been formulated, and had requested the Government to provide a copy of the same once it had been adopted. The Committee notes that the Government has neither supplied a copy of the above statutory instrument nor has provided any information regarding its adoption. ***The Committee once again requests the Government to provide a copy of the statutory instrument determining light work activities as soon as it has been adopted.***

Part V of the report form. Application of the Convention in practice. The Committee had previously noted the ITUC’s allegation that child labour in Zambia is almost non-existent in the formal economy. However, children are reported to work in the unregulated economy, often in dangerous or harmful work. According to the ITUC, children are mostly found in agriculture, domestic service, small-scale mining operations, stone crushing and pottery. It had noted the Government’s information on the results achieved following the implementation of the projects with the support of ILO–IPEC. Noting that a large number of children under the age of 15 years continue to work in the informal sector, the Committee had requested the Government to renew its efforts to progressively improve this situation.

The Committee notes that the Conference Committee in June 2008 had noted that the Government had taken a number of measures to address the situation of children under the minimum age who worked in the informal sector, often in hazardous work. The Conference Committee had encouraged international cooperation in order to promote poverty eradication, sustainable and equitable development and the elimination of child labour. The Conference Committee had strongly encouraged the Government to improve the situation by taking the necessary measures to further strengthen the capacity of the labour inspectorate and to promote the work of district child labour committees.

The Committee notes the Government’s indication that it is committed to combat child labour despite many difficulties such as the rampant nature of the problem in the informal sector. According to the Government’s report, Zambia, like many other developing countries, was confronted with the challenges of growth and development coupled with rapid expansion of the informal economy as an alternative source of livelihood for the majority of the poor. The Government further states that, despite these challenges, it has taken a number of measures in collaboration with ILO–IPEC and progress has been made in reducing the high incidence of child labour in the most predominant informal economic activities such as agriculture and quarrying. The Committee notes that according to the Child Labour Survey Report of 2005, out of the 895,000 child labourers in the country, 853,000 were engaged in agricultural activities.

The Committee notes the Government’s information in its report under Convention No. 182 that according to the Labour Department Annual Report of 2006, labour officers inspected about 1,020 workplaces every year. In 2006, no cases of child labour were highlighted in the formal sector although some cases of child labour were found in the informal sector. The Committee also notes that 11 district child labour committees have been established. They are entrusted with the mandate to monitor the implementation of programmes to sensitize the public on child labour and its worst forms as well as programmes to withdraw, rehabilitate and reintegrate identified children. The Committee further notes that a

National Child Labour Action Plan is being envisaged within the *Time-bound Programme (TBP)* and the draft document would be ready by December 2008. ***The Committee requests the Government to provide information on the measures adopted within the framework of the new National Child Labour Action Plan of 2008 for the elimination of child labour, especially in the informal sector. It also requests the Government to redouble its efforts to adapt and strengthen the labour inspection services in the informal sector, in order to ensure that the protection established by the Convention is ensured for children working in this sector. The Committee further requests the Government to provide information on the number of children withdrawn from child labour and rehabilitated pursuant to the implementation of the programmes monitored by the district child labour committees.***

The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. The Committee invites it to consider technical assistance from the ILO.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 and Part V of the Convention. Worst forms of child labour and application in practice. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. In its previous comments, the Committee had noted the allegations of the International Trade Union Confederation (ITUC), according to which there were reports of trafficking of children to neighbouring countries for the purpose of forced prostitution and that combatants from neighbouring Angola kidnapped Zambian children to perform forced labour in Angola.

It had also observed that according to the ILO-IPEC study conducted in 2002, there were reports of internal child trafficking, especially in the central province, for the purpose of employing them in farms. The Committee had further noted that sections 2, 4B(1) and 17(B)(1) of the Employment of Young Persons and Children's Act of 1933, as amended by Act No. 10 of 2004, prohibit the sale and trafficking of children and young persons under 18 years of age. It had also noted the prohibition on trafficking of persons for sexual exploitation for slavery under sections 257 and 261 of the Penal Code, respectively.

The Committee notes that the Penal Code of Zambia was amended in 2005 to include explicit prohibitions against human trafficking. According to section 143 of the Penal Code (Amendment) of 2005, any person who sells or traffics in a child or other person for any purpose, or in any form, commits an offence and is liable, upon conviction, to imprisonment for a term of not less than 20 years.

It notes the Government's information that, so far, three prosecutions under section 143 of the Penal Code (related to child trafficking) have been reported. The Committee notes *with interest* that the Government adopted an Anti-Human Trafficking Act No. 11 of 2008. According to sections 3(2) and (4) of the Act, any person who traffics a child (defined as a person under 18 years of age) for the purpose of engaging them in the worst forms of child labour shall be liable to imprisonment for 25–35 years. The Committee notes, however, that according to a study conducted by ILO-IPEC on the nature and extent of trafficking in Zambia (Working Paper on the Nature and Extent of Child Trafficking in Zambia, 2007) trafficking of children exists in Zambia, predominantly internal trafficking, for domestic labour, farm work and commercial sexual exploitation. The Committee notes that, although the trafficking of children for labour or sexual exploitation is prohibited by law, it remains an issue of concern in practice. ***The Committee therefore requests the Government to redouble its efforts to take the necessary measures to eliminate trafficking of children for labour and sexual exploitation. It also requests the Government to take the necessary measures to ensure that persons who traffic in children are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. The Committee finally requests the Government to provide information on the progress made towards the adoption of the new Anti-Trafficking Bill and to provide a copy as soon as it has been adopted.***

Article 5. Monitoring mechanisms. The Committee notes the Government's information that 11 District Child Labour Committees and Community Child Labour Committees have been established with the mandate to monitor the implementation of programmes to sensitize the public on child labour and its worst forms as well as programmes to withdraw, rehabilitate and reintegrate identified children. The Committee also notes the Government's information that the labour inspectors, with the support of other Government security forces, carry out child trafficking inspections within its jurisdiction. So far, six labour officers have been trained in the prosecution of child trafficking cases.

The Committee further notes the information provided by the Government representative of Zambia to the Conference Committee on the Application of Standards in June 2008 concerning the application of the Minimum Age Convention, 1973 (No. 138). The Government representative stated that active investigation of child trafficking was strengthened, and that an Inter-Ministerial Committee on Human Trafficking has been established in order to provide specialized intervention on human trafficking through its relevant law enforcement agencies. ***The Committee requests the Government to provide information on the number of investigations carried out and the prosecutions undertaken by the labour officers and the police and the findings with regard to the trafficking of children. The Committee also requests the Government to provide information on the number of children withdrawn from trafficking and rehabilitated pursuant to the implementation of the programmes monitored by the District Child Labour Committees. It finally requests the Government to provide information on the activities of the Inter-Ministerial Committee on Human Trafficking to prevent and combat the trafficking of children under 18, and the results achieved.***

Article 7, paragraph 2. Time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Child victims/orphans of HIV/AIDS. In its previous comments, the Committee had noted the ITUC's indication that the number of street children in the capital Lusaka nearly tripled over the 1990s. It had also noted that since the number of Zambians dying of HIV/AIDS had increased, the number of orphans had also increased and that nearly all of these children were working, particularly in hazardous work.

The Committee notes the Government's report that it has developed a National HIV/AIDS policy which addresses the issues of orphans as well as HIV-positive children. It also notes that the Government has launched a National Decent Work Country Programme in December 2007, which has outlined HIV/AIDS prevention and elimination of child labour among its priorities. It further notes the Government's statement that, as of March 2008, there has been an increase in the number of children prevented and withdrawn from HIV/AIDS-induced child labour through educational support, recreational and psychological support, and through income generation activities for the families affected by HIV/AIDS. Many children who were integrated into formal and informal schools continued their education after receiving school requirements, and those who completed vocational skills training were provided with employment. The Committee finally notes the Government's statement that the Employment Act Cap 268 of the Laws of Zambia, which is currently being reviewed, will include provisions dealing with HIV/AIDS.

The Committee notes that, according to the ILO-IPEC Progress Report, 2008, of the project entitled "Combating and preventing HIV/AIDS-induced child labour in sub-Saharan Africa (September 2004 – December 2007)", in Zambia a total of 1,124 children were withdrawn from exploitative child labour and 1,149 children prevented from being engaged in exploitative child labour, through educational and social protection services. Moreover, the project supported the Government's efforts to mainstream HIV/AIDS issues in its national child labour policies and programmes. The Committee notes, however, that according to the information contained in the "Report on the global AIDS epidemic" published by the Joint United Nations Programme on HIV/AIDS (UNAIDS) in July 2008, over 600,000 children aged below 17 years are HIV/AIDS orphans in Zambia. While noting the measures taken by the Government, the Committee observes with concern that one of the serious consequences of this pandemic on orphans is their increased risk of being engaged in the worst forms of child labour. ***The Committee therefore requests the Government to pursue its efforts to combat HIV/AIDS-induced child labour and to provide information on the results achieved. It further requests the Government to provide information on the implementation of the National HIV/AIDS policy and the National Decent Work Country Programme and on the results achieved in terms of the elimination of HIV/AIDS-induced child labour.***

Article 8. International cooperation. The Committee had previously noted that Zambia is a member of Interpol, which assists cooperation between countries in the different regions, in the fight against trafficking of children. The Committee had asked the Government to provide information on the measures taken or envisaged to cooperate with countries to which Zambian children are trafficked. The Committee notes the Government's information that the police service has created a human trafficking desk as a way of cooperating with other countries in order to combat human trafficking. ***The Committee requests the Government to provide information on the role of the human trafficking desk created by the police service in combating cross-border trafficking in children, and on the results achieved.***

The Committee is also addressing a direct request to the Government concerning certain other points.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 6** (Cambodia, Central African Republic); **Convention No. 10** (Senegal); **Convention No. 59** (Peru, United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Gibraltar); **Convention No. 77** (Kyrgyzstan, Malta, Tajikistan); **Convention No. 78** (Kyrgyzstan, Malta, Tajikistan); **Convention No. 79** (Kyrgyzstan, Tajikistan); **Convention No. 90** (Guinea, Tajikistan); **Convention No. 123** (Mongolia, Uganda); **Convention No. 124** (Bolivia, Kyrgyzstan, Tajikistan, Uganda); **Convention No. 138** (Albania, Angola, Azerbaijan, Bahamas, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Burkina Faso, Burundi, Cambodia, Central African Republic, Chile, China, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Colombia, Comoros, Congo, Côte d'Ivoire, Croatia, Cuba, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Georgia, Germany, Greece, Grenada, Guatemala, Guinea, Guyana, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lesotho, Malawi, Mozambique, Nigeria, Papua New Guinea, Peru, Qatar, Senegal, Seychelles, Sudan, Tajikistan, Togo, Trinidad and Tobago, Turkey, Uganda); **Convention No. 182** (Albania, Algeria, Angola, Argentina, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Central African Republic, Chad, Chile, China, China: Macau Special Administrative Region, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Malawi, Mozambique, Nicaragua, Nigeria, Pakistan, Papua New Guinea, Russian Federation, Saint

Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Senegal, Seychelles, Slovakia, Sudan, Suriname, Thailand, Togo, Trinidad and Tobago, Turkey, Zambia).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 6** (Congo, Mali); **Convention No. 33** (Netherlands: Netherlands Antilles); **Convention No. 59** (United Kingdom: Bermuda, United Kingdom: Montserrat); **Convention No. 79** (Peru); **Convention No. 90** (Peru); **Convention No. 124** (Bulgaria, Malta, Zambia); **Convention No. 138** (Bulgaria, Slovenia); **Convention No. 182** (China: Hong Kong Special Administrative Region).

Equality of opportunity and treatment

Afghanistan

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

Articles 1 and 2 of the Convention. Legislation. The Committee previously noted that section 9 of the Labour Code does not contain a definition of “discrimination”. It notes the Government’s indication that any infringement of rights guaranteed under the legislation was considered to constitute discrimination. **While noting this information, the Committee requests the Government to include in the legislation a definition of discrimination, with a view to facilitating the implementation of the Labour Code’s non-discrimination provisions. Such a definition should cover direct and indirect discrimination and include the prohibited grounds listed in Article 1(1)(a) of the Convention, as well as any other ground the Government may determine in accordance with Article 1(1)(b) such as, for instance, age, disability or health status. Please indicate any further developments in this regard.**

The Committee notes that preparations are under way for the National Assembly to adopt new legislation on persons with disabilities, which, inter alia, will address vocational rehabilitation, training and employment of disabled persons. The Government may also wish to include in the new legislation provisions prohibiting discrimination in employment and occupation based on disability. **The Committee requests the Government to provide information on the progress made in adopting the legislation concerning persons with disabilities.**

Articles 2 and 3. Equality of opportunity and treatment of men and women. The Committee notes the Government’s indication that women actively participate in the economic and social life of the country. **The Committee would appreciate further information on the progress made in enhancing women’s access to education and employment. Recalling that the Convention specifically requires governments to ensure respect for the principle of equality of opportunity and treatment in employment under the direct control of the authorities, the Committee requests the Government to provide information on the measures taken or envisaged to promote and ensure women’s access to employment in the civil service, including in management positions. The Committee would appreciate if the Government would continue to provide statistical information on the number of men and women that have benefited from vocational training.**

Awareness raising. Recalling its previous comments noting that further progress in realizing gender equality and non-discrimination is being held back, inter alia, by customary practices, the Committee notes from the Government’s report that awareness-raising and training activities concerning the Labour Code and with regard to equal access to training, employment and occupation of women, disabled persons and disadvantaged ethnic minorities took place through seminars and workshops. **The Committee hopes that such awareness-raising and training activities will continue, with the support of the ILO and the United Nations system, and that workers’ and employers’ organizations will have an active role in this regard. Please continue to provide information on awareness-raising activities on gender equality and non-discrimination in employment and occupation.**

Article 5. Special measures of protection. The Committee notes that the Government has not yet established a list of physically arduous or harmful work prohibited for women as envisaged under section 120 of the Labour Code. **The Committee requests the Government to ensure that any future list does not contain exclusions that go beyond what is strictly necessary to protect women’s reproductive capacity, as special protective measures for women which are based on stereotyped perceptions regarding their capacity and role in society would be contrary to the principle of equality of opportunity and treatment. The Committee requests the Government to provide a copy of the list of work that is prohibited for women under section 120 of the Labour Code, as soon as it is adopted.**

Angola

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1976)

The Committee notes the Government’s report and recalls the communication from the National Union of Angolan Workers (UNTA) dated 16 August 2007, which had been forwarded to the Government.

Discrimination in practice. The Committee notes that, although the Government has put in place legal provisions concerning discrimination in employment and occupation, including sections 3 and 268 of the General Labour Act No. 2/00, discrimination continues to occur in practice. In its report the Government states that violations of the non-discrimination provisions occur particularly in the private sector where imbalances in the participation in decision-making positions and a tendency to exclude women during and after maternity can be observed. The Government previously reported that gender-based discrimination also exists in the informal economy. As noted by the Committee previously, there is also a significant gender imbalance in the judiciary and as regards management positions in the civil service.

Further, the Committee notes that according to the UNTA a practice of fixing a maximum age of 35 years for recruitment has been observed. The Committee considers that such a practice is likely to be indirectly discriminatory against women as it may particularly affect women wishing to enter employment following an absence from the labour market for child rearing.

In its report, the Government states that it was difficult to measure the incidence of gender-based discrimination as women do not file petitions or complaints due to shortcomings in the “legal culture”. The Government also states that it has made efforts to raise awareness of legal matters, particularly among women, by expanding information and education programmes on women’s rights, using different national languages and various forms of communication. Efforts were also being made to address discriminatory cultural and traditional practices still prevailing in the country, which, for instance, lead to unequal access of girls to education. The Government, in a very general manner, also refers to the National Strategy and Strategic Framework to Promote Gender Equality and the Rural Growth and Development Programme which includes a programme for the economic empowerment of women. The report refers to the preparation and use of gender-disaggregated data, although such data has not been provided.

(i) *The Committee requests the Government to respond to the comments made by the UNTA. Concerned over the discriminatory effects of using age as a recruitment criteria, particularly on women, the Committee encourages the Government, in collaboration with workers’ and employers’ organizations, to take measures to ensure that women are not indirectly discriminated against in access to employment on the basis of age. Please provide information on the measures taken in this regard.*

(ii) *The Committee encourages the Government to continue and intensify its efforts to raise awareness and understanding of the principle of non-discrimination and the related legislation among men and women, and requests the Government to indicate the specific activities carried out to this end. Given the reports of discrimination based on sex and pregnancy in the private sector, the Committee requests the Government to indicate the measures taken or envisaged to enhance the capacity of the labour inspectorate and other competent authorities to identify and address discrimination in employment and occupation. Please also provide information regarding whether the competent authorities have addressed any such cases, and if so, the results thereof.*

(iii) *The Committee considers that the Government should take specific and proactive measures to promote and ensure equality of opportunity and treatment of women in the civil service, including the judiciary, and it asks the Government to indicate any measures taken or envisaged in this regard, including measures to ensure that women have access to management positions on an equal footing with men.*

(iv) *Noting that the Government has yet to provide statistical information on the situation of men and women in the labour market, the Committee hopes that the Government will take the necessary measures to collect and provide such data with its next report. This information should, as far as possible, include data on the representation of men and women in the different industries and occupations, as well as indications as to the representation of women in decision-making positions. Please also indicate the share of men and women considered to work in the informal economy and the measures taken to ensure their access to training and employment opportunities, irrespective of sex, race, religion or other grounds.*

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

Argentina

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

Wage gap, Tripartite Commissions on Equality of Opportunity and Treatment and Women’s Trade Union Quota Act. The Committee notes with interest the activities of the Tripartite Commission on Equality of Opportunity and Treatment for men and women at work (CTIO). It notes in particular that provincial Tripartite Commissions on Equality of Opportunity and Treatment have been established and that these Commissions meet in the Federal Council for the formulation of a joint strategy. One of the priority themes of this body is the gender wage gap. Conceptual, evidence-based and statistical materials are being prepared for this purpose. The strategy is supplemented, according to the Government, by the application of the Women’s Trade Union Quota Act No. 25674, under the terms of which each collective bargaining unit for conditions of work has to include women delegates proportional in number to the quantity of women workers in the branch or activity concerned. It also notes the difficulties encountered in giving effect to this Act. *The Committee encourages the Government to continue its efforts to strengthen the activities of the CTIO and to achieve the full application of Act No. 25674 so that women can participate actively in the negotiation of their own conditions of work and remuneration, and it requests it to provide information in this respect.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1968)

National Anti-Discrimination Plan. The Committee notes the information provided on the follow-up to the National Anti-Discrimination Plan coordinated by the National Institute against Discrimination, Xenophobia and Racism (INADI).

It notes with interest the activities carried out by the INADI to promote non-discrimination in employment and occupation. For example, it has established links with various trade unions of the two trade union federations (General Confederation of Labour (CGT) and the Confederation of Argentinean Workers (CTA)) in order to strengthen the trade union representation of women and to devise joint strategies for combating the persistent discrimination at work; it has promoted the establishment of forums with the participation of trade unions and civil society and participates in the Tripartite Committee on Equality of Opportunity and Treatment in the World of Work (CTIO). Furthermore, it has developed a programme entitled “Real equality now! State consensus on combating discrimination against women”, and under the subprogramme entitled “Equality at work between men and women”, various activities and studies are being carried out with the participation of the ILO, including on the situation of women migrant workers. The INADI is also promoting a Code of Good Practice for equality between men and women at work. Furthermore, the INADI is developing activities to promote the integration of persons with disabilities into employment and is preparing a report on the monitoring of the application of the National Anti-discrimination Plan. ***The Committee would be grateful if the Government would provide extracts from the above report relating specifically to non-discrimination in employment and occupation, and provide information on the impact of the various measures adopted and on the collaboration with employers and workers to implement these measures.***

Public sector. The Committee notes with interest that section 125 of the 2006 General Collective Labour Agreement for the Central Public Administration provides that the parties agree to eliminate any measure or practice which produces discriminatory treatment or inequality between workers based on political opinion, trade union membership, sex, sexual orientation or preference, marital status, age, nationality, race, ethnic group, religion, disability, physical characteristics, AIDS, or any other action, omission, segregation, preference or exclusion which damages or contradicts the principle of non-discrimination and equality of opportunity and of treatment, both in access to employment and during an employment relationship. ***Please provide information on the application of this section in practice, both on promotional activities and on any complaints made and the action taken in response to such complaints.***

Communication of the General Confederation of Labour of the Republic of Argentina (CGTRA). The Secretariat for Equality of Opportunity and Gender of the CGTRA indicates that the official line is one of strong support for equality but that difficulties are encountered in ensuring the application of the principle of gender equality in practice, and that in the trade union sphere there has still not been any clear progress. It points out that the Executive Board of the CGTRA is composed of 23 persons, of whom five are women and 18 are men. It indicates that the CTIO, a body under the Ministry of Labor, is a key body for the achievement of equality of opportunity in the public sector, but that it has not yet developed the capacity to respond effectively. It points out that difficulties are encountered with regard to the application of Act No. 25.674 on a quota in trade unions and that the Secretariat for Equality of Opportunity and Gender of the CGTRA has submitted numerous complaints to the CTIO of repeated violations of the Act, but measures to ensure its effective application have not yet been taken.

The Government reiterates that, according to the Act on a quota in trade unions, every collective bargaining unit shall be composed of a number of women representatives that is proportional to the number of women workers in the branch or activity concerned. It indicates that differences are observed in the representation of women according to the level of trade union association: in trade unions, the percentage is 22 per cent, in confederations it is 17 per cent and in federations it is 13 per cent. Between 2004 and 2006 the participation of women increased overall by 6 per cent. ***The Committee requests the Government to continue its efforts to strengthen the action in the CTIO and to ensure the effective application of the Act on a quota for trade unions, and to provide information in this regard, including on the representation of women on trade union executive bodies and on the action taken by the CTIO in response to complaints of violations of the Act on a quota for trade unions.***

Communication of the Confederation of Argentinean Workers (CTA). The Committee notes the comments made by the CTA, received on 12 September 2007, and the Government’s reply, received on 21 July 2008. The communication refers to domestic workers, undeclared work, migrant workers, interns and members of indigenous peoples.

Domestic workers, migrant workers and declared work. In its communication, the CTA indicates that 92.7 per cent of domestic workers are undocumented and that if they are documented, the law treats them in a less favourable manner than other workers. The Government indicates that women domestic workers are among the most vulnerable groups and that in 2005, the Government implemented new measures to promote the registration of domestic workers. It also indicates that the large majority of women domestic workers come from neighbouring countries, as a result of which it has implemented the *Patria Grande* Plan, complementing the Migration Act No. 25.871, National Directorate of Migration provision No. 53.253/05 intended to facilitate their regularization. This Plan was welcomed by the other MERCOSUR countries and partner States at the XVI Ibero-American Summit of November 2006. Under this Plan, 227,339 migrants have been regularized. Furthermore, the Government indicates that although the statutory schemes for domestic employees are different from those for other employees, section 21 of Act No. 25.239 establishes a special compulsory social security scheme for domestic workers under which the contributions are payable by the employer. Taking into account that the majority of domestic workers, both national and foreign, are women, the Committee points out that in many countries, domestic work is generally undervalued and poorly paid due to gender stereotypes. The Committee recalls that, under the Convention, all workers, including domestic workers, should enjoy equality of opportunity and of treatment in all aspects of employment and not just with regard to social security. The vulnerability and lack of

recognition within society of domestic workers places these workers at particular risk of suffering discriminatory practices, in particular on the basis of sex, race, colour and national extraction. It is therefore necessary to adopt legal and practical measures which ensure effective protection against discrimination on the grounds listed in the Convention. The Committee hopes that the National Anti-Discrimination Plan will pay special attention to the employment situation of domestic workers. ***The Committee requests the Government to provide information on all measures adopted or envisaged, including by the INADI, to ensure that domestic workers are not discriminated against in employment and occupation. It also requests detailed information on the legal provisions applicable to domestic workers, both national and foreign. Please also indicate the number of domestic workers that have been regularized under the Patria Grande Plan.***

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

Azerbaijan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1992)

Article 1 of the Convention. Equal remuneration for work of equal value. The Committee recalls its previous comments concerning sections 16, 154 and 158 of the 1999 Labour Code, drawing the Government's attention to the fact that these provisions do not fully reflect the principle of equal remuneration for men and women for work of equal value. In this context, the Committee notes that the Act on Ensuring Gender Equality of 10 October 2006 (No. 150-III O) provides in section 9(1) that the salary of employees working under equal conditions, in the same enterprise and with the same skills shall be equal. Section 9(2) provides that, in the event of a difference in wages, bonus and other forms of remuneration, an employer, at the request of an employee, shall prove that the difference is not related to the sex of the employee. The Committee notes that section 9(1) of the Act on Ensuring Gender Equality fails to reflect fully the principle of the Convention. As highlighted in the Committee's general observation of 2006, the notion of "work of equal value", in particular, is important to ensure that men and women enjoy the right to equal remuneration, not only when they perform the "same" or "similar" work, but also when they perform work that is different but nonetheless of equal value, whether or not in the same enterprise. The Committee wishes to stress once again that legislation setting out the principle of equal remuneration for work of equal value is important in order to ensure the full application of the Convention. ***The Committee asks the Government to indicate the measures taken or envisaged to bring the legislation into full conformity with the Convention. In also asks the Government to provide detailed information on the implementation and enforcement of section 9 of the Act on Ensuring Gender Equality, including relevant judicial and administrative decisions.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)

Legislative developments. The Committee notes with interest the adoption and entry into force of the Act on Ensuring Gender Equality of 10 October 2006 (No. 150-III O) which aims at ensuring gender equality by eliminating all forms of discrimination based on sex and creating equal opportunities for men and women in all spheres of social life, including employment. The Committee notes in particular that under section 7, the employer has a specific obligation to provide equal treatment in relation to recruitment, promotion, training, working conditions, performance appraisals and dismissal. Section 7 also requires the employer to prevent discrimination based on sex, including sexual harassment, by taking appropriate measures. Article 10 prohibits discriminatory job announcements. ***The Committee requests the Government to provide information on the implementation of the Act on Ensuring Gender Equality, in particular information on measures taken to make the new provisions widely known. Please also provide information on any complaints and cases regarding discrimination in employment and occupation dealt with by the courts, the labour inspection service or other competent bodies, including information on the number, nature and outcomes of any such proceedings.***

Gender equality. The Committee notes that, in addition to putting in place gender equality legislation, the Government included measures to promote gender equality in its employment strategy (2006–15). According to the report, the strategy emphasizes assistance to women in the creation of small enterprises and the introduction of flexible forms of employment with a view to creating new jobs for women. The Government also states that vocational training and involvement of women in public works is a priority of the state employment service. The Committee further notes that the Decent Work Country Programme (DWCP) (2006–09) envisages the ratification of the Workers with Family Responsibilities Convention, 1981 (No. 156), and the elaboration of measures to promote reconciliation of work and family, and the creation of family-friendly workplaces. Further, under the DWCP, compliance of the national legislation with international labour standards will be examined. ***The Committee requests the Government to provide detailed information on the specific measures taken under the employment strategy to ensure women's equal access to the labour market, including self-employment, and to provide detailed statistical information on the participation of men and women in the different sectors, industries and occupations. The Committee also requests the Government to***

indicate the progress made in the examination of the national legislation with a view to ensuring compliance with international labour standards on gender equality.

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

Bahrain

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)

Legislative protection. In its previous comments, the Committee raised doubts about the effectiveness of the legal protection available in the country to victims of work-related discrimination. The Committee noted, in particular, that article 18 of the Constitution does not prohibit discrimination on the basis of race or colour and it does not appear to protect non-nationals from discrimination on the grounds listed in the Convention. This may leave the many foreign workers living in the country without legal protection from discriminatory treatment. Noting that the Labour Code for the private sector was being revised, the Committee thus encouraged the Government to introduce in the Code an explicit definition, as well as an express prohibition of discrimination in accordance with *Article 1 of the Convention*.

The Committee notes the Government's indication that the Labour Code for the private sector applies equally to all workers in the Kingdom, irrespective of their sex or nationality. The Committee considers, however, that the insertion in the labour legislation of an explicit provision prohibiting discrimination with respect to all the grounds set forth in *Article 1(1)(a)* of the Convention would ensure a more direct and effective application of the Convention. ***The Committee therefore hopes that the Government will introduce in the new Labour Code provisions explicitly defining and prohibiting direct and indirect discrimination on the basis of all the grounds enumerated in Article 1(1)(a) of the Convention and in respect of all aspects of employment. Please provide information on any further developments concerning the status of the new Labour Code for the private sector and provide a copy once it has been adopted.***

Migrant workers. The Committee understands that Bahrain is receiving a growing number of migrant workers, mainly from Asia and some African countries, who are employed for the most part in domestic work, as well as in the entertainment and construction industries. The Committee notes from the 2005 concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) that migrant workers are facing serious discrimination in the enjoyment of their social, economic and cultural rights, especially as regards employment (CERD/C/BHR/CO/7, 14 April 2005, paragraph 14). Moreover, recalling that domestic workers' employment relations fall outside the scope of the Labour Code, the Committee notes that women migrant domestic workers are particularly vulnerable to abuses and discrimination. In addition, the Committee notes the concerns expressed by the UN Special Rapporteur on trafficking in persons, especially women and children, about the effects of the sponsorship system in force in the country and its distortions resulting in an unequal distribution of power between employers and migrant workers, which increases the possibility of migrant workers being abused and exploited (A/HRC/4/23/Add.2, 25 April 2007, paragraph 62ff.). The Committee notes that this state of dependency of migrant workers on their employers seriously affects the enjoyment of their labour rights and exposes them to discriminatory practices. The Committee also notes that because of this system, migrant workers are often reluctant to make formal complaints against their employers. The Committee notes that in the context of the review of the Labour Code the abolition of the sponsorship system is envisaged (*ibid.*, paragraph 64). The Committee further notes from the Government's report that the new draft Labour Code, currently before the National Assembly, will cover some categories of workers previously excluded from the application of the Labour Code with respect to certain aspects of labour relations, including weekly rest and compensation following unfair dismissal. ***The Committee requests the Government to:***

- (i) ***examine the current situation of migrant workers with a view to identifying the most effective measures to be taken in order to prevent and address the multiple discrimination in employment and occupation, based on race, colour, religion or sex, of which migrant workers, especially women migrant domestic workers, are victims, and report on the steps taken in this regard;***
- (ii) ***provide information on the number and nature of any relevant complaints filed by migrant workers, especially domestic workers, before the Ministry of Labour and Social Affairs, as well as on any relevant violations detected by the labour inspectorate, the sanctions imposed and the remedies provided;***
- (iii) ***provide information on any developments concerning the abolition of the sponsorship system; and***
- (iv) ***consider extending the scope of the Labour Code provisions to domestic workers, casual workers and agricultural workers.***

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

Bangladesh

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1998)

Assessment of the gender pay gap. The Committee notes that a number of recent studies and surveys concerning the labour market in Bangladesh have highlighted the continuing wide differential in the earnings of men and women. The 2007 wage survey carried out by the Bangladesh Bureau of Statistics among non-farm production workers found that the average daily income of women amounted to 69.7 per cent of that of men. According to the 2008 World Bank report entitled “Whispers to voices: Gender and social transformation in Bangladesh”, women in rural areas earned 59.7 per cent of men’s wages (nominal), and the ratio for urban areas was 56 per cent (data for 2002–03). According to the report, the gender pay differentials are often explained by the lower levels of skills and qualifications of women workers, but there is also a tendency to set lower wages in female-dominated sectors, in part as a result of wage discrimination. ***The Committee asks the Government to provide detailed information on the earnings of men and women in both the formal and informal economy and the measures taken to address the wide gender pay gap.***

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes that section 345 of the 2006 Labour Act provides that “[i]n determining wages or fixing minimum rates of wages for any workers, the principle of equal wages for male and female workers for work of equal nature or value shall be followed and no discrimination shall be made in this respect on the ground of sex”. ***The Committee asks the Government to provide detailed information on the measures taken to ensure the effective implementation of section 345 of the Labour Act, including targeted training and awareness raising on the issues of equal pay for judges, relevant public officials, such as labour inspectors, and workers’ and employers’ representatives. It also asks the Government to provide information on any cases concerning section 345 that have been addressed by the labour inspectorate or the courts.***

Article 1(a). Definition of remuneration. The Committee recalls that the principle of equal remuneration for men and women for work of equal value must be applied to all aspects of remuneration as defined in *Article 1(a)* of the Convention. However, section 345 of the Labour Act only applies to “wages” which, under the terms of section 2(xlv), do not include the following aspects of remuneration: (1) the value of any house accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by general or special order of the Government; (2) contributions by the employer to any pension fund or provident fund; (3) travelling allowances; (4) reimbursements of special expenses incurred by the worker. ***The Committee asks the Government to indicate how it is ensured, in law and in practice, that the principle of equal remuneration for men and women for work of equal value is applied in relation to those aspects of remuneration which are excluded from the definition of “wages” contained in section 2(xlv) of the Labour Act.***

Article 2(2)(b). Minimum wages. The Committee notes the Government’s indication that the Minimum Wages Board when recommending minimum wages follows the principle of equal remuneration for work of equal value. For example, in November 2006, the Board recommended minimum wages for workers in the ready-made garment sector irrespective of whether they are male or female. In this regard, the Committee recalls that, where minimum wage rates are set by occupation, it must be ensured not only that the same wage rates apply to men and women performing a specific occupation, but also that the wage rates for female-dominated occupations are not set at a lower level than the wage rates for male-dominated occupations where the work done is of equal value. ***The Committee asks the Government to indicate how, in practical terms, it is ensured that minimum wage rates fixed for female-dominated occupations or sectors are not set below the level of rates applying to male-dominated occupations involving work of equal value. It also asks the Government to provide the texts of the minimum wage orders currently in force.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1972)

The Committee recalls its previous observation which addressed three issues:

- (1) the absence of a legislative ban on discrimination and the importance of including such a prohibition in the Labour Act in conformity with the Convention;
- (2) the need for the Government to provide full information on the specific action taken to eliminate discrimination against women and to promote equality in respect of their access to education, including vocational training, as well as their equal access to employment and the widest range of occupations and sectors; and
- (3) the need for the Government urgently to take active measures to address the issue of sexual harassment at work through appropriate laws, policies and mechanisms.

The Committee also notes the discussion of the application of the Convention by Bangladesh that took place during the 96th Session of the International Labour Conference in June 2007.

Articles 1 and 2 of the Convention. Prohibition of discrimination. The Conference Committee in 2007 expressed the firm hope that in the revision of the labour legislation, provisions specifically prohibiting discrimination in employment and occupation had been adopted. The Committee has now obtained a translation of the Labour Act 2006 and regrets to note that it does not contain a prohibition of discrimination in employment and occupation based on all the

grounds listed in *Article 1(1)(a)* of the Convention and with respect to all aspects of employment and occupation as defined in *Article 1(3)*, i.e. access to vocational training, access to employment and to particular occupations, and terms and conditions of employment, including advancement and promotion. The Committee also notes that the Labour Act does not apply to a number of categories of workers, including domestic workers. ***Considering that legal provisions prohibiting discrimination in accordance with Article 1 of the Convention and their enforcement are essential for ensuring progress in the elimination of discrimination in employment and occupation, the Committee requests the Government to take measures to introduce such provisions, and to provide information in this regard. It also asks the Government to indicate how it ensures the protection of men and women against discrimination in employment and occupation in practice, including those excluded from the scope of the Labour Code.***

Gender equality in employment and occupation. The Committee recalls that in June 2007, the Conference Committee observed that serious gender-based inequalities continued to prevail in the labour market. It called on the Government to take active measures to ensure that women have a real choice of a wider range of jobs and occupations, including through broadening their educational and employment opportunities. In its brief report, the Government asserts that it had taken measures to promote laws and ensure practices respecting the principle of equality of opportunity and treatment in employment and occupation. Although the Conference Committee had requested specific information, the Government's report makes general reference to some programmes in this regard. According to the Government, women have entered the public service and benefited from training and education programmes. The Government has not provided any data in this regard, except an indication that the Ministry of Labour and Employment was currently building two new vocational training centres for women. The Government also highlights the high level of women employed in some sectors of the economy, such as the garment sector and primary education.

The Committee notes that the information provided would not appear to indicate that appropriate steps are being taken to address the serious situation of women in employment and occupation. The Committee notes from the Key Findings of the Labour Force Survey 2005–06 published by the Bangladesh Bureau of Statistics, that the women's labour force participation rate has increased from 23.9 per cent in 1999–2000 to 29.2 per cent in 2005–06. The data confirms that the rise in women's labour participation was due to growth in a few female dominated sectors. While women's employment opportunities particularly increased between 1999–2003 in health and community services, manufacturing and agriculture, increases between 2003–06 were mainly due to a drastic increase in women working in agriculture. There has also been a decrease of women working in the formal sector, whilst that of men has increased. In 2005–06, some 60.1 per cent of women in the labour force were unpaid family workers and unemployment among women was about twice that of men.

The Committee considers it of the utmost importance that the Government, in addition to enhancing women's educational and training opportunities, actively addresses other root causes of gender inequality in the labour market, including gender-based discrimination in hiring and stereotypical views and behaviour that confine women to training and work which are considered as "suitable" for women. The Committee urges the Government to take effective measures to ensure that women have access, on an equal footing with men, to jobs in the public sector, including through the adoption and implementation of equality plans. It once again urges the Government to provide detailed information on the specific action taken to eliminate discrimination against women and to promote equality in respect of their access to education, including vocational training, as well as their equal access to employment and the widest range of occupations and sectors. The Committee requests the Government to provide full statistical information on the situation of men and women in the labour market, including the level of women's employment at all levels of public service, and in education and training.

Sexual harassment. The Committee notes that section 332 of the new Labour Act prohibits behaviour in establishments that employ female workers "which may seem to be indecent or repugnant to the modesty and honour of the female worker". Although this provision appears to include sexual harassment, it is unclear whether it covers all forms of sexual harassment as described in the Committee's General Observation of 2002. The Committee considers that in the absence of a clear definition, it remains ambiguous as to what constitutes prohibited conduct under this provision, which undermines legal certainty and consequently effective enforcement. ***The Committee requests the Government to take further measures to clarify the prohibition of sexual harassment, including through the inclusion of an appropriate definition of sexual harassment at work in the legislation and the elaboration of practical guidelines or codes of conduct that further elaborate on the various forms of harassment. The Committee requests the Government to provide information on any measures envisaged or taken in this regard.***

The Conference Committee requested the Government to provide specific information to the Committee on the impact of the existing legislation to prevent and address sexual harassment at work, as well as any other measures taken or envisaged in this regard, including information on the effectiveness of the dispute resolution mechanisms in place to address complaints of sexual harassment. The Committee regrets that the Government's report contains no information in this regard. ***Recalling that the Government previously indicated that no allegations concerning sexual harassment at work had been received, the Committee urges the Government to consider implementing awareness-raising and training activities on sexual harassment targeting workers, employers and relevant public officials, such as labour inspectors, and requests the Government to report on any measures taken in this regard. Regarding the impact of the existing legislation, the Committee requests the Government to provide information on whether any cases of sexual***

harassment at work have been dealt with by the courts or labour inspectors under section 332 of the Labour Act or under section 10(2) of the Suppression of Violence Against Women and Children Act.

The Committee recalls that the Conference Committee urged the Government to accept an ILO High-level mission to assist with the effective application of the Convention in law and practice. The Committee considers that technical assistance continues to be necessary and hopes that an ILO mission could take place in the near future to assist the Government in its efforts to strengthen the Convention's application.

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

Belgium

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)

New legislation to combat discrimination and promote equality. The Committee notes that the Government has taken a series of legislative measures to combat discrimination in employment and occupation and sexual harassment more effectively, and to promote equality between men and women. In 2007, a legislative reform was put in place to create a general framework to combat all forms of direct and indirect discrimination based on a large number of criteria in all areas of public life, including employment, as well as for the purposes of social security. The new laws, notably the Act to combat discrimination between men and women of 10 May 2007; the Act designed to combat certain forms of discrimination (General Anti-discrimination Act) of 10 May 2007; and the Act to curb acts motivated by racism or xenophobia of 10 May 2007, amending the Act of 20 July 1981, introduce new elements into the existing legislation.

The Committee notes with *satisfaction* that, by including discrimination on the basis of social origin in the General Anti-discrimination Act, the legislation now contains all the criteria of discrimination listed in *Article 1(1)(a) of the Convention*. The Committee is also pleased to note that henceforth nationality is included as an additional ground of discrimination in the national legislation, in accordance with *Article 1(1)(b) of the Convention*.

Furthermore, the Committee notes that the new laws aim to improve the system of penalties and make them more specific and effective, both at the criminal and civil levels. They prohibit the instruction to discriminate and provide for the punishment of anyone inciting discrimination, segregation, hatred or violence against a person, group, community or their members on the grounds of one of these criteria. The laws also make it possible to combat de facto discrimination by means of an action for injunction, and provide for the shifting of the burden of proof of discrimination. With respect to gender equality, the Act of 2007, designed to combat discrimination between men and women, henceforth bans any direct and indirect discrimination based on sex, including the instruction to discriminate, sex-based harassment and sexual harassment in employment and occupation.

Furthermore, in order to prevent and combat sexual harassment more effectively, the Act of 4 August 1996 concerning the well-being of workers, as amended in 2007, now obliges employers to take measures designed, inter alia, to combat sexual harassment as part of their overall policy to prevent work-related psychological and social problems. These measures include appointing a counsellor or other persons of confidence, setting up an internal procedure at the enterprise level, informing and training workers, and assisting the victims. The Act also gives social inspectors and the labour prosecutor's office an important role.

Finally, the Committee notes the adoption, on 12 January 2007, of the Act monitoring the application of the resolutions of the Fourth World Conference on Women, held in Beijing in September 1995. The said Act requires the implementation of the principle of gender mainstreaming in all federal policies, including in the area of employment and social security. It also provides that legislation and regulations must be accompanied by a report assessing their impact on the respective situation of women and men, so as to avoid introducing or reinforcing any possible inequalities; furthermore, all relevant statistics must be disaggregated by sex. The law also provides that the concepts of equality between men and women and gender mainstreaming must be taken into account in public contracting procedures and the granting of subsidies.

The Committee would be grateful if the Government would provide information on the application in practice of the new federal legislation concerning discrimination, sexual harassment and gender mainstreaming, by enclosing a copy of the relevant administrative or legal decisions and by indicating the activities undertaken by the Government, the Institute for Equality of Women and Men and the Centre for Equal Opportunities and the Fight Against Racism.

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

Brazil

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)

Article 1 of the Convention. Discrimination on the basis of political opinion. In its previous observation, the Committee referred to a communication from the Union of Teachers of Itajaí and Region concerning the dismissal of three

university teachers which was based, according to the communication, on their political opinions. The Committee notes that, according to the Government, the investigation into this case was halted on 27 March 2007 because the allegations could not be proved. This was subsequently communicated to the Higher Council of the Labour Prosecution Office so that it could align its records accordingly. The Committee also notes the Government's statement that no specific action has been taken for combating discrimination in employment and occupation on the basis of political opinion. ***The Committee requests the Government to clarify the nature of the abovementioned investigation, indicating in particular whether this was an independent procedure. The Committee also requests the Government to provide information on any other cases of discrimination in employment or occupation on the basis of political opinion which are brought before the judicial or administrative authorities and the outcome thereof. Please also provide information on the manner in which it is ensured that workers do not suffer discrimination on the basis of political opinion.***

Discrimination on the basis of gender, race or colour. The Committee notes the "Brazil: gender and race" programme, under which equal opportunity and anti-discrimination groups were established, and also the territorial/sectoral qualification plans (PlanTEQS) for promoting vocational training, particularly for vulnerable groups, namely women, persons of African descent and indigenous peoples. The Committee also notes the plan of action adopted in 2006 by the Tripartite Committee on Equal Opportunities and Treatment, the "National plan for policies for women" and the "National policies for the promotion of racial equality and for sustainable development for the poor and for traditional communities", the aim of which include the eradication of all forms of discrimination with regard to these groups. However, the Committee notes from the documents attached to the Government's report that women and persons of African descent are concentrated in activities which are the most precarious and afford the least social protection and their remuneration is lower than that earned by other workers (men, whites). In this regard, the Committee notes that, although the gender wage gap decreased from 23.9 per cent in the early 1990s to 16.7 per cent in 2003, the wage gap between persons of African descent and whites has not shown any improvement over the last 11 years, remaining at approximately 50 per cent. The Committee understands that persons of African descent are under pressure in various sectors, including private banks, and in particular in managerial positions. The Committee also notes the particularly vulnerable situation of women of African descent, who suffer discrimination on grounds of both race and sex. ***The Committee urges the Government to continue taking steps to ensure that women and persons of African descent benefit fully from equality of opportunity or treatment in access to vocational training, access to employment, including employment in private banks, and conditions of work. Please supply information on any measure taken in this regard and also up to date information on the situation of women and persons of African descent in the labour market.***

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

Bulgaria

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

Articles 2 and 3 of the Convention. Implementation of the anti-discrimination legislation. The Committee notes with interest that the Commission on the Protection against Discrimination has been able to increase its level of activities, both in the area of prevention of discrimination as well as in the adjudication of cases. In 2006, some 389 complaints were filed with the Commission compared to 89 in 2005. In respect of 220 complaints of discrimination, proceedings were initiated and in 71 cases the Commission found violations of the equal treatment principle. The Committee notes that a number of cases related to employment matters, although the report gives no precise case information either as to the subject matter or the ground of discrimination in respect of each case. The Committee welcomes the efforts of the Commission to extend its activities to the different regions of the country which has led to increased awareness of the legislation and, as a result, an increase in the number of complaints received. The Committee also notes that the Commission has collaborated with the national workers' and employers' organizations and has signed framework agreements on cooperation on the prevention of discrimination in the field of labour with the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Agency for Persons with Disabilities. ***The Committee requests the Government to:***

- (i) continue to provide information on the activities of the Commission on the Protection against Discrimination as regards discrimination in employment and occupation, including detailed information on the number, nature and outcome of cases dealt with by the Commission and an indication of the level of compliance with its decisions;***
- (ii) provide information on the Commission's efforts in the area of awareness raising and prevention of discrimination, including its collaboration with workers' and employers' organizations and other public authorities, such as the Agency for Persons with Disabilities or the labour inspectorate; and***
- (iii) provide detailed information on the number, nature and outcome of court cases involving questions of discrimination in employment and occupation.***

Equality of opportunity and treatment irrespective of national extraction or religion. Access to education, training and employment. In its previous observation, the Committee urged the Government to indicate any measures taken to assess the impact of the special measures taken to promote equality of opportunity and treatment in employment and

occupation of ethnic minority groups which are in a vulnerable social-economic situation. The Committee also asked the Government to provide information on the actual employment situation of persons of Roma and Turkish origin and the extent to which they were actually able to obtain jobs in the public and private sectors after having benefited from skills training or other assistance. The Committee further wished to receive information on the progress made in increasing the number of integrated schools, including the number of Roma children attending such schools.

With respect to these matters, the Committee notes the Government's statement that in 2006 the Employment Agency had not gathered any statistics regarding the ethnicity of persons seeking employment. Accordingly, no information on the employment situation of ethnic minority groups could be given. However, the Employment Office Directorate sent a letter to the Employment Agency on 16 May 2007 providing a form by which employment seekers could identify themselves as members of ethnic groups. The Committee also notes that the Government's report contains certain data on the level of participation of Roma in a number of programmes and projects implemented by the Employment Agency in 2006 in relation to the National Action Plan under the Decade of Roma Inclusion 2005–15. The Government indicates that this data has been established through an expert assessment made by officials of the Employment Office Directorate. For instance, an estimated half of the 82,550 persons having participated in the "From Social Assistance to Employment" Scheme were Roma, while 9,729 unemployed Roma were included in vocational orientation courses. In addition, some 2,675 Roma acquired specific vocational qualifications through training. The report also states that the job fairs were held in areas with concentrated Roma population which offered a total of 4,560 jobs and led to some 3,000 persons obtaining employment. With regard to the access of boys and girls from Roma communities to quality education, the Committee particularly notes the information provided on the ongoing desegregation projects. *While duly noting the information provided, the Committee requests the Government to:*

- (i) *continue to provide information, including statistical data, on the participation of the Roma or persons of Turkish origin in active labour market measures, and information on the extent to which persons from these groups have actually found employment after having benefited from such measures;*
- (ii) *continue and intensify its efforts to assess and to monitor the employment situation of members of ethnic minority groups, particularly the Roma and persons of Turkish origin, and to provide statistical information on the overall employment situation of these groups as soon as it is available; and*
- (iii) *continue to provide information on the progress made in ensuring equal access of women and men from ethnic minority communities, in particular the Roma, to quality education at all levels.*

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

Burundi

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

Article 1 of the Convention. Equal remuneration for work of equal value. The Committee recalls that both article 57 of the Constitution and section 73 of the Labour Code provide for equal remuneration for equal work, which falls short of fully reflecting the principle of equal remuneration for work of equal value as set out in *Article 1* of the Convention. In its report, the Government states that there is no obstacle to reflecting the principle of the Convention in the national legislation. *Noting the Government's willingness to bring article 57 of the Constitution and section 73 of the Labour Code into conformity with the Convention, the Committee hopes that the Government will take the necessary measures as soon as possible and to indicate in its next report the progress made in this regard.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee notes the comments on the application of the Convention made by the Trade Union Confederation of Burundi (COSYBU) dated 30 August 2008, to which the Government has not as yet replied. *It requests the Government to provide its comments regarding the issues raised by COSYBU.*

Discrimination based on race, colour or national extraction. In its previous comments the Committee requested the Government to provide information on the measures taken to address discrimination in employment between different ethnic groups. In reply, the Government once again refers to the 2005 Constitution, and to the Arusha Agreement. As previously noted by the Committee, article 122 of the Constitution prohibits discrimination based, inter alia, on an individual's origin, race, ethnicity, sex, colour and language. The Committee also notes that, pursuant to article 129(1) of the Constitution, 60 per cent and 40 per cent of the seats in Parliament are reserved for Hutus and Tutsis, respectively. Similar provisions also exist for government positions. In its report, the Government also asserts that ethnic discrimination in employment and occupation no longer exists. As the elimination of discrimination and the promotion of equality is a continual process, and cannot be achieved solely through legislation, the Committee finds it difficult to accept statements to the effect that discrimination is inexistent in a given country. It stresses the need for the Government to take continuing action with a view to promoting and ensuring non-discrimination and equality in employment and occupation. *The Committee therefore reiterates its request for information on any specific measures taken to promote and ensure*

equality of opportunity and treatment, irrespective of ethnic origin, in respect of employment in the private and public sectors, including awareness-raising activities and measures to promote respect and tolerance between the different groups. It also reiterates its request for information on the activities of the newly established public service recruitment commission with a view to promoting equal access to public service employment of different ethnic groups.

The Committee notes that, despite the provisions of article 7 of Protocol I to the Arusha Agreement which provides for the promotion of disadvantaged groups, notably the Batwa, the Working Group of Expats on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights (Report of the Research and Information Visit to the Republic of Burundi, March–April 2005, page 31) reports that this particular group continues to suffer from strong negative stereotypes and racial harassment by other segments of the population. While taking note of the Government's very general statement that measures have been taken in the field of education, the Committee observes that, according to the African Commission's Working Group, Batwa's access to education is well below the national average. The illiteracy rate among the Batwa is estimated to be over 78 per cent. ***The Committee urges the Government to take all measures necessary to ensure equal access of the Batwa to education, vocational training and employment, including through reviewing and strengthening relevant national laws and policies and ensuring their full implementation. The Committee also requests the Government to take measures to combat stereotypes and prejudice against this group. The Government is requested to provide detailed information with regard to these matters in its next report.***

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

Canada

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1972)

Work of equal value. The Committee noted previously that in *Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan* and in the territories, namely *Northwest Territories, Nunavut and Yukon*, full legislative expression is not given to the principle of equal remuneration for work of equal value. While there is pay equity legislation applicable to the public sector in *Manitoba, New Brunswick, Nova Scotia and Prince Edward Island*, comparisons in the private sector are limited to jobs involving the same or substantially similar work. The Committee had urged the Government to take measures for the adoption of legislation to ensure equal remuneration for work of equal value in both the public and private sectors. In response, the Government notes that no legislative changes are anticipated with respect to *British Columbia* or *Manitoba*. Regarding *Saskatchewan*, the Committee notes the Court of Queen's Bench decision of 30 May 2007 referred to in the Government's report holding that the Human Rights Code prohibition of discrimination in employment on the basis of sex does not guarantee equal pay for work of equal value, and that pay equity is a specific issue requiring dedicated legislation. The Committee notes that the Department of Justice and the Saskatchewan Human Rights Commission are considering how to respond to the ruling. The Committee regrets that no information is provided regarding the other provinces or territories.

The Committee draws the Government's attention to the Committee's 2006 general observation underscoring the importance of providing in legislation for equal remuneration not only for work that is the same or similar, but also for work that is of an entirely different nature, but which is nevertheless of equal value. This is particularly important given occupational sex segregation, which remains a feature of the Canadian labour market. The Committee stated in its general observation that legal provisions that are narrower than the principle as laid down in the Convention, hinder progress in eradicating gender-based pay discrimination against women at work as they do not give expression to the concept of "work of equal value". ***The Committee, therefore, once again, urges the Government to take measures for the adoption of legislation at the provincial and territorial levels, to ensure equal remuneration for men and women for work of equal value in both the public and private sectors, and to provide information on steps taken to this effect.***

Application in practice. The Committee notes the numerous initiatives that have been undertaken in the various jurisdictions relevant to the application of the principle of the Convention in practice. The Committee notes in particular the Equal Pay for Work of Equal Value and Pay Equity Policy Framework introduced by the *Saskatchewan* government and the implementation of the *New Brunswick* Five Year Wage Gap Action Plan. The Committee notes with interest that, according to the Government's report, the wage gap in every department and agency in which the Saskatchewan Policy Framework has been implemented has narrowed. The Committee also notes with interest that the *New Brunswick* Action Plan sets out clear and measurable benchmarks and targets for achieving pay equity, through changing societal attitudes, increased sharing of family responsibilities, reducing the job clustering of women and increasing the use of pay equity practices to better value work. The Committee also notes the work of the *Ontario* Pay Equity Office in providing educational seminars, an e-learning programme, and outreach to employers' organizations, trade unions and other stakeholders. The *Quebec* Pay Equity Commission has also been active in awareness-raising and training activities and developing tools, offering its services to 17,000 people from 2005 to 2007. With respect to the *Quebec* regulation concerning pay equity in enterprises that do not have a male-dominated class, the Committee notes the Government's reply that it is still too early to be able to evaluate the impact of the regulation. ***The Committee welcomes these initiatives, and looks forward to continuing receiving information on the implementation of these measures in practice and their impact in reducing the gender pay gap.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1964)***

Legislative developments. The Committee notes with interest that section 67 of the Canadian Human Rights Act, which had limited the access of First Nations peoples to the protection of the Canadian Human Rights Act, was repealed in June 2008. The Committee also notes that the Canadian Human Rights Commission has begun an outreach strategy to raise awareness of First Nations peoples regarding the Act and to prepare for its implementation. The Committee notes further that a comprehensive review of the effects of the repeal will take place in five years. ***The Committee requests the Government to provide information on the effect in practice of the repeal of section 67 and the awareness raising undertaken on the right of First Nations peoples to non-discrimination in employment and occupation.***

Discrimination on the grounds of political opinion and social origin. With reference to its previous comments requesting the Government to include political opinion and social origin as prohibited grounds of discrimination in the Canadian Human Rights Act, the Committee notes the Government's reply that more consultation and analysis needs to be carried out with respect to these grounds before deciding on amendments to the Act. The Committee recalls that an independent review panel established in 1999 had recommended that "social condition" be added as a prohibited ground of discrimination, which the Government considers to be broader than social origin, and had also recommended that consideration be given to the need for the ground of political belief to also be included. The Committee also notes from the 2007 annual report of the Canadian Human Rights Commission that "the visible rise of social inequalities in Canada has sparked renewed debate over whether 'social condition' should be added as the 12th prohibited ground of discrimination". The report goes on to state that the Commission began research in 2007 to better understand the larger social and institutional implications of such an amendment.

With respect to the provinces and territories, the Committee notes with regret that no reply has been provided to its previous request for information regarding the absence of "social origin" as a prohibited ground of discrimination under the Human Rights Act (Nunavut), nor to its comment regarding the need to amend the Prince Edward Island Human Rights Act to include "social origin" as a prohibited ground of discrimination. The Committee also notes that the Manitoba Human Rights Commission has recommended that the Manitoba Human Rights Code be amended to add "social disadvantage" as a protected ground.

Recalling the importance of prohibiting discrimination on all the grounds enumerated in the Convention, the Committee urges the Government to take the necessary measures to amend the Canadian Human Rights Act to include the grounds of political opinion and social origin. The Committee also requests the Government to provide information on the process of consultation and analysis being undertaken in this respect. The Committee also requests the Government to take steps to have social origin included as a prohibited ground of discrimination in the provinces and territories, and to report on progress made in this regard.

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

Chad

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1966)***

The Committee recalls that, for several years, it has been raising a number of issues relating to the application of the Convention in law and in practice, seeking additional information from the Government on a number of issues. However, the Committee notes that, for the second consecutive time, the Government's report does not reply to the Committee's comments. ***The Committee urges the Government, therefore, to provide information on the all the outstanding issues as set out below.***

Article 1 of the Convention. Grounds of discrimination. Article 32 of the Constitution states that no one can be discriminated against in their work on the grounds of origin, opinions, beliefs, sex or matrimonial situation, but does not include the other grounds of discrimination set out in *Article 1(1)(a)* of the Convention, particularly race and colour. In this regard, the Committee had already observed that the grounds of race and colour are of particular significance to promote and ensure equality of opportunity and treatment in employment and occupation in multi-ethnic societies. ***The Committee therefore requests the Government to amend the legislation to ensure that it addresses, as a minimum, discrimination based on all the grounds listed in the Convention, including race and colour. The Committee requests the Government to provide information on the steps taken in this regard.***

Discrimination based on sex. ***Recalling that article 9 of Ordinance No. 006/PR/84 contains provisions granting the husband the right to object to the commercial activities of his spouse, the Committee notes that such provisions are incompatible with the Convention and urges the Government to take the necessary measures to repeal them. Recalling its 2002 general observation on sexual harassment, the Committee urges the Government to provide information on the measures taken, or envisaged, to address sexual harassment at work.***

Article 2. National policy to promote equality. The Committee is concerned that the Government, for a number of years, has not provided any information on the measures taken to promote and ensure gender equality in employment and occupation, including equal access to education and training. **The Committee therefore urges the Government to provide information on the measures taken, or envisaged, to adopted and pursue a national policy to promote and ensure equality of opportunity and treatment of men and women in employment and occupation, as well as in training and education at all levels. The Committee also urges the Government to provide information on the measures taken to address discrimination based on grounds other than sex.**

Part V of the report form. Practical application and statistics. The Government previously indicated that no judicial decisions concerning the Convention had been issued and that no practical difficulties had been encountered with respect to its application. The Committee reiterates emphatically that the absence of cases brought before the courts is not necessarily an indication that discrimination does not exist in practice. It also emphasizes again the need to collect and analyse appropriate statistics. In addition, the Committee stresses that the Government, in cooperation with workers' and employers' organizations and other appropriate bodies, should take measures to promote awareness and understanding of the principle of equality at work, with a view to securing observance of the Convention. **The Committee requests the Government to make every effort to collect and provide statistical information disaggregated by sex, national extraction and religion in employment and occupation in the private and public sectors, as well as information on the measures taken or envisaged to promote awareness and understanding of the principle of equality at work among relevant public officials, workers' and employers' representatives, the judiciary and the public at large.**

Chile

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1971)

Legislative measures. The Committee notes with interest the reform of labour procedures introduced by Act No. 20087 of 3 January 2006 and, in particular, where such rights are prejudiced through the exercise of the employer's powers, the establishment of a special procedure to guarantee the protection of the fundamental workers' rights set out in article 19 of the Constitution and section 2 of the Labour Code. These rights include the right to equality. Under the terms of the Act, proceedings relating to workers' fundamental rights benefit from preference in relation to all other procedures before the same court (section 488). The Act also provides that, where the evidence provided by the plaintiff constitutes sufficient proof that there has been a violation of fundamental rights, the defendant shall be under the obligation to explain the reasons why the measures were adopted and their proportional effect (section 493). **The Committee asks the Government to provide information on the effect given to these provisions including and, in particular, the number and types of cases relating to the violation of the principle of equality of opportunity and treatment in employment and occupation brought to the courts under this Act and their outcome, with particular reference to the application of section 493. The Committee once again requests the Government to provide a copy of Ordinance No. 3704/134 of 11 August 2004, determining the meaning and scope of the second, third and fourth subsections of section 2 of the Labour Code relating to non-discrimination at work.**

In its previous comments, the Committee had asked the Government to amend section 349 of the Code of Commerce which provides that, unless she married under the separate property regime, a married woman may not enter into a commercial partnership agreement without special permission from her husband, as well as the provisions of the Civil Code and supplementary legislation respecting the marriage regime and community of income, with a view to granting spouses equal rights. The Committee notes that, according to the Government's report, amendments to section 349 of the Code of Commerce and of the marriage regime are envisaged in the Bill to amend the Civil Code and supplementary legislation respecting the marriage regime and community of income (Bulletin No. 1707-18). **The Committee requests the Government to continue providing information on the progress of this Bill.**

Discrimination on the ground of political opinion. In its previous observation, the Committee observed that for over ten years it had carried on an exchange with the Government on the issue of the explicit repeal of certain Legislative Decrees (Nos 112 and 139 of 1973, 473 and 762 of 1974, 1321 and 1412 of 1976) allowing the rectors of Chilean universities broad discretion to abolish academic and administrative posts, and section 55 of Legislative Decree No. 153 on the legal status of the University of Chile and the University of Santiago de Chile, under which teachers, students and administrative staff may be expelled from or refused admission to these two institutions on grounds of their political activities. In this respect, the Committee asked the Government to take the necessary measures to amend the national legislation so as to bring it into conformity with the Convention. **The Committee regrets that no information has been received on this matter, and once again asks the Government to take the necessary measures to bring the national legislation into conformity with the Convention.**

Indigenous peoples. With reference to its previous comments concerning the situation of indigenous peoples in the country, the Committee notes with interest that, on 8 September 2008, Chile ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Committee also notes the Constitutional Reform Bill, which recognizes the indigenous peoples of Chile, is currently under examination by the Constitution, Legislation, Justice and Regulations Commission of the Senate and it hopes that all the aspects of the Convention will be duly taken into account in this context. **The**

Committee asks the Government to provide information on the progress of the above Constitutional Reform Bill in relation to indigenous peoples, including information on the measures adopted to ensure the participation of indigenous peoples in this process.

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

China

Macau Special Administrative Region

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(notification: 1999)***

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes that section 6(2) of the Labour Act (No. 7/2008), which enters into force on 1 January 2009, provides for equal rights and duties of all workers or candidates for employment irrespective of social or national origin, extraction, race, colour, sex, sexual orientation, age, civil status, language, religion, political or ideological convictions, membership of an association, education or economic situation. Section 6(3) allows for distinctions to be made on these grounds based on inherent job requirements and section 6(4) provides that nothing in section 6 precludes the possibility of taking special measures for the protection of certain social groups provided such special measures are legitimate and proportional. The Committee notes with interest that the new non-discrimination provisions cover all candidates for employment and that all prohibited grounds listed in *Article 1(1)(a)* of the Convention have been included. In addition, the Committee notes with interest that discrimination based on a number of additional grounds (sexual orientation, age, civil status, language, membership of an association, education and economic situation) are also included as envisaged in *Article 1(1)(b)*. ***The Committee requests the Government to provide information on the measures taken to promote and ensure the implementation of the new non-discrimination provisions, including information on any cases dealt with by the courts or the labour inspection department regarding discrimination in employment. It also asks the Government to provide information on any special measures taken in accordance with section 6(4).***

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

Colombia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)

Article 1(a) of the Convention. Concept of remuneration. In its previous comments, the Committee noted a communication of 15 August 2007 from the Single Confederation of Workers of Colombia (CUT) and stated that it would deal with it together with the Government's comments. These were received on 18 March 2008. The CUT indicates that section 15 of Act No. 50 of 1990 amending the Substantive Labour Code expressly precludes any share in profits from being counted as wages. It also allows the exclusion from wages of "regular or occasional benefits or allowances established under agreements on contracts or otherwise granted by the employer on a non-statutory basis where the parties have expressly provided that these constitute wages in cash or in kind, such as food, accommodation or clothing, non-statutory bonuses for holidays, services or Christmas". The CUT asserts that by excluding indirect payments and allowing, upon agreement, some regular or occasional benefits or allowances to be excluded from wages, Act No. 50 paved the way for discrimination in remuneration based on sex. The Committee observes that the Government has sent no information regarding this matter. The Committee recalls that as long ago as 1994, it referred to section 15 of Act No. 50. It noted that according to the interpretation of the abovementioned provisions given by the Supreme Court of Justice on 12 February 1993, premiums, bonuses or awards, the reimbursement of costs and allowances in kind, do not constitute wages in the legal sense but are nonetheless benefits arising out of employment. It pointed out that the principle of equal remuneration for men and women established in the Convention applies not only to wages but also to any additional emolument in cash or in kind payable to the worker and arising out of the worker's employment, and it asked the Government to ensure that this principle was applied in practice. The Committee notes the CUT's comment that the problem persists. It points out that regardless of the other effects of the Supreme Court's interpretation, for the purposes of determining remuneration as defined in the Convention, with a view to ensuring equality of remuneration between men and women for work of equal value, account must be taken not only of the wage or salary but also "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment". ***The Committee once again asks the Government to take the necessary steps to ensure that this principle is applied effectively and to provide detailed information on this matter, together with replies to the Committee's comments of 2007.***

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1969)***

In its previous observation the Committee took note of a communication from the Single Confederation of Workers of Colombia (CUT). It notes the Government's reply, received on 21 February 2008.

Discrimination on grounds of race and colour. The CUT alleges discrimination against members of indigenous and Afro-Colombian peoples, citing the fact that they are poorly represented in middle and high level posts in private companies. It states that the darker the skin the greater the discrimination. It refers to a report from the five dioceses of the pacific coast of Colombia according to which in Buenaventura, for example, although persons of African descent account for 92 per cent of the population, when they look for work they are turned down because of the colour of their skin. Furthermore, in banks and corporations black persons have the worst jobs. The employment office and the banks have rejected applicants “because they are very dark”. The employment office of the region and private companies set other physical requirements for employment, particularly for women, namely that they must be white, tall and slim.

Discrimination on the ground of social origin. The CUT states that the inhabitants of the poorer districts, despite a good education, are unable to get jobs in a number of private companies, particularly banks and financial companies. The selection process now involves a phase known as “home visit”, the aim of which is to ascertain the applicant’s social background, which results in discrimination in access to employment based on social origin.

In its communication the Government states that it has focused its efforts on devising policy programmes to promote equality of rights and opportunities. In this context, it has promulgated the “Employability Act”, which provides for support to people who are at risk and vulnerable. While noting the Government’s comments on the efforts made for particularly vulnerable people, the Committee notes that the Government has not responded to the allegations of discrimination in access to employment and employment conditions based on race, colour and social origin. ***The Committee requests the Government to take effective measures to ensure that there is no discrimination in access to employment and in employment on grounds of social origin, race, colour, or physical characteristics. It also asks the Government to take measures to ensure that no investigations are carried out into applicants’ social backgrounds resulting in discrimination based on social origin, and to take measures to prohibit discriminatory job announcements, in both law and practice, and to promote the employment of Afro-Colombians and indigenous people. Please provide information on the steps taken in this regard. The Government is also asked to provide detailed information on the employment situation of indigenous and Afro-Colombian peoples, including those living in the Pacific coast area.***

Communication of the report to the social partners. With reference to the CUT’s comments that by 15 August 2007, it had not received a copy of the Government’s report on the Convention so that it could submit comments, the Committee requests the Government to send its report to the social partners in a timely manner to enable them to make such comments as they deem appropriate, thus facilitating their participation in the monitoring of the application of the Convention. ***The Committee asks the Government to provide the information requested together with replies to the questions raised by the Committee in its comments of 2007.***

Croatia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1991)

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes from the Government’s report that work is under way to draft a comprehensive anti-discrimination law, with a view to harmonizing the legislation with the relevant European directives. In this regard, the Committee recalls that, at present, section 2 of the Labour Code and section 6 of the Act on Civil Servants prohibit discrimination on the basis of a wide range of grounds, including the grounds specifically listed in *Article 1(1)(a)* of the Convention. These provisions also provide protection from discrimination based on family status, situation or responsibilities, in line with the Workers with Family Responsibilities Convention, 1981 (No. 156) ratified by Croatia. ***The Committee urges the Government to ensure that the new legislation does not restrict the currently available level of protection from discrimination in employment and occupation, in line with Conventions Nos 111 and 156. The Government is requested to provide information on the progress made in the adoption of new anti-discrimination legislation and the steps taken to ensure that it is in line with relevant ILO Conventions, as well as on the consultations held with workers’ and employers’ organizations in this regard.***

Articles 2 and 3. Gender equality in employment and occupation. The Committee notes that the Gender Equality Ombudsperson received 174 complaints in 2007, almost twice as many as in 2004, while in 2006 the number of complaints received was 193. More than one-third of the complaints related to employment discrimination against women, including sexual harassment, in both the private and public sectors. The Committee is concerned that, as observed by the Ombudsperson, a wide range of discriminatory practices exist that exclude pregnant women or women having small children from employment. ***The Committee requests the Government to continue to provide detailed information on the work of the Gender Equality Ombudsperson, including information on the complaints received and the follow-up action taken in response to recommendations issued.***

The Committee notes that the National Policy for the Promotion of Gender Equality 2006–10 is aimed at eliminating discrimination against women and establishing genuine gender equality, including in the labour market. The Policy outlines a number of measures to reduce the female unemployment rate, ensure women’s economic empowerment and eliminate all forms of discrimination. Measures to enhance collection, processing and publication of gender-specific statistical data are envisaged as well. ***The Committee requests the Government to provide detailed information on the following:***

- (i) *the measures taken under the National Policy for the Promotion of Gender Equality to promote equality of opportunity and treatment in employment and occupation of women, as well as the results achieved by such action, including detailed statistical information concerning women's participation in the private and public sectors, disaggregated by industry and occupational category;*
- (ii) *the progress made in increasing women's participation in decision-making and management positions; and*
- (iii) *the measures taken to promote a better sharing of family responsibilities between men and women and to ensure that men and women can make use, in practice, of family-related rights and benefits, without being subjected to discrimination based on family responsibilities.*

Equality of opportunity and treatment in employment and occupation of the Roma. In its previous comments, the Committee requested the Government to provide information on the specific measures implemented under the National Programme for the Roma and the Ten-Year Plan of Action for the Inclusion of the Roma 2005–15 to promote and ensure equality of opportunity and treatment of the Roma in employment and occupation, as well as the results achieved by such action. The Committee regrets that the information provided in this regard is so general in nature that it does not allow the Committee to conclude whether adequate effect is being given to the Convention's provisions. ***The Committee urges the Government to provide specific and detailed information on the concrete measures taken to promote and ensure equal access of Roma men and women to employment and occupation, without discrimination based on sex, race, colour and national extraction.***

The Committee recalls the importance of monitoring, on a continuing basis, the impact of the measures taken to promote equality of opportunity and treatment in employment and occupation of the Roma. In this regard, the Committee notes from the Government's report that the Croatian Employment Service does not maintain information on the ethnic origin of the unemployed. However, estimates concerning unemployment among the Roma are established on the basis of the place of residence of jobseekers and knowledge of the Roma language. The Committee also notes that Roma representatives participate in the Commission for the Monitoring of the Implementation of the National Programme for Roma. ***The Committee requests the Government to provide information on the following:***

- (i) *the actual situation of men and women from the Roma community in the labour market, including the estimated levels of employment, unemployment and self-employment;*
- (ii) *the level of participation of Roma men and women in employment promotion measures, such as vocational training or public works programmes; and*
- (iii) *the work of the Commission for the Monitoring of the Implementation of the National Programme for Roma concerning the implementation of measures to promote equal access to employment and occupation.*

Article 3(d). Access of minorities to employment under the control of a national authority. The Committee notes with interest that a number of positive steps have been taken with regard to the implementation of section 22 of the Constitutional Act on the Rights of National Minorities of 2002, which guarantees proportional employment of national minorities in the state administration. The Civil Service Employment Plan 2007, for the first time includes targets for the recruitment of national minorities to the civil service, and a proposal is being discussed to introduce similar targets with respect to the judiciary. A series of round-table discussions to promote the access of national minorities to public employment have been held, in cooperation with the Organization for Security and Cooperation in Europe. ***The Committee requests the Government to continue to provide information on its efforts to promote and ensure access of members of national minorities to public employment, including information on the progress made in achieving recruitment targets concerning minorities. The Committee reiterates its request to the Government to provide information on the current ethnic and gender composition of the civil service.***

Enforcement of anti-discrimination legislation. The Committee notes from the National Policy for the Promotion of Gender Equality that, the enforcement of the anti-discrimination legislation continues to be subject to many challenges, including lack of awareness of the legislation among workers, employers and the judiciary. The Committee notes, however, that the National Policy's Action Plan, envisages a number of measures to strengthen the enforcement of the anti-discrimination legislation, including systematic collection of statistical data on cases of gender discrimination in employment and work, as well as awareness-raising and training activities for relevant target groups. ***The Committee welcomes these envisaged measures and requests the Government to ensure that information is collected also in relation to cases concerning discrimination on the basis of grounds other than sex. It requests the Government to provide information on the following:***

- (i) *progress made in collecting and analysing information on court cases on discrimination in employment and occupation on the grounds of race, colour, sex, religion, political opinion, national extraction and social origin; and*
- (ii) *measures taken to raise the awareness of the judiciary and other competent bodies to better equip them to deal with cases of discrimination.*

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

Czech Republic

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2008 and the resulting conclusions of the Conference Committee. It also notes the comments on the application of the Convention received from the Czech-Moravian Confederation of Trade Unions (CM KOS) on 25 November 2008, which were sent to the Government for its comments thereon. The Committee notes, however, that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. *Legislative developments.* The Committee notes that under section 16(1) of the new Labour Code (Act No. 262/2006), the employer is required to ensure equal treatment of employees in respect of working conditions, remuneration, vocational training and career advancement. Section 16(2) provides that all forms of discrimination in labour relations shall be prohibited. For the purposes of the new Labour Code, the definitions of the different forms of discrimination contained in the future Anti-Discrimination Act apply. According to the Government's report, the current draft Anti-Discrimination Act will cover direct and indirect discrimination based on race, ethnic background, nationality, sex, sexual orientation, age, health impairment, religion and belief.

2. However, the Committee recalls that section 1(4) of the previous Labour Code prohibited discrimination based on sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social background, family background, language, health condition, age, religion or confession, property, marital or family status, family responsibilities, political or other conviction, membership of or activity in political parties or movements, trade union or employers' organizations. The Committee notes with concern that the new Labour Code, in conjunction with the future Anti-Discrimination Act would appear to restrict considerably the protection from discrimination in employment and occupation available under the previous Labour Code, not even providing protection from discrimination on the basis of all the grounds contained in the Convention. ***The Committee therefore requests the Government to ensure that the legislation continues to provide a high level of protection against discrimination in employment and occupation on all the grounds listed in the Convention, i.e. race, colour, sex, religion, political opinion, national extraction or social origin, as well as the additional grounds previously covered, and to provide information on the specific steps taken to this end.***

3. In this context the Committee also notes the concerns expressed by the Czech-Moravian Confederation of Trade Unions according to which the draft Anti-Discrimination Act currently before Parliament did not provide for a strong involvement of the State in the protection against discrimination through its various inspections bodies. In the Committee's view, it is equally important that the future legislation allows individual victims of discrimination to bring complaints and obtain redress, and that it also permits the competent bodies and institutions to address discrimination and to promote equality in a proactive and coordinated manner. ***The Committee requests the Government to provide information on the following:***

- (a) ***the measures taken to make the new anti-discrimination legislation, once adopted, known among workers and employers, as well as the public officials and judges responsible for its enforcement;***
- (b) ***the measures taken to assist victims of discrimination, particularly the Roma, in bringing complaints concerning employment discrimination;***
- (c) ***the discrimination cases dealt with by the competent bodies, including the courts and the labour inspectorate, under the Labour Code, the Employment Act, as well as the future Anti-Discrimination Act according to the different grounds of discrimination (facts, rulings, remedies provided or sanctions imposed).***

4. *The situation of the Roma in employment and occupation.* The Committee notes that the Government undertook in 2006 an "analysis of socially excluded Roma neighbourhoods, and of the absorption capacity of entities operating in this field". The results of the analysis, which confirmed the existence of social exclusion of the Roma throughout the Czech Republic, are currently under evaluation. The Committee also notes that the Government plans to create a new agency to combat social exclusion and to prepare a comprehensive programme for the integration of the Roma. While the Committee notes that the Government's report contains an update on measures taken to promote the access of the Roma to education, the Committee regrets that no information has been provided with regard to the specific measures taken to promote the access of members of the Roma community to employment. ***The Committee, therefore, requests the Government to provide detailed information on the specific measures taken and results achieved in promoting equal access of Roma men and women to employment, including self-employment and employment in the public service. In this regard, the Government is requested to provide information on the relevant measures taken under the envisaged comprehensive programme for the integration of the Roma.***

5. The Committee remains concerned that the absence of data on the status of the Roma in employment and occupation may be a serious obstacle to assessing their situation and the impact of the programmes and schemes implemented to improve their situation. The Committee notes that under Act No. 101/2000 on the Protection of Personal Data, ethnic or racial origin is considered as "sensitive data" which can be collected and processed only under certain conditions, including with the consent of the individual concerned. The Government reiterates that the 2001 census data are the only official data currently available concerning the situation of the ethnic minorities, including the Roma. However, the Committee is aware that the usefulness of the 2001 census data concerning the Roma is questionable due to the significant discrepancy between the number of persons having identified themselves as Roma and the estimated size of the Roma population. ***The Committee requests the Government to take all measures necessary to explore options with regard to creating the conditions required for the collection of data on the situation of the Roma in employment and occupation, in accordance with the recognized principles of data protection and human rights.***

6. The Committee recalls its previous comments on the need to step up efforts to combat prejudices and discrimination against the members of the Roma community and to build trust between the Roma and other parts of the society. It notes that there are a number of initiatives and projects to promote multicultural awareness and anti-racism among students and teachers. ***The Committee requests the Government to continue to provide such information, as well as information on the measures taken or envisaged to promote racism-free workplaces, in cooperation with workers' and employers' organizations.***

7. *Discrimination on the basis of political opinion.* The Committee recalls that Act No. 451 of 1991 (Screening Act), which lays down certain political prerequisites for holding a range of jobs and occupations, mainly in the public service, had been

the subject of representations under article 24 of the ILO Constitution (in November 1991 and June 1994) and the Governing Body invited the Government to repeal or modify the provisions in the Screening Act that were incompatible with the Convention. Following the rejection by Parliament of a proposal to repeal the Act in 2003, the legislation remains in force unchanged, contrary to the Convention. The Committee is concerned that despite the time that has elapsed since the Governing Body's decision on this matter, this situation remains unresolved. In its report, the Government merely states that no changes had occurred during the reporting period. ***Noting from the Government's report that new legislation regulating civil service employment is being prepared, the Committee urges the Government to ensure, in this context, that the provisions of the Screening Act that are contrary to the Convention are modified or repealed, in accordance with the Governing Body's 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 very near future.

Democratic Republic of the Congo

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. The Committee recalls its previous comments concerning section 86 of the Labour Code which provides that with equal conditions of work, vocational qualifications and output, the salary is equal for all workers, irrespective of origin, sex or age. The Committee noted that this provision is not in conformity with the Convention which requires measures to promote and ensure equal remuneration for men and women for work of equal value. In accordance with the Convention, women and men should have the right to equal remuneration not only where they have the same working conditions, vocational qualifications and output, but also where they have different vocational qualifications and when they work in different working conditions, so long as the work performed is of equal value. The Committee draws the Government's attention to its 2006 general observation which further elaborates on this matter and calls on States which have not yet done so to ensure that their legislation fully reflects the principle of the Convention.

Application of the principle to all aspects of remuneration. Further to the above, the Committee notes that section 86 provides for equality with respect to the "salary", which is one of the elements of "remuneration" as defined in section 7(h) of the Labour Code. In addition, the term "remuneration" as defined in section 7(h) includes additional payments, such as commissions, payments in kind, bonuses etc., whereas it is provided that transport allowances, family allowances, accommodation and accommodation allowances and health care are not considered part of the remuneration. Section 138 of the Labour Code specifies that the right to accommodation and accommodation allowance also applies to women workers, and according to the Government this applies irrespective of marital status. Recalling that under the Convention it must be ensured that the principle of equal remuneration for men and women for work of equal value is applied to all aspects of remuneration, as broadly defined in *Article 1(a)*, the Committee is concerned that the Labour Code currently provides for equality only in respect of the salary (section 86) and accommodation and accommodation allowances (section 138).

Based on the above, the Committee asks the Government to take the necessary steps to bring the legislation into line with the Convention with a view to ensuring that the principle of equal remuneration for men and women is fully reflected in the legislation and that it applies to all the elements of remuneration, as defined in Article 1(a) of the Convention. The Committee asks the Government to provide information on the steps taken in this regard.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

Articles 1 and 2 of the Convention. Prohibition of discrimination in employment and occupation. The Committee previously noted that the Labour Code contains no provisions prohibiting and defining discrimination in employment and occupation, although section 1 provides that the Labour Code applies to all employers and all workers, with the exception of state public services, regardless of race, sex, civil status, religion, political opinion, national extraction and social origin. Act No. 81/003 of 17 July 1981, which promulgates the conditions of service of career members of the state public service, also lacks anti-discrimination provisions. Recalling its previous comments concerning the need to include in legislation provisions prohibiting and defining indirect and direct discrimination in employment and occupation, including in respect of recruitment, the Committee welcomes the Government's statement that it will examine the matter and take the Committee's comments into account. ***The Government is requested to indicate the steps taken with a view to including such provisions in the Labour Code and Act No. 81/003 and any progress made in this regard.***

Discrimination based on sex. The Committee previously noted that a reading of sections 448 and 497 of Act No. 87/010 of 1 August 1987, issuing the Family Code, appears to indicate that, in certain cases, a woman has to obtain the authorization of her husband to take up salaried employment, whereas no such obligation is imposed upon the husband. Furthermore, in relation to jobs in the public service, the Committee notes that section 8 of Act No. 81/003 of 17 July 1981, issuing the conditions of service of career members of the state public services, and section 1(7) of Legislative Ordinance No. 88-056 of 29 September 1988, respecting the activities of magistrates, provide that a married woman must have obtained the permission of her spouse to be recruited as a career member of the public service or appointed as a

magistrate. The Committee considers that the above provisions constitute discrimination on grounds of sex which are contrary to the principle of equality of opportunity and treatment for men and women workers in employment and occupation, as set out in the Convention. In this regard, the Committee welcomes the Government's statement that these provisions, being contrary to the Constitution, are null and void and that the modification of these texts was under way. ***The Committee requests the Government to provide information on the steps taken to bring the abovementioned provisions into conformity with the Convention and to provide the amended texts, as soon as possible.***

Discrimination based on race or ethnic origin. In response to the Committee's comments regarding the socio-economic situation of the Batwa, a minority indigenous group, and discrimination faced by the Batwa in employment and occupation, the Government refers to article 51 of the Constitution under which the State has the obligation to ensure and promote the peaceful and harmonious coexistence of all ethnic groups of the country. In addition, article 51 requires the State to ensure the protection and promotion of vulnerable groups and minorities. The Committee also notes that the United Nations Committee on the Elimination of Racial Discrimination, in its concluding observations of 17 August 2007, expressed concern that pygmies (Bambuti, Batwa and Bacwa) are subjected to marginalization and discrimination with regard to the enjoyment of their economic, social and cultural rights, in particular their access to education, health and the labour market, and also that the rights of pygmies to own, exploit, control and use their lands, their resources and communal territories – which are the basis for the exercise of their traditional occupations and livelihood activities – are not guaranteed (CERD/C/COD/CO/15, 17 August 2007, paragraphs 18 and 19). ***The Committee urges the Government to take measures with a view to ensuring equality of opportunity and treatment of the Bambuti, Batwa and Bacwa in employment and occupation, and to indicate the steps taken in this regard. In this context, the Government is also requested to indicate the measures taken to ensure that these indigenous groups enjoy their right to engage in their traditional occupations and livelihoods without discrimination.***

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

Djibouti

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes with ***satisfaction*** that the new Labour Code (Act No. 1337AN/05/Sieme of 28 January 2006) provides in section 137 that an equal salary is due for work of equal value, irrespective of workers' origin, sex, age, status or religion. Section 136 defines the term "salary" as including the basic salary, irrespective of its denomination and method of calculation, and any other emoluments whatsoever payable directly or indirectly, whether in cash or in kind by the employer and arising out of the worker's employment. Section 289 provides for the payment of fines from FD500,000 to FD1,000,000 for violations of section 137. ***The Committee asks the Government to provide information on the implementation and enforcement of section 137 of the new Labour Code, including information on the measures taken or envisaged to raise awareness of these provisions among workers and employers and their representatives and public officials responsible for the enforcement of the labour legislation. In this regard, the Committee also asks the Government to provide information on whether any cases concerning section 137 have been dealt with by the responsible authorities and the manner in which they have been resolved, including any remedies provided or sanctions imposed.***

Article 2(c). Collective bargaining. The Committee notes from the Government's report that salaries in the private sector are determined by way of collective agreements. Section 258 of the new Labour Code provides that collective agreements may determine the salary applicable to each occupational category. Section 259(4) provides that collective agreements cannot change the modalities of the application of the principle of "equal salary for equal work", irrespective of the origin, sex or age of the worker. The Committee notes that section 259 is not in conformity with the Convention as it refers to equal salary for equal work rather than to equal salary for *work of equal value*, and is also at variance with section 137 of the Labour Code. ***The Committee asks the Government to take the steps necessary to amend section 259(4) to bring it into alignment with the provisions of section 137 and to bring it into conformity with the Convention. The Committee also asks the Government to provide examples of collective agreements, as well as indications as to how the agreements implement the principle of equal remuneration for men and women for work of equal value.***

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

Dominican Republic

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2008 and the resulting conclusions of the Conference Committee. However, the Committee notes that the Government's report, although specifically requested by the Conference Committee, has not been received. It must therefore repeat its previous observation which read as follows:

1. ***Discrimination on grounds of colour, race and national extraction.*** In its previous observation, the Committee examined a communication of 2005 from the International Confederation of Free Trade Unions (ICFTU), now International

Trade Union Confederation (ITUC), according to which, between the end of July and mid-August of that year, 2,000 persons were detained by the police, the Dominican army or migration officials, and were deported to Haiti because of their colour or their inability to speak Spanish, and that during the deportation process they had no opportunity either to demonstrate that they were legal immigrants, or to recover their documents or contact the diplomatic authorities of their country, nor were they allowed to claim payment of wages due. The Committee also noted the indication in the ICFTU's report that even some Dominican nationals were deported, as they were taken for Haitians. The Committee recalls that in June 2004 the Conference Committee on the Application of Standards noted the Government's determination to investigate the allegations made in the complaints and to improve the supervision of its laws against discrimination. The Committee nevertheless notes that in its latest report the Government does not provide information on the action taken for this purpose and confines itself to stating that there is no discrimination against Haitian citizens, whether they are legal or illegal. However, the Committee notes the report submitted by the United Nations Independent Expert on the situation of human rights in Haiti (E/CN.4/2006/115), according to which the forced repatriation of Haitians from the Dominican Republic occurs frequently in violation of the guarantees provided for under Dominican immigration legislation (Act No. 95 and Regulation No. 275) and the Agreement concluded between the two Governments in December 1999, and without taking into account the recommendations of the Inter-American Commission on Human Rights calling for each individual case to be heard by an independent judicial authority. In view of the above, the Committee welcomes the fact that the Government accepted the request of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to visit the country in October 2007 together with the Independent Expert on minority issues (Human Rights Council, A/HRC/4/19/Add.1). The Committee notes that the Independent Expert and the Special Rapporteur will present their findings and recommendations to a forthcoming session of the Human Rights Council. **The Committee requests the Government to provide information on the measures adopted or envisaged to implement the recommendations relating to this visit with a view to preventing and eliminating discrimination on grounds of race, colour and national extraction. The Committee urges the Government to adopt the necessary measures to ensure that full effect is given in practice to the principle of non-discrimination on grounds of race, colour and national extraction and to provide information in this respect. The Committee once again requests the Government to provide information on the progress achieved in clarifying the situation with regard to the cases of illegally deported Haitians and Dominicans referred to by the ICFTU and to provide the information requested in 2004 by the Committee on the Application of Standards.**

2. **Promoting and guaranteeing the application of the Convention in practice. Discrimination on the ground of sex.** The Committee recalls the ICFTU's communication indicating the persistence of cases of discrimination based on gender, including pregnancy testing and sexual harassment, as the authorities are not ensuring the effective application of the legislation that is in force. The Committee notes that, according to the Government's report, the labour inspection services and the Gender Department are continually calling for complaints to be lodged where there has been sexual harassment. The Committee also notes that 58,394 regular inspections were carried out by the Government during the course of 2006. The Committee notes the Government's indication that, despite the measures adopted to improve information to workers on their rights, the national inspection services and the labour courts have not received any complaints of sexual harassment. The Committee emphasizes that the absence of complaints is not necessarily an indication that sexual harassment does not take place. The Committee further expresses its continued concern with regard to pregnancy testing as a requirement to obtain or keep a job in export processing zones, and notes that the Government's report does not provide information on the measures taken in practice to prevent and eliminate these types of discriminatory practices against women. **The Committee requests the Government to take proactive measures to prevent, investigate and penalize sexual harassment and the requirement of pregnancy testing as a condition for obtaining or maintaining employment, in collaboration with employers' and workers' organizations, and to keep it informed in this respect. The Committee asks the Government to provide information on measures to support and protect victims of sexual harassment and pregnancy testing, education and training provided regarding sexual harassment and pregnancy testing including measures to assist labour inspectors to detect violations in this regard. Please also provide information on the intensification of supervisory activities in export processing zones and on whether such action has been taken in cooperation with employers' and workers' organizations. The Committee further requests the Government to continue providing information on any cases of sexual harassment reported by the labour inspectorate and on court rulings in relation to sexual harassment.**

3. **Application of the legislation. HIV testing.** In its previous comments, the Committee noted the information supplied by the ICFTU that men and women workers were required as a matter of course to undergo HIV testing, often against their will and in breach of the principle of confidentiality, in order to be hired or to keep their jobs. The Committee also noted the information indicating that the problem principally affects women workers in export processing zones and the tourist industry, and the allegations of the ICFTU that the authorities do not enforce the prohibition of such testing. **The Committee regrets that the Government has not provided information in this respect and, therefore, hopes that it will make every effort to provide information in its next report on the following points: (a) the measures adopted to guarantee the confidentiality of complaints made relating to violations of the prohibition of HIV testing; (b) the measures adopted to protect workers who lodge complaints; (c) the measures that ensure the enforcement of the prohibition by labour inspectors; (d) information, awareness-raising and training activities on subjects relating to the problem, particularly for officials and employees in the labour inspectorate and their impact in practice; and (e) complaints or charges that are made for violations of this prohibition and, where appropriate, the outcome of the cases, accompanied by the related administrative or court decisions.**

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

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

Ecuador

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1962)

Article 2 of the Convention. National policy on gender equality. The Committee notes that the Government is undertaking numerous activities in the context of the Equal Opportunities Plan (PIO), 2005–09, which was declared a state policy and is therefore compulsory for institutions entrusted with the design, formulation and implementation of public policies and is a principal technical and political instrument for the National Women's Council (CONAMU). It notes with

interest that in this framework a labour observatory with a gender focus has been established with the participation of the CONAMU, the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the United Nations Population Fund (UNFPA) and the ILO Subregional Office for the Andean Countries. ***The Committee asks the Government to provide information on the activities undertaken and the progress achieved by the labour observatory in relation to equality for men and women in employment and occupation. The Committee also asks the Government to continue providing information on the measures adopted in the context of the PIO, 2005–09, and an evaluation of the results achieved, including extracts from reports, where appropriate.***

Article 3. Promoting the access of women to public sector employment. With reference to its previous request for information on the measures adopted or envisaged to promote the access of women to the public sector, the Committee notes with interest the conclusion of a Framework Inter-institutional Cooperation Agreement between the National Secretariat for State Remuneration, the National Women's Council, the Latin American Institute for Social Research and Public Service International in Ecuador (PSI) with a view to ensuring that effect is given to the principles of equality between men and women in the processes of institutional modernization and work re-evaluation in public institutions. The Framework Agreement covers the period from 8 September 2006 until December 2009. ***The Committee asks the Government to provide detailed information on the activities and progress achieved in the context of the Framework Agreement with regard to the access of women to the public sector.***

Legislation. While noting the Government's indication that the Codification Commission has submitted a draft codified text of the Cooperatives Act to the National Congress, the Committee asks the Government to indicate whether section 17(b) of the Regulations of the Cooperatives Act has been repealed, as requested by the Committee on repeated occasions.

Sexual harassment. The Committee notes the Government's indications that sexual harassment is defined in the Penal Code. The Committee notes that confining sexual harassment to criminal procedures has generally proven inadequate, as they may deal with the most serious cases, but not with the range of conduct in the context of work that should be addressed as sexual harassment, the burden of proof is higher and there is limited access to redress. ***The Committee therefore asks the Government to take appropriate administrative and legislative measures to afford sufficient and appropriate protection in relation to the two forms of sexual harassment at the workplace (quid pro quo and a hostile work environment) to which the Committee referred in its general observation of 2002. The Committee also asks the Government to provide information on any other measures that have been adopted or envisaged in law and in practice to prohibit and prevent sexual harassment at work, including through cooperation with employers' and workers' organizations.***

Afro-Ecuadorian peoples. The Committee notes that, according to the information provided by the Government, the Afro-Ecuadorian Development Cooperation (CODAE) from the time of its establishment until mid-2007 had not achieved the objectives for which it had been established, nor had it attained positive results and impacts on Afro-Ecuadorian peoples and communities. It notes that the CODAE Multi-year Plan has been formulated based on three strategic objectives: (1) ensuring compliance with the economic rights of the Afro-Ecuadorian peoples; (2) guaranteeing access to and exploitation of land; and (3) strengthening the institutionalization of the CODAE and the implementation of the collective rights of Afro-Ecuadorian peoples. ***The Committee asks the Government to provide information on the activities carried out in the context of the Multi-year Plan, and particularly the measures adopted to eliminate discrimination in employment and occupation, including in access to education, for members of Afro-Ecuadorian peoples.***

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

El Salvador

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1995)

Article 1 of the Convention. Maquila sector (export processing zones). In its previous comments, the Committee asked the Government to supply detailed information on any cases involving infringements of section 627 of the Labour Code in export processing zones which were detected by the labour inspectorate. This section establishes penalties for pregnancy testing and the dismissal of pregnant or disabled women. The Committee notes that in 2005 the Special Unit for Gender Issues and the Prevention of Discrimination in Employment reported nine cases of dismissal of pregnant women, in six of which the women were reinstated. In 2006, five cases of dismissal of pregnant women were detected, in two of which the women were reinstated; in 2007 two cases were reported, in one of which the woman was reinstated. ***The Committee requests the Government to indicate whether these cases specifically concern the maquila sector and to continue supplying information on cases involving infringements of section 627 of the Labour Code in the export processing zones.***

The Committee also notes from the report submitted by the Government to the Committee on the Elimination of Discrimination against Women (CEDAW) that a seminar and workshop entitled "Ongoing improvements to the

conditions of work in the maquila sector” were held for the purpose of providing labour inspectors with training on inspection techniques with regard to cases of discrimination and harassment in the workplace, and on legislation regarding the labour rights of women workers applicable in the maquila sector (CEDAW/C/SLV/7, 19 April 2007, page 58). ***The Committee requests the Government to continue supplying information on inspections undertaken by the Special Unit for Gender Issues and the Prevention of Discrimination in Employment and the results thereof, particularly in the export processing zones. The Committee also requests the Government to supply detailed information on other measures adopted or contemplated for strengthening the protection of women workers and preventing discrimination in the maquila sector, including information on the implementation and results of the “Programme for the comprehensive development of women workers in the maquila sector” mentioned by the Government in its report.***

Articles 2 and 3(d). Public sector. The Committee notes that women occupy only 19.7 per cent of managerial posts, according to the summary regarding the incorporation of men and women in managerial posts within the public administration supplied by the Government. The Committee also notes that the Government does not have a national policy on equality of opportunity and treatment specifically directed at the public sector, the only basis used being the general national policy on equality of opportunity and treatment. The Committee recalls that, under *Article 3(d) of the Convention*, the Government has the obligation to pursue such a policy in respect of employment under its direct control. ***The Committee therefore requests the Government to take appropriate measures to promote and apply the principle of equality of opportunity and treatment in respect of employment and occupation for women and men working in the public sector, particularly measures for promoting access to managerial posts for women, and to provide information on any developments in this regard.***

Indigenous workers. The Committee notes the various programmes undertaken by the Government for agricultural workers which, according to the Government, have also benefited indigenous peoples, such as the project for the “Promotion of family micro-enterprises in rural areas of the north-east of El Salvador”, the “Presidential programme for the distribution of fertilizers” and the distribution of improved seed for white maize, sorghum, beans and grass. However, the Committee refers to its comments under the Indigenous and Tribal Populations Convention, 1957 (No. 107), and to similar comments made by the Committee on the Elimination of Racial Discrimination (CERD) (CERD/C/SLV/CO/13, 4 April 2006, paragraph 11), to the effect that the difficult situation concerning land ownership is continuing to have a negative impact on the possibility for indigenous peoples to perform their traditional occupations. Consequently, so that the indigenous peoples can benefit in practice from the abovementioned initiatives, it appears essential that measures are adopted to resolve the problem of land ownership. In this respect, the Committee notes the programmes conducted by the Salvadorian Institute of Agrarian Reform (ISTA) concerning the transfer of land to which indigenous communities, according to the Government, had access on the same terms as the rest of the groups concerned. ***The Committee requests the Government to supply detailed information on the manner in which the indigenous communities involved have participated in the land transfer programmes conducted by the ISTA. The Committee also requests the Government to supply information on any measure adopted or contemplated, with a view to making progress towards effective equality for indigenous peoples in the area of employment and occupation.***

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

Ethiopia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

The Committee regrets that for the second consecutive time the Government’s report does not adequately respond to the issues raised in the Committee’s comments. The Committee therefore urges the Government to provide full information on all matters raised in the comments below.

Legislation. The Committee recalls that section 14(1)(f) of Labour Proclamation No. 377/2003 provides that it shall be unlawful for an employer to discriminate between workers on the basis of nationality, sex, religion, political outlook or any other conditions. The Committee requested the Government to clarify whether section 14(1)(f) protects workers from discrimination in the selection and recruitment process and whether the employment service is bound by the principle of non-discrimination. In its report, the Government states that article 41 of the Constitution provides that every Ethiopian has the right to engage freely in economic activities and to pursue a livelihood of his or her choice. According to the Government this provision requires all public bodies, including the employment service, as well as employers to abstain from discrimination. ***The Committee nevertheless considers it important that the non-discrimination provisions contained in the Labour Proclamation are amended with a view to explicitly providing that workers and candidates for employment, including non-citizens, are protected from discrimination and to include all the prohibited grounds listed in Article 1(1)(a) of the Convention, including social origin and national extraction. In the meantime, the Committee urges the Government to provide information on any cases concerning discrimination in employment and occupation identified and addressed by the competent authorities, including the labour inspectors and the courts.***

Recalling that the non-discrimination clause of the Federal Civil Service Proclamation No. 262/2002 does not include the grounds of social origin and national extraction (section 13(1)), the Government previously indicated that the question of amending section 13(1) to include these grounds had been placed on the agenda of the task force responsible

for amending the Proclamation. **The Committee requests the Government to provide information on the progress made in this regard.**

Equality of opportunity and treatment in the public sector, irrespective of sex and ethnicity. The Committee recalls that section 13(3) of the Federal Civil Service Proclamation No. 262/2002 authorizes preferential recruitment of women and members of ethnic groups underrepresented in the civil service. However, the Committee regrets that no information has been provided in response to the Committee's comments regarding the promotion of gender equality and ethnic diversity in the public sector. **Consequently, the Committee urges the Government to:**

- (i) **provide information on the measures taken to promote equality of opportunity and treatment of men and women in the civil service, including in respect to recruitment, training and promotion;**
- (ii) **provide information on any measures taken to promote access to the civil service of all ethnic groups;**
- (iii) **provide statistical information on civil service employment by type of service and grade, disaggregated by sex, and to provide information on the ethnic composition of the civil service; and**
- (iv) **provide an indication as to how the Convention is applied with respect to state-owned enterprises.**

Education and training. The Committee notes from the Government's report that in 2006–07 the gross enrolment rate of girls increased to 85 per cent in secondary education, 51 per cent in technical and vocational education and training and to 25 per cent in higher education. **The Committee requests the Government to continue to provide information on the progress made in ensuring equal access of men and women to education and training at all levels. The Committee also asks the Government to provide information on the measures taken or envisaged to ensure equal access of women to employment and income-generating activities.**

Indigenous communities. The Committee notes from the 2003 report of the African Commission's Working Group of Experts on Indigenous Populations/Communities that a number of pastoralist communities live in Ethiopia who depended on their ancestral lands to engage in their traditional occupations and livelihood activities. The report indicates that the adoption of a new strategy on pastoral development by the federal Government constituted a positive step in addressing the problems faced by pastoralist communities, particularly evictions from their land. **The Committee requests the Government to provide a copy of the strategy on pastoral development and information on its implementation.**

Follow-up to the representation made under article 24 of the ILO Constitution by the National Confederation of Eritrean Workers concerning Conventions Nos 111 and 158 (GB.282/14/5, November 2001). The Committee notes that the Government's report contains no new information concerning this matter. **The Committee requests the Government to provide information in its next report on any further decisions reached by the Ethiopia–Eritrea Claims Commission and on measures taken, in line with such decisions, to indemnify as fully as possible the workers displaced following the outbreak of the 1998 border conflict, and to grant appropriate relief in accordance with Conventions Nos 111 and 158.**

Finland

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)

The Committee notes the Government's report and the comments of the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK), the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), the Confederation of Finnish Industries (EK), the Commission for Local Authority Employers, and the State Employer's Office (VTML), included therein.

Assessment of the gender pay gap. The Committee notes from the Government's report that between June 2005 and May 2007, the gender pay gap calculated on the basis of average monthly earnings (regular monthly working hours) has remained unchanged at 20 per cent. According to Eurostat, there has also been a 20 per cent gap between men's and women's average gross hourly earnings since 2002. SAK expressed concern that pay differentials have increased in certain sectors. The Committee previously noted that the equal pay programme, which was adopted based on recommendations made by a tripartite working group in 2005, aims at closing the current gender pay gap (average monthly earnings) by at least 5 per cent by 2015. The programme addresses the gender pay gap through various measures regarding pay systems, occupational segregation based on sex, equality planning, reconciliation of work and family life and corporate social responsibility. The Committee also notes the concerns expressed by some trade unions over delays in the programme's implementation. **The Committee asks the Government to provide detailed information on the implementation of the measures envisaged under the equal pay programme and to continue to provide detailed statistical information that will allow the Committee to assess the progress made in closing the gender pay gap.**

Article 2 of the Convention. Application in practice. Equality plans. The Committee notes that according to a survey carried out by SAK, only 35 per cent of the enterprises surveyed had undertaken a pay survey as required under the Act on Equality between Men and Women. EK indicated that by autumn 2006, some pay surveys had been conducted by a majority of their members. According to SAK and AKAVA the legislation was not sufficiently clear as to how these surveys should be conducted and how work of equal value should be determined, particularly in cases where employees of the same employer were employed under different collective agreements or pay systems. STTK states similarly that equal

pay could not be realized unless equally demanding jobs and their remuneration can be compared across collective agreements. SAK and AKAVA stress that access to the necessary pay information was unsatisfactory. According to EK, pay surveys were carried out using existing personnel or task-related classifications and no major difficulties were reported, while according to the Ombudsperson, data protection issues may be an obstacle. EK considered that equal pay is best promoted through up to date and fair pay systems.

In its report, the Government states that following the entry into force of the amendments to the Act that introduced pay surveys in the context of the adoption and implementation of equality plans, the Ombudsperson focused on the provision of information, advice and training. In 2006, the Ombudsperson began consultations with labour market organizations in order to address practical problems and difficulties in equality planning, and particularly as regards pay surveys. When workplaces had included concrete objectives concerning the removal of gender pay differentials in equality plans, it was found that there was more likelihood of progress. *The Committee welcomes the efforts made by the Government and the social partners to promote equal remuneration for men and women for work of equal value through pay surveys under the Act on Equality between Men and Women, and asks the Government to continue to provide information on the implementation of pay surveys and their actual impact on reducing gender pay differentials, as well as on the measures taken to ensure that all workplaces required to undertake such surveys under the Act comply with their obligations. The Committee also asks the Government to provide further information on the measures taken to:*

- (i) *promote participation of employees and their organizations in equality plans and pay surveys;*
- (ii) *ensure appropriate access to pay data with a view to identifying discriminatory gender pay differentials; and*
- (iii) *ensure that for the purpose of ensuring equal remuneration for work of equal value, jobs performed by men and women can be compared on the broadest possible basis, including comparison across different collective agreements.*

Collective agreements. The Committee notes that SAK considers collective bargaining significant for addressing gender pay differentials, including through centralized collective bargaining and equality increments. According to STTK, the Government is committed to making additional contributions towards pay increases in public sector fields dominated by women. The Committee further notes STTK's comment that the new collective agreement for the finance industry (2007–11) was an example of a collective agreement addressing equal pay concerns. The agreement includes a "salary discussion model" under which salary increases are partially performance based. The agreement also provides for increased information on salaries and job difficulty evaluation. Finally, the Committee notes that the memorandum adopted by the central labour market organizations in the framework of the round table on equality recommends that all parties to collective agreements assess, as and when necessary, how their agreements have impacted in differences in pay between women and men. *The Committee looks forward to receiving information on the measures to implement this recommendation, and requests further information and examples on how collective agreements are being used to promote equal remuneration for men and women for work of equal value.*

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

Georgia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

Legislative developments. Prohibition of discrimination. The Committee notes that the Labour Code adopted in 2006 provides in section 2(3) that "any type of discrimination due to race, colour, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership in a religious or other union, family conditions, political or other opinions is prohibited in employment relations". While noting that this provision covers all the grounds of discrimination listed in *Article 1(1)(a) of the Convention*, the Committee also notes that by referring to discrimination "in employment relations" it does not appear to prohibit discrimination that occurs during selection and recruitment, including job advertisements. Noting that under section 5(8) of the Labour Code the employer is not required to give reasons for his or her decision when a candidate is not hired, the Committee is concerned that this provision may effectively bar candidates from successfully bringing discrimination cases. The Committee recalls that, by ratifying the Convention, the Government has undertaken to address direct and indirect discrimination in respect to all aspects of employment and occupation, including access to employment and particular occupations (*Article 1(3)*). *The Committee therefore requests the Government to provide the following information:*

- (i) *whether and how the Labour Code or any other legislation provides protection from discrimination with regard to access to employment and particular occupations, including discriminatory recruitment practices;*
- (ii) *whether section 2(3) of the Labour Code is intended to prohibit direct and indirect discrimination and to indicate whether consideration is being given to including definitions of direct and indirect discrimination into the legislation;*
- (iii) *the procedures and mechanisms available to lodge complaints concerning discrimination in employment and occupation, including complaints to contest recruitment decisions that are allegedly discriminatory, and to*

provide information on any cases that may have been decided concerning sections 2(3) and 5(8) of the Labour Code.

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

Ghana

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1968)

Legislation. Equal remuneration for work of equal value. The Committee recalls that section 68 of the Labour Act 2003 provides that every worker shall receive equal pay for equal work without distinction of any kind. In its previous comments, the Committee pointed out that section 68 is more restrictive than the principle of equal remuneration for men and women for work of equal value as set out in the Convention. As indicated in the Committee's 2006 general observation, the principle of equal remuneration for "work of equal value" includes, but goes beyond, equal remuneration for "equal work" and also encompasses work that is of a different nature, but which is nevertheless of equal value. Provisions that are narrower than the principle as laid down in the Convention hinder progress in eradicating gender-based pay discrimination against women at work, and governments are therefore urged to amend them. Reflecting the concept of "work of equal value" in the legislation is essential as it allows for a broad scope of comparison which is of importance for giving effect to the Convention's principle in situations where men and women perform different jobs which are nevertheless of equal value. ***Noting the Government's indication that the Committee's comments concerning section 68 of the Labour Code will be addressed by the Attorney-General and the Ministry of Manpower, Youth and Employment, the Committee asks the Government to provide information on the specific steps taken in this regard and the progress made with a view to amending section 68 of the Labour Code to ensure full conformity with the Convention.***

Remuneration in the public sector. The Committee notes the enactment of the Fair Wages and Salaries Commission Act 2007. Under the Act, the Commission is to ensure fair, transparent and systematic implementation of the government public service pay policy and to develop, advise on and ensure that decisions are implemented on matters related to, inter alia, remuneration, grading, classification, as well as job analysis and job evaluation (section 2). The Government indicates in its report that the Commission has hired a consultant to undertake a job evaluation exercise. A Single Spine Salary Structure Policy and the implementation of a new salary structure is planned for 2008. ***The Committee asks the Government to provide information on the specific measures taken by the Fair Wages and Salaries Commission to ensure full application of the principle of equal remuneration for men and women for work of equal value in the public service, in particular in the context of job grading and classification. It also asks the Government to ensure that the principle of equal remuneration for men and women for work of equal value is recognized as an explicit objective in the future public sector pay policy. Stressing the need to ensure that the job evaluation methods are objective and free from gender bias, the Committee asks the Government to provide detailed information on the methods used in the ongoing job evaluation exercise and how it is ensured that jobs predominantly occupied by women are not undervalued compared to jobs predominantly occupied by men.***

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

Greece

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)

Assessment of the gender pay gap. The Committee notes that according to the statistical information provided by the Government on the earnings of men and women in the public sector for the second quarter of 2005, 69 per cent of the employees earning a wage inferior to €750 and 48.55 per cent of the employees gaining more than €750 were women. As to the private sector, the Committee notes that these percentages were 66.6 per cent and 37.7 per cent, respectively. According to Eurostat data, the gender pay gap (average gross hourly earnings) was 10 per cent in 2006 compared to 9 per cent in 2005. According to the Government's report the main reasons underlying the gender pay gap relate to occupational segregation based on sex and to different educational choices made by men and women. ***The Committee asks the Government to continue to provide detailed information on the earnings of men and women in the private and the public sectors, as well as its analysis of the existing gender pay differentials and the evolution thereof.***

Articles 1, 2 and 3 of the Convention. Legislative developments. The Committee notes that section 5(1) of Act No. 3488/2006 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions provides that men and women are entitled to equal remuneration for work of equal value. Section 5(2) defines remuneration in accordance with *Article 1(a)* of the Convention. Section 5(3)(a) provides that where a job classification system is used for determining pay, this system must be based on common criteria for both men and women and be drawn up so as to exclude any discrimination on the grounds of sex. In addition, section 5(2)(b) requires that the principle of equal treatment and non-discrimination on the grounds of sex or family status must be respected in the context of a performance appraisal impacting on the workers' promotion and earnings. ***The Committee asks the Government to provide information on the measures taken to promote the full implementation and enforcement of section 5 of Act No. 3488/2006. In this regard, the Committee asks the Government to provide information on any judicial or administrative decisions concerning section 5. With respect to***

section 5(2)(b) of the Act, the Government is asked to provide information on the measures taken to promote the development and use of objective job evaluation methods that are free from gender bias, as envisaged under Article 3 of the Convention, with a view to ensuring that job classification systems are established in accordance with the principle of equal remuneration for men and women for work of equal value.

Articles 2, 3 and 4. Other measures to address the gender pay gap. The Committee notes that the Government intends to address the gender pay gap through measures to promote equality of opportunity and treatment of men and women in the labour market, including measures to address vertical and horizontal occupational segregation, such as vocational guidance. The General Secretariat on Equality, the most representative employers' organizations and the Hellenic Corporate Social Responsibility Network signed a Protocol of cooperation to promote equal opportunities for women. The report also states that the Government promotes social dialogue and collective bargaining as a means of improving the remuneration in female-dominated occupations and sectors. The Committee further notes the Government's indication that none of the collective agreements in force in Greece have been found to contain provisions violating the right to equal remuneration. *The Committee asks the Government to indicate whether there are any collective agreements that promote and facilitate equal remuneration for men and women for work of equal value, including equal pay mapping, targets for reducing the gender pay gap, or objective job evaluation. Similarly, the Committee asks the Government to indicate whether any such measures are being promoted under the abovementioned Protocol of Cooperation. It also reiterates its request to the Government to provide information on the concrete results achieved by the equal pay projects carried out by the General Secretariat on Equality and the Centre for Equality Issues, as noted in the Committee's previous comments. In addition, the Committee asks the Government to provide statistical information on the progress made in improving the wages in female-dominated sectors of the economy.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1984)

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes the adoption of Act No. 3488/2006 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. The Committee notes that the Act prohibits any form of direct and indirect discrimination on the basis of sex, including marital status, in employment and occupation. The Act also defines and prohibits sexual harassment. The Greek Ombudsperson, who is charged with monitoring the application of the Act in the private and public sector, received 11 complaints in 2006. As regards application in the private sector, the Act provides for cooperation between the Ombudsperson and the Labour Inspectorate. *The Committee requests the Government to provide information on the implementation of Act No. 3488/2006 in practice, including indications as to the number, nature and outcome of the cases decided by the Ombudsperson and the courts, as well as more detailed information on the cooperation between the Ombudsperson and the Labour Inspectorate. In addition, the Committee requests the Government to consider publicizing the new legislation widely and to indicate any measures taken to this end.*

Articles 2 and 3. Measures to promote and ensure gender equality in employment and occupation. The Committee notes from data for the first quarter of 2008 published by the General Secretariat for Equality that the women's employment rate is considerably lower than men's (47.9 per cent compared to 74.6 per cent for men), while the women's unemployment rate is more than double that of men (12.4 per cent as compared to 5.6 per cent for men). According to ILO data for 2006, only 26.5 per cent of the people in the occupational category of "legislators, senior officials and managers" were women. Some 12 per cent of the total of employed men held positions in this occupational category, compared to a rate of 7 per cent among women. The statistical information provided by the Government concerning the participation of men and women in public employment, indicates that women remain under-represented in public service and among employees of local self-government authorities. *The Committee requests the Government to provide detailed information on the position of men and women in private and public sector employment, as well as on the measures taken to ensure and promote gender equality in the labour market, and the results achieved by such action. In this regard, please continue to provide information on the specific measures taken to address vertical and horizontal occupational segregation based on sex, and the results secured by such action.*

Articles 1, 2 and 3(d). Access of women to employment in the police. The Committee recalls its previous comments concerning Presidential Decree No. 90 of 7 April 2003, which sets out height and athletic requirements for admission to the police academy. The Committee noted that while these requirements apply equally to men and women candidates, they may amount to indirect discrimination based on sex. In this regard, the Committee asked the Government to provide information on the impact of the said requirements on the number of women candidates accepted to the police academy. The Committee notes that the Government has not provided the information requested. It is nevertheless aware that according to a Diversity Audit of the Greek Police, carried out in 2004 in the context of the European Community action programme to combat discrimination, the number of women accepted in the police academy reportedly fell from 174 in 2002 to 129 in 2003.

In its report, the Government maintains that the requirements established by Decree No. 90 were necessary to ensure that police staff could perform their duties successfully. However, the report also states that the said requirements have

been challenged in the Athens Administrative Court of Appeals. In six cases, the Court found that the common height requirement was incompatible with the constitutional principle of equality because it unjustifiably equates men and women candidates, despite anatomical differences between them. Appeals lodged by the Minister of Public Order regarding these cases were pending before the State Legal Council. *Expressing concern that Decree No. 90 of 2003 appears to have the effect of impairing women's equality of opportunity and treatment in respect to admission to the police academy and, subsequently to employment in the police service, the Committee requests the Government to provide further information substantiating its view that the uniform height and athletic requirements for men and women set by the Decree are necessary to ensure the functioning of the police service. In this regard, the Committee requests the Government to indicate whether any scientific studies have been carried out on this matter. In addition, the Committee requests the Government to provide information on the outcome of the proceedings before the State Legal Council concerning the constitutionality of Decree No. 90.*

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

Guinea

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

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

Article 1 of the Convention. Recalling its 2002 observation, the Committee once again expresses the hope that the Government will amend section 20 of the Order of 5 March 1987 on the general principles of the public service (which prohibits discrimination only on the basis of philosophical or religious views and sex). The Committee recalls that, where provisions are adopted to give effect to the principle of non-discrimination contained in the Convention, they should include all of the grounds set forth in Article 1(1)(a) of the Convention.

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

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

Guyana

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)

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

1. *Legislation.* The Committee recalls that section 9 of the Prevention of Discrimination Act No. 26 of 1997 imposes the obligation on every employer to pay equal remuneration to men and women performing work of equal value, while section 2(3) of Equal Rights Act No. 19 of 1990 provides for "equal remuneration for the same work or work of the same nature", which is a narrower concept than that required by the Convention. Further, the Committee recalls that section 28 of the 1997 Act stipulates that the Act shall not derogate from the provisions of the Equal Rights Act of 1990 but that the Government previously stated that the 1997 Act takes precedence over the 1990 Act. In light of the fact that section 2(3) of the 1990 Act falls short of the requirements of the Convention, the Committee remains concerned about the inconsistency between the above provisions concerning equal remuneration. *Noting that no progress has been made concerning this matter for a number of years, the Committee asks the Government once again to amend the legislation in question with a view to ensuring that it is in accordance with the Convention and to avoid any uncertainties as to the interpretation of the provisions concerned, for instance, through expressly providing that the 1997 Act, in case of conflict, takes precedence over the 1990 Act. The Committee asks the Government to indicate any measures taken or envisaged in this respect.*

2. *Application in practice.* The Committee recalls its previous comments asking the Government to provide information on the measures taken or envisaged to promote and supervise the application of the equal remuneration provisions of the Prevention of Discrimination Act. The Committee also recalls the communication received from the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)), of 30 October 2003 which was forwarded to the Government on 13 January 2004 and again on 1 June 2006, and to which the Government has not yet replied. The ICFTU raises concerns regarding the promotion and effective enforcement of equal pay legislation. In this context, the Committee notes the Government's statement that there were no cases of male and female workers receiving different pay for the same work and that it was a long established fact that men and women received equal remuneration both in the public and private sectors. The Committee draws to the Government's attention the fact that the principle of equal remuneration for men and women for work of equal value does not merely require equal pay for the same or equal work but also equal pay for different work that is nevertheless of equal value, as established on the basis of an objective evaluation of the content of the work performed. The absence of differential wage rates for men and women, while necessary in order to apply the Convention, is not sufficient to ensure its full application. *Concerned that the Government's report indicates misunderstandings as to the scope and meaning of the Convention's principle, the Committee considers that training concerning the principle of equal remuneration for labour inspectors and judges, as well as workers' and employers' representatives is essential to effectively ensure the application of the Convention. It asks the Government to indicate in its next report any measures envisaged or taken to ensure the application of the equal pay legislation and the Convention through training and awareness raising and to indicate any steps taken to seek the cooperation of workers' and employers' organizations in this regard. Further, the Committee reiterates its request to the Government to provide information on any judicial or administrative decisions relating to the equal pay provisions of the Equal Rights Act No. 19 of 1990 and the Prevention of Discrimination Act of 1997.*

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

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

**Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1975)**

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

1. The Committee recalls its previous observation in which it noted the communication from the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)), of 30 October 2003 pointing to the low representation of women in traditionally male-dominated areas of work, the weak labour force participation of Amerindian women, and the lack of effective procedures dealing with complaints of discrimination. The Committee notes the Government's reply that more and more women are undergoing training and are entering areas of work that had previously been dominated by men. Women are now engaged in technical fields including working as electricians, mechanics and masons, and they make up a large percentage of employees of security firms. Women also represent the largest portion of graduates of the University of Guyana. The Government refers in this regard to statistics showing the number of women in areas of study that were traditionally male. However, these statistics were not attached to the Government's report. The Government concludes that persons are free to choose whatever field of occupation they desire and that the various branches of education are accessible to all.

2. The Committee notes the developments on women's employment and training mentioned by the Government but wishes to point out that without reliable statistics disaggregated by sex or any other information on the participation of women, as compared to men, in a wide range of occupations and vocational training courses, it is difficult for the Committee to assess whether progress has been made in achieving the objectives of the Convention. The Committee recalls that while some women may in theory be free to choose the occupations or training courses they desire, discrimination often flows from social stereotypes that deem certain types of work as suitable for men or for women. As a result, persons may apply for jobs based on work deemed to be suitable for them, rather than on actual ability and interest. Such stereotypes channel women and men into different education and training and subsequently into different jobs and career tracks which may not be in keeping with their ability or interest. Lastly, the Committee recalls the importance of effective complaints procedures to enforce legislation on non-discrimination and equality in employment and occupation. *The Committee, therefore, requests the Government to provide in its next report information on the following points:*

- (a) *statistical data disaggregated by sex on the participation of men and women, including Amerindian women, in the various occupations and sectors of the economy as well as their participation in vocational training courses;*
- (b) *the measures taken or envisaged to ensure that policies and plans under its control are not reinforcing stereotypes on the roles of men and women in employment and occupation;*
- (c) *the measures taken or envisaged, including in the area of vocational training and education, to encourage women to consider a wider choice of trades and occupations;*
- (d) *the measures taken to ensure that the existing complaints procedures allow for effective implementation of the legislation prohibiting discrimination in employment, including on the measures taken or envisaged to prevent delays in litigating complaints. Please also indicate whether any cases alleging discrimination on the grounds set out in the Convention have been brought to the courts, and the outcome thereof.*

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

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

Honduras

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

The Committee notes the communication submitted by the Honduran Private Enterprise Council (COHEP) on 22 May 2008. The communication provides information on the questions raised by the Committee and the action taken by the COHEP to contribute to applying the Convention. The Committee welcomes the information submitted by the COHEP and emphasizes the relevance of the involvement of the social partners in the application of the Convention. The Committee will examine the communication at its next session, together with the report and the comments which the Government may consider it appropriate to make.

**Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1960)**

The Committee notes the communication sent by the Honduran Private Enterprise Council (COHEP) on 22 May 2008. The communication contains a complete alternative report and also information on the actions undertaken by the COHEP to contribute to the application of the Convention. The Committee welcomes the information submitted by the COHEP, which will contribute to a more complete evaluation of the manner in which the Convention is applied, and will examine it in detail at its next meeting, together with the report and any further comments which the Government may wish to make.

Hungary

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1961)***

Labour inspection. The Committee recalls its previous comments made in relation to the Equal Remuneration Convention, 1951 (No. 100) concerning the fact that the Labour Inspectorate is only able to take action with regard to the equal treatment provisions of the Labour Code following a complaint from an individual employee claiming that his or her right to equal treatment has been infringed. The Committee emphasized the importance of giving workers' organizations the possibility of reporting discrimination and of enabling the Labour Inspectorate to supervise the application of the Labour Code's provisions on equal treatment on their own initiative.

In this regard, the Committee notes from the Government's report that the 2006 amendments to the Equal Treatment Act authorize trade unions to bring complaints under the Equal Treatment Authority. Concerning the limited mandate of the Labour Inspectorate with regard to the supervision of the Labour Code's equal treatment provisions, the Committee notes from the Government's report on Convention No. 100 that Hungary does not intend to change this situation, as, in the Government's view investigations by labour inspectors, on their own initiative, into the observance of equal treatment requirements would be contrary to the principle of self-determination. The Committee stresses that the principle of equal treatment in employment and occupation is a fundamental right that the authorities must protect, including in cases where the workers concerned do not raise complaints. ***The Committee therefore requests the Government to review, in cooperation with the social partners, section 3(2) of Act LXXV of 1996 with a view to expanding the mandate of the labour inspectors to address violations of equal treatment. Please indicate the outcome of such a review, including the results of the consultations held with the social partners in this regard. The Committee also requests the Government to indicate whether and how trade unions cooperate with the Labour Inspectorate to address workplace discrimination.***

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

Islamic Republic of Iran

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1964)***

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2008 and the resulting conclusions of the Conference Committee. The Committee also notes the observations of the International Trade Union Confederation (ITUC) of 29 August 2008, regarding discrimination against women, which were sent to the Government for its comments.

The Committee notes that the Conference Committee expressed its disappointment with the absence of progress achieved since it had discussed the case in 2006. The Conference Committee requested the Government to take urgent action on all the outstanding issues, with a view to fulfilling its promises of 2006 that it would bring all its relevant legislation and practice into line with the Convention by 2010. The Conference Committee requested the Government to provide complete and detailed information to this Committee at its present session in reply to all the issues raised in its previous observation and those raised by the Conference Committee. The Committee regrets that despite this specific request, the information provided in the Government's report is virtually identical to the information it put before the Conference Committee. In its report and the letter of 24 November 2008 accompanying the report, the Government acknowledges that it has had difficulties in obtaining the information requested, and that what has been provided is an "abridged report".

Legislative developments

The Committee notes the Government's indication that a comprehensive Bill prohibiting any form of discrimination in employment and education has been drafted. The Bill relates to access of all Iranian nationals, irrespective of gender, colour, creed, race, language, religion, ethnic and social background, to education, technical and vocational training, and to job and employment opportunities and similar working conditions. The Government states that violations of the proposed Bill would be subject to very heavy penalties and sanctions, unlike violations of the Constitution or the Labour Law. The Committee notes that this Bill is awaiting approval of the Cabinet of Ministers, and that the Government hopes to receive comments of the Office on the Bill. The Committee understands that the proposed Bill has not yet been sent to the Office with a request for comment thereon. ***The Committee urges the Government to forward the proposed Bill on non-discrimination to the Office for its comments as soon as possible. The Committee hopes that in drafting the new law, the opportunity will be taken to prohibit direct and indirect discrimination against nationals and non-nationals, on all the grounds enumerated in the Convention, including political opinion, national extraction and social origin. Noting the concern expressed by the Conference Committee that over the years a number of bills, plans and proposals had been referred to which had not come to fruition, the Committee hopes that every effort will be made to adopt a comprehensive law on non-discrimination which is fully in conformity with the Convention, in the near future.***

National Equality Policy

The Committee notes the Government's indication that the Charter of Citizenry Rights referred to in article 100 of the Fourth Economic, Social and Cultural Development Plan (the Plan) was approved by Parliament in 2007. The Committee also notes from the Government's report that disciplinary measures, including dismissal, were taken by the head of the judiciary against the judges who failed to apply the Charter. As regards article 101 of the Plan, calling for the elaboration of a national plan for the development of "meritorious work" on the basis of a number of principles, including "prohibition of discrimination in employment and profession", the Government indicates that regular meetings with the social partners are held in order to survey and monitor the implementation of this provision. No information is provided with regard to article 130 of the Plan empowering the judiciary to take measures towards the elimination "of all types of discrimination – gender, ethnic and group – in the legal and judicial [field]". ***The Committee requests the Government to provide a copy of the Charter of Citizenry Rights as well as information on its application in practice, and detailed information on any measures taken against judges and other officials failing to respect and apply the rights set forth in the Charter, including any disciplinary sanctions imposed. The Committee also reiterates its request for information on the status of the adoption of the National Plan foreseen under article 101 of the Plan and on any measures taken to implement article 130. The Committee would also appreciate receiving specific information on the outcome of the meetings held to survey and monitor the implementation of article 101 of the Plan, including detailed information on the measures taken to implement this provision. The Committee again requests the Government to provide translated summaries of the evaluation reports prepared pursuant to article 157 of the Plan, and any other information on the implementation of the Plan in practice, and the results achieved with respect to furthering equality in employment and occupation. Please also provide information on any measures taken or envisaged to raise awareness of the Plan, in particular with respect to equality rights. The Committee again requests the Government to provide a copy of the Charter of Women's Rights, to clarify how the Charter and the Plan interrelate, and to provide information on any measures taken to implement the provisions of the Charter of Women's Rights.***

Equal opportunity and treatment of men and women

With regard to the measures taken to improve women's access to employment and occupation, through increasing access to university and technical and vocational training, the Committee recalls that in June 2008 the Conference Committee, while noting the efforts to promote women's access to university education, also noted the Government's acknowledgement that there remained a long way to go in practice to remove the barriers to women's employment. The Committee notes that in his report on the situation of human rights in the Islamic Republic of Iran, the UN Secretary-General pointed out that "women have limited participation in wage labour outside of the agricultural sector, estimated at 16 per cent, which signifies that the progress achieved in female education in the recent past has not as yet translated into increased women's economic participation" (A/63/459, 1 October 2008, paragraph 51). The Committee also notes the ITUC's allegation that quotas restricting women's access to university have been secretly applied since 2006 in up to 39 fields of study.

The Committee notes that according to official government statistics collected by the ILO, the unemployment rate for women decreased from 17 per cent in 2005 to 15.8 per cent in 2007. In the same period, however, the number of women in the occupational category of legislators, senior officials and managers, decreased by almost 20 per cent. The Committee also notes the Government's indication that the Deputy Minister for Industrial Relations is responsible for the supervision of the Presidential Circular calling for the guarantee of equal access to women and religious minorities to employment opportunities. Moreover, the Government indicates that various empowerment programmes for women were implemented under article 101 of the Plan. The Committee recalls that the Conference Committee urged the Government to provide the Committee of Experts with the detailed statistics it had been repeatedly calling for in order to allow it to make an accurate assessment of the situation of women in vocational training and employment. The Committee notes that these statistics were not provided. ***The Committee urges the Government to provide detailed statistics on the number of women and men in public and private sector employment, disaggregated by category and level of employment. The Committee also requests the Government to provide information on the number of women participating in the empowerment programmes mentioned in the Government's report. Please also provide more information on the content and impact of these programmes. The Committee also asks the Government to provide a copy of the Presidential Circular referred to above and more detailed information on the role of the Deputy Minister for Industrial Relations in supervising the implementation of the Circular. The Committee again requests the Government to provide information on the number of women trained through the Technical and Vocational Training Organization (TVTO) and on the participation rate of women and men in the various disciplines of technical and vocational training in privately run institutes. The Committee further reiterates its request for information on the activities of the Women's Entrepreneurship Guild as well as on the activities of the Centre for Women and Family Affairs.***

The Committee notes from the ITUC's submission that an increasing number of women are working in temporary jobs and contract employment, and thus are not covered by legal entitlements and facilities, including maternity protection. The ITUC states that since Iranian labour law does not require companies employing less than 20 people to abide by these regulatory protections and women often work in small and medium-sized enterprises, they may in practice face serious discrimination in the labour market. The Committee recalls that the Conference Committee had urged the Government to ensure that all entitlements and facilities are made available to women working in temporary and contract

employment. *Noting that no information has been provided by the Government on this point, the Committee urges the Government to take the necessary measures to ensure that women in temporary and contract employment benefit from all the legal entitlements and facilities, and to provide information on progress made in this regard.*

The Committee recalls the Government's acknowledgement that the existing imbalance in women's participation in the labour market in comparison with that of men "is a direct result of cultural, religious, economic and historical factors". The Government also raised the issue of the difficulty of women balancing work and family responsibilities. The Government indicates that the Ministry of Labour and Social Affairs held regular workshops throughout the country to raise public awareness about ILO standards and the rights set out in the Labour Law. The Committee also notes the Government's indication that various workshops were held at provincial level with a view to "teaching Iranian women how best to balance work and family responsibilities". The Committee refers to its previous comments and stresses that restricting measures to reconcile work and family responsibilities to women reinforces the assumption that women are solely responsible for caring for children. *The Committee requests the Government to provide detailed information on the measures taken to improve awareness, access and enforcement of equality and non-discrimination rights and policies, as well as on protection and benefits aimed at balancing work and family responsibilities. It also again requests the Government to consider extending the special measures for workers with children to men as well as women.*

The Committee recalls the findings of the technical assistance mission regarding the prevalence of discriminatory job advertisements. *In the absence of the information previously solicited, the Committee again requests the Government to provide information on measures taken or envisaged to prohibit such practice. Further to its 2002 general observation, the Committee also reiterates its request for information on measures taken or envisaged to prevent and prohibit sexual harassment in employment and occupation.*

Discriminatory laws and regulations

The Committee, as well as the Conference Committee, has raised over a number of years the need to repeal or amend discriminatory laws and regulations. In June 2008, the Conference Committee expressed deep regret that despite the Government's statements that it was committed to repealing laws and regulations that violated the Convention, progress in this regard was slow and insufficient. The Committee notes with regret that despite the repeated call from this Committee and the Conference Committee for the amendment or repeal of the laws and regulations restricting women's employment and the discriminatory application of the social security legislation, the Government reports no new developments since the Conference Committee discussion.

Regarding section 1117 of the Civil Code pursuant to which a husband can prevent his wife from taking up a job or profession, the Government states that due to the existence of section 18 of the Family Protection Law, section 1117 is automatically repealed and courts are not authorized to hear complaints regarding section 1117. The Committee notes from the UN Secretary-General's report that a family protection draft Bill was being debated. However, it is not clear if the reference to section 18 in the Government's report is a provision in the draft Bill. The Committee also notes that the same explanation was provided to the Conference Committee, which nonetheless expressed concern that in the absence of the express repeal of section 1117, the provision would continue to have a negative impact on women's employment opportunities. *The Committee requests the Government to clarify the content of section 18 of the Family Protection Law, and how it automatically repeals section 1117, as well as to provide information on the status and content of the family protection draft Bill. Noting the concern expressed by the Conference Committee that in the absence of an express repeal of section 1117, it would continue to have a negative impact on women's employment opportunities, the Committee urges the Government to take steps to repeal the provision or to ensure that the public is aware of any consequential repeal due to the adoption of new legislation, and the fact that a husband can as a result no longer prevent his wife from taking up a job or profession. Please provide the Committee with detailed information of steps taken in this regard.*

Regarding the discriminatory provisions in social security regulations, the Government indicates that it is collaborating with the social partners to launch a global plan for social security that would address amendments to the social security regulations. With respect to the limitations on women's access to all positions in the judiciary, with particular reference to Decree No. 55080 of 1979, the Government once again refers to a Bill addressing this issue having been drafted. The Government rejects the existence of any administrative rules restricting the employment of wives of government employees. With respect to the age barrier to women's employment, the Government states that the maximum age for employment is 40 years, not 30, and a five-year extension is possible exceptionally in the civil service. On the issue of the obligatory dress code, the Committee notes that no information has been provided by the Government. *The Committee urges the Government to repeal or amend all laws and regulations restricting women's employment, and the discriminatory application of the social security legislation. The Committee also urges the Government to take measures to address any barriers to women being hired after the age of 30 or 40. Please also provide details of the content and status of the most recent Bill regarding women in the judiciary.*

Discrimination on the basis of religion

In its previous comments, the Committee noted that the situation of unrecognized religious minorities, and in particular the Baha'i, appeared to be very serious, and called on the Government to take a range of measures. The

Conference Committee also strongly urged the Government “to take decisive action to combat discrimination and stereotypical attitudes, through actively promoting respect and tolerance for the Baha’i”, to withdraw all discriminatory circulars and other government communications, and to ensure that authorities and the public were informed that discrimination against religious minorities, in particular the Baha’i, would not be tolerated. In reply, the Government states generally that a circular was recently issued by the President of the Technical and Vocational Training Organization, providing that all Iranian nationals had free access to vocational training. *Noting that the Committee has been urging the Government to take decisive action to address the very serious situation of discrimination against religious minorities, in particular the Baha’i, and the urgency expressed by the Conference Committee with respect to this matter, the Committee deeply regrets that the Government appears to have taken no action along the lines called for by this Committee or the Conference Committee, and urges it to do so without further delay. The Committee is also once again obliged to request information on the practice of “gozinesh” and on the status of the Bill that had been before Parliament asking for a review of this practice.*

Ethnic minorities

Noting the very general information provided by the Government to the Committee’s previous request, the Committee once again asks the Government to provide information on the employment situation of ethnic minority groups, including the Azeris, the Kurds and the Turks, including statistics on their employment in the public sector, and information on any efforts taken to ensure equal access and opportunities to education, employment and occupation for members of these groups. The Committee also reiterates its request for information on the positions from which members of ethnic minorities are excluded on the ground of national security.

Dispute settlement and human rights mechanisms

As no information has been provided regarding the Committee’s previous request on this issue, the Committee, stressing the importance of accessible dispute resolution mechanisms to address cases of discrimination, again requests the Government to provide information on the nature and number of complaints lodged with the various dispute settlement and human rights bodies and the courts, including the outcome thereof. The Committee urges the Government to take measures to raise awareness of the existence and mandate of the various bodies, and to ensure the accessibility of the procedures for all groups.

Social dialogue

The Committee previously raised concerns that in the context of the freedom of association crisis in the country, meaningful national-level social dialogue regarding issues related to the implementation of the Convention would not be possible. The Conference Committee also expressed deep concern in this regard. The Committee regrets that the Government has provided no information on this issue. The Committee understands, however, that there has been no improvement in the social dialogue situation in the country. *The Committee, expressing its deep concern at the social dialogue situation in the country, urges the Government to make every effort to establish constructive dialogue with the social partners to address the considerable gaps in law and practice in the implementation of the Convention, and to demonstrate concrete results by 2010.*

[The Government is asked to supply full particulars to the Conference at its 98th Session and to reply in detail to the present comments in 2009.]

Iraq

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)

Articles 1 and 2 of the Convention. Legislation. The Committee recalls its previous comments concerning section 4(2) of the Labour Code, 1987, which provides that one of the factors that should be taken into account in the determination of wages is the principle of equal remuneration for “work of the same nature and the same volume carried out in identical conditions”. The Committee, over many years, has drawn the Government’s attention to the fact that section 4(2) of the Labour Code is not in conformity with the principle of equal remuneration for men and women for work of equal value, as set out in the Convention. The Convention goes beyond requiring equal remuneration for work of the same nature carried out in identical conditions, because the concept of “work of equal value” includes also work that is of an entirely different nature and work which is carried out in different conditions, but which is nevertheless of equal value. In this regard, the Committee draws the Government’s attention to its 2006 general observation on the Convention which further elaborates on this issue. *The Committee asks the Government to bring the legislation into conformity with the Convention. It trusts that the Government will take the necessary measures to include in the draft Labour Code provisions giving full expression to the principle of equal remuneration for men and women for work of equal value.*

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

Ireland

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1999)

Articles 1 and 2 of the Convention. Equality of opportunity and treatment of men and women. The Committee recalls its previous comments concerning article 41.2 of the Constitution of Ireland which provides that “the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved” and that “the State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home”. The Committee expressed concern that these provisions might encourage stereotypical treatment of women in the context of employment, contrary to the Convention and requested the Government to consider reviewing them. In this regard, the Committee notes that the All-Party Oireachtas Committee on the Constitution revisited the issue of article 41.2 of the Constitution in its Tenth Progress Report of 2006, concluding that a change of these provisions was desirable and recommending amendments. ***The Committee requests the Government to continue to provide information on the progress made with regard to the recommended revision of article 41.2 of the Constitution with a view to eliminating any tension between this provision and the principle of equality of opportunity and treatment of men and women in employment and occupation.***

Article 1(1)(b). Additional grounds of discrimination. The Committee recalls that, for the purpose of this Convention, the term “discrimination” includes differential treatment based on any of the grounds listed in *Article 1(1)(a)*, as well as on any additional ground as may be determined by the Member concerned in accordance with *Article 1(1)(b)*. In its previous comments, the Committee noted that the Employment Equality Act covers a number of grounds beyond those expressly listed in *Article 1(1)(a)* of the Convention (marital status, family status, age, disability, sexual orientation and membership of the Travelling Community) and invited the Government to indicate whether it considers that these grounds are covered by the Convention in respect of Ireland, pursuant to *Article 1(1)(b)*. In its report, the Government confirms that section 6(2) of the Act includes these additional grounds in the definition of discrimination. The Committee also notes the Government’s indication that these provisions were drafted in accordance with the usual legislative procedures, including consultations with employers’ and workers’ organizations and representatives of the Travelling Community. ***Noting with interest the Government’s statement that it considers the grounds of marital status, family status, age, disability, sexual orientation and membership of the Travelling Community to be within the parameters of Article 1(1)(b), the Committee requests the Government to continue to provide information on the measures taken to promote and ensure equality of opportunity and treatment in employment of occupation, with a view to eliminating discrimination based on these additional grounds in respect thereof.***

Article 1(2). Inherent requirements of the job. The Committee recalls that section 2 of the Employment Equality Act provides that “persons employed in another person’s home for the provision of personal services for persons residing in that home where the services affect the private or family life of such persons” are not considered employees under the Act as far as access to employment is concerned. The term “personal services” includes “but is not limited to services that are in the nature of services in loco parentis or involve caring for those residing in the home” (section 2). The Committee notes that these provisions deprive certain domestic workers from protection against discrimination in respect of access to employment. Noting from the Government’s report that this exception is meant to balance the competing rights to respect of one’s private and family life and to equal treatment, the Committee notes that these provisions, in practice, would appear to have the effect of allowing employers of domestic workers to make recruitment decisions on the basis of the grounds listed in section 6(2) of the Act, without such decisions being considered discriminatory.

The Committee recalls that the Convention is intended to promote and protect the fundamental right to equality of opportunity and treatment in employment and occupation and that it only allows for exceptions from the principle of equal treatment as far as they are based on the inherent requirements of the particular job. It therefore considers that the right to respect for one’s private and family life should not be construed as protecting conduct that infringes on this fundamental right (including conduct consisting of differential treatment of candidates for employment on the basis of any grounds covered by *Article 1* of the Convention where this is not justified by the inherent requirements of the particular job in question). The Committee also notes that the definition of personal services affecting private or family life contained in section 2 of the Act appears to be broad and non-exhaustive, and open for extensive interpretation. The Committee considers that the exclusion of domestic workers from the protection against discrimination in respect to access to employment, as currently provided for in section 2, may lead to discrimination against these workers contrary to the Convention. ***The Committee requests the Government to provide information on the practical application of these provisions, including information on any relevant administrative or judicial decisions. It also requests the Government to indicate whether it is considering amending the relevant parts of section 2 of the Employment Equality Act to ensure that decisions concerning the recruitment of all domestic workers cannot be based on any of the grounds contained in section 6(2) of the Act except where this is justified on the basis of inherent job requirements.***

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

Israel

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes that the ground of pregnancy has been included in the prohibition of discrimination in section 2 of the Employment (Equal Opportunities) Act, 5748-1988 which, as amended, provides that an employer shall not discriminate in employment and occupation between employees or between jobseekers on the ground of gender, sexual preference, marital status, pregnancy, parenthood, age, race, religion, nationality, country of origin, views, political party or duration of reserve duty. The Committee notes that further amendments to the Act provide for the establishment of the Equal Employment Opportunities Commission under the Ministry of Industry, Trade and Labour. The Commission is to be headed by a National Commissioner for Equal Employment Opportunities and it is operating three district offices headed by Regional Commissioners. The Commission has a broad mandate to promote the recognition and exercise of rights under the equality in employment legislation, including through the following: public awareness raising; cooperation with other relevant bodies and persons, including workers and employers; research and collection of information; interventions in legal proceedings; and the handling of complaints. ***The Committee requests the Government to provide information on the activities of the Equal Employment Opportunities Commission with regard to discrimination on all the grounds covered by the legislation, including information on the number of complaints received and the manner in which they have been resolved. In this regard, please indicate whether any complaints have been received from migrant workers, including those from the occupied Palestinian territories. The Committee also requests the Government to supply information on the number, nature and outcomes of discrimination cases under the Act dealt with by the courts or labour inspectors.***

Equality of opportunity and treatment irrespective of race, national extraction, or religion. Recalling its previous comments concerning equality of opportunity and treatment of Arab Israelis, the Committee remains seriously concerned over the extent to which Arab Israeli men and women, a group now constituting over 20 per cent of the population, remain disadvantaged in the labour market. Data provided by the Government for 2006 indicate that the employment rate for Arabs was 40.6 per cent, compared to 65.9 per cent for Jews (18 to 65 years of age). No significant improvements of the employment rate of the Arab population have occurred since 2000. According to data of the Central Bureau of Statistics (CBS) for 2007, the unemployment rate for Arabs was 12.1 per cent (9.6 per cent for men and 15.1 per cent for women), and 6.8 per cent among Jews (6.2 per cent for men and 7.4 per cent for women). The average gross monthly income of Arabs in 2006 was 4,915 NIS compared to 7,454 NIS for Jews. The disadvantaged position of Arabs in the labour market is also reflected in a high incidence of poverty among Arab families. According to the National Insurance Institute, the poverty rate among non-Jewish families was 54 per cent in 2006, compared to 14.7 among Jewish families.

The Committee notes the Government's indication that an employment subsidy scheme, implemented by the Ministry of Industry, Trade and Labour since 2005 has helped to create new jobs for members of the "minority sector". In 2007, the Government established the Authority for the Economic Development of the Arab, Druze and Circassian Sectors. As regards access to public employment, the Committee notes that section 15A of the Civil Service (Appointments) Act requires adequate representation of members of Arab, Druze and Circassian population in civil service employment. In February 2004, the Government decided that 8 per cent of the governmental workforce is to come from the Arab, Bedouin, Druze and Circassian populations by 2007, with the percentage rising to 10 per cent by 2009 (CERD/C/471/Add.2, 1 September 2005, paragraph 229). There is also an affirmative action scheme to ensure representation of these groups in government-owned corporations.

The Committee urges the Government to intensify its efforts to ensure and promote full equality of opportunity and treatment in employment and occupation of Arab Israelis in the public and private sectors, paying particular attention to creating opportunities for Arab Israeli women. The Committee requests the Government to provide detailed and complete information on the steps taken by the various responsible government agencies to this end as well as on the results secured by such action, including information on the following matters:

- (i) *statistical data, disaggregated by sex, on the evolution of the labour force participation of Arab Israelis, their representation in the different occupations and industries, and the employment rates of Arab Israeli men and women according to their level of education;*
- (ii) *the progress made in ensuring proportional representation of men and women from the Arab, Bedouin, Druze and Circassian population in the civil service, including statistical information on the number of men and women from these groups in the different areas and levels of civil service employment;*
- (iii) *the activities of the Equal Employment Opportunities Commission to combat discrimination in employment and occupation, particularly during selection and recruitment, of Arab Israeli men and women, based on their race, religion or national extraction, and information on any cooperation with workers' and employers' organizations in this regard.*

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

Kenya

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

The Committee notes that a number of pieces of legislation relevant to the application of the Convention were adopted in 2007, namely, the Employment Act, the Labour Relations Act and the Labour Institutions Act.

Article 1 of the Convention. With reference to its earlier comments, the Committee notes with *satisfaction* that legislative expression has been given to the principle of equal remuneration for work of equal value in section 5(4) of the Employment Act 2007. The Committee also notes the broad definition of “remuneration” set out in section 2 of the Employment Act 2007, which encompasses “the total value of all payments in money or in kind” arising out of the worker’s employment. ***The Committee asks the Government to provide information on the application of section 5(4) of the Employment Act, and to confirm whether the provision of accommodation or an accommodation allowance, and the provision of food, as provided for in sections 31 and 33 of the Employment Act, come within the definition of “remuneration” in section 2 of the Act.***

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)

Assessment of the gender wage gap. The Committee notes from the Government’s report that in 2007 women earned 62.8 per cent of men’s average annual wages, which amounts to a gender pay gap of 37.2 per cent (2002:36.7 per cent; 2004: 38.3 per cent). According to the 2007 Wage Structure Survey, women’s average monthly wages were 33.6 per cent lower than men’s. The gender wage gap (average monthly wages) was 10 per cent or less for women in their twenties, whereas women in their forties and fifties earned 40 per cent less than men in the same age bracket. The Committee also notes from the Government’s report that when the hourly total wages of regular and non-regular workers at the same workplace, and of the same age, level of seniority and educational background are compared, male non-regular workers earned 11.6 per cent less than regular workers, while the wage gap was considerably wider for female non-regular workers who earned 19.8 per cent less than regular workers (2007 Survey Report on Labour Conditions in Establishments). The Committee concludes that there is no discernible trend towards a narrowing of the very wide and persistent gender wage gap, with women, on average, earning less than two-thirds of the wages earned by men. ***The Committee asks the Government to continue to provide statistical information on the gender wage gap that will allow the Committee to assess the evolution of the gender pay gap over time, including data calculated on the basis of hourly wages, and also data disaggregated by industry and occupation, as well as age group.***

Articles 1, 2 and 3 of the Convention. *Equal remuneration for work of equal value – comparing remuneration for jobs of a different nature.* The Committee recalls that the Ministry of Labour’s Equal Treatment Regulation (No. 422) provides that work of equal value refers to jobs which are equal or almost equal by nature or which, though slightly different, are considered to have equal value. The Committee considered that limiting the possibility of comparing work performed by men and women to “slightly different” work, as provided for in the Regulation, appears to limit unduly the full application of the principle of equal remuneration for men and women for work of equal value as set out in the Convention. The concept of “work of equal value”, as provided for in the Convention, also encompasses work that is of an entirely different nature but which is nevertheless of equal value (see general observation, 2006).

In its report, the Government once more indicates that the Ministry of Labour is planning to improve the existing regulation, but also states that it would be desirable for the concept of work of equal value to be developed through rulings of dispute settlement bodies. The Government also views the continued widespread use of seniority-based pay systems as an impediment to applying the principle of the Convention. The Committee considers that given the restrictive understanding of the concept of “work of equal value” as prescribed by Regulation No. 422 and accepted by the Supreme Court in its ruling of 14 March 2003 (2003DO2883), the courts may be unable to develop their jurisprudence on this point in a direction that would broaden the current restrictive scope of comparison. In the light of the persisting and very wide gender pay gap, the Committee recalls its 2006 general observation in which it noted that legal provisions that are narrower than the Convention’s principle hinder progress in eliminating gender-based pay discrimination against women and urged the countries concerned to amend their legislation. ***The Committee asks the Government to provide information on the progress made in revising the Equal Treatment Regulation No. 422 with a view to bringing it into full conformity with the Convention.***

The Government previously indicated that it planned to carry out awareness-raising activities to promote the integration of the principle of equal remuneration for work of equal value in human resource management. In this regard, the Committee notes that the Government has advised some 50 enterprises on job-based wage systems since 2007 under a pilot programme. The Committee also notes that the Ministry of Labour conducted research on the application of the principle of equal remuneration for work of equal value in job-based pay systems and prepared a workplace manual on this topic. ***The Committee asks the Government to provide a summary of the results of the research on the application of the principle of equal remuneration for work of equal value in job-based pay systems, as well as a copy of the workplace manual. It also asks the Government to continue to provide detailed information on the measures taken or***

envisaged to promote the application of the principle of the Convention at the enterprise level, including its application in the context of the management and pay systems, and to indicate the results secured by such action.

Application of the principle beyond the enterprise level. In its previous comments, the Committee recalled its General Survey of 1986 on equal remuneration in which it noted that, with a view to applying the principle of the Convention, the reach of comparison between jobs performed by men and women should be as wide as allowed by the level at which wage policies, systems and structures are coordinated (paragraph 72). ***Noting from the Government's report that at present no measures are being envisaged in this regard, the Committee trusts that the Government will give due consideration to this matter and asks the Government to keep the Committee informed of any progress made in promoting and ensuring the application of the principle of equal remuneration for men and women for work of equal value beyond the level of the establishment.***

Enforcement. The Committee notes from the Government's report that since the Supreme Court's ruling of 14 March 2003 (2003DO2883) no further court decision on the principle of equal remuneration for men and women for work of equal value has been rendered. In 2007, the labour inspectorate found 11 cases of violation of the principle of equal remuneration. ***The Committee asks the Government to continue to provide information on the activities of the labour inspectorate to enforce the equal remuneration legislation, including information on the nature and substance of the cases addressed. It also asks the Government to provide information on any new court decision regarding the principle of equal remuneration for men and women for work of equal value as guaranteed under the Equal Employment Act.***

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1998)

The Committee notes the Government's report, the communication dated 5 September 2008 received from the Korean Confederation of Trade Unions (KCTU), as well as the Government's reply thereto of 28 October 2008.

Articles 1 and 2 of the Convention. Migrant workers. The Committee recalls its previous comments in which it welcomed that the Employment Permit System (EPS) has introduced new elements of protection for migrant workers and that migrant workers are generally covered by the labour and anti-discrimination legislation. The Committee stressed the importance of ensuring the effective promotion and enforcement of the legislation to ensure that migrant workers are not subject to discrimination and abuse contrary to the Convention. The Committee also considered that providing for an appropriate flexibility to allow migrant workers to change workplaces may assist in avoiding situations in which migrant workers become vulnerable to discrimination and abuse.

The Committee notes the Government's statement that, considering the views of the Committee, it planned to add a further reason for the granting of a workplace transfer to the legislation, i.e. "when it is deemed difficult to maintain an employment contract on account of the employer's violation of labour laws, such as delayed payment of wages". The Committee notes that currently section 25(1)(3) of the Act on Foreign Workers' Employment provides that a migrant worker's application for a workplace transfer may be granted in case of cancellation of the employer's permit to engage foreign workers under section 19(1) which provides that the authorities may cancel such a permit if the employers breach the labour contract or violate the labour legislation. It thus appears that the suggested amendment would have the aim of providing a direct basis for migrant workers to request a workplace transfer in case of discrimination or abuse, as compared to the current legislation which construes the workplace transfer as a consequence of the cancellation of the employers' permit rather than as a measure to assist migrant workers whose rights have been violated. According to the KCTU, the revision proposed by the Government, though making the legislation clearer, would not contribute to diminishing the power of employers over the foreign workers engaged by them. The KCTU recommends that migrant workers are given the possibility to apply for a workplace transfer more generally when they are dissatisfied with their working conditions. ***The Committee requests the Government to continue to provide information on the measures taken or envisaged to allow for appropriate flexibility for migrant workers to change their workplaces which may assist in avoiding situations in which migrant workers become vulnerable to discrimination and abuse. In this regard, please indicate the number of migrant workers that have successfully applied for a change of workplace during the reporting period, indicating the reasons for granting such a change.***

With regard to the enforcement of the anti-discrimination provisions in respect of migrant workers, the Committee notes from the Government's report that among the 1,845 discrimination cases dealt with by the National Human Rights Commission, so far only one related to the situation of migrant workers. It notes that 1,537 complaints were filed by migrant workers (employed under the EPS or otherwise) with local labour offices in 2007. However, the Government indicates that no information is available on the content and outcome of such complaints. The Government further indicates that, as of October 2008, three Korea Migrants' Centres providing assistance to migrant workers were operating and that two more will be established before the end of 2008. Given that migrant workers may often refrain from bringing complaints out of fear of retaliation by the employers, the Committee stresses the need to ensure effective labour inspection. ***The Committee requests the Government to provide detailed information on the measures taken to ensure that the legislation protecting migrant workers from discrimination and abuse is fully implemented and enforced, including more detailed information on the number of inspections of enterprises employing migrant workers and the number and kind of violations detected and the remedies provided, as well as the number, content and outcome of***

complaints brought by migrant workers before labour officers, the courts and the National Human Rights Commission.

Equality of opportunity and treatment of women and men. The Committee notes that the women's employment rate continued to grow, although at a very slow pace, from 48.8 per cent in 2006 to 48.9 per cent in 2007. The data provided by the Government indicates that increases in women's employment mainly occurred in the categories of professionals and managers. The Committee notes with interest from the Government's report that the public sector affirmative action scheme has been extended to workplaces with more than 500 employees as of March 2008. According to this scheme, workplaces where the participation of women is less than 60 per cent of the average female employment rate in the respective industry, must draw up equal employment plans and report on them. In 2007, out of the 613 workplaces concerned, 333 failed to meet the required level of women's employment and are therefore required to report on the measures taken in this regard by 31 October 2008. The Committee further notes that the Personnel Administration Guidelines for Public Enterprises and Quasi-Government Agencies were revised on 11 April 2007 to ensure that companies introduce gender equality targets when hiring workers through open competition and with regard to women's representation in management positions. **The Committee requests the Government to continue to provide information on the measures taken to promote and ensure gender equality in employment and occupation, including through the adoption and implementation of equal employment plans in the private and public sectors, as well as updated detailed information on the position of men and women in the labour market, including the civil service.**

Article 1(1)(b). Additional grounds of discrimination. Age. The Committee notes with interest the enactment and promulgation of the Act on prohibition of age discrimination in employment and employment promotion for the aged, on 21 March 2008, which replaces the previous Aged Employment Promotion Act. According to the Government's report, the Act introduces a ban on age discrimination, including indirect discrimination at every stage of employment. **The Committee requests the Government to provide a copy of the new Act, along with information on its implementation and enforcement.**

Disability. The Committee also notes from the Government's report that amendments prohibiting discrimination against persons with disabilities have been introduced into the Act on the prohibition of discrimination against disabled and remedy for violation of their rights. The amendments entered into force on 11 April 2008. **The Committee requests the Government to provide a copy of the Act, as amended, along with information on its implementation and enforcement.**

Employment status. The Committee notes the information provided by the Government concerning the implementation of the Act on the protection, etc. of fixed-term and part-time employees (Act No. 8074 of 21 December 2006), which prohibits discriminatory treatment of these workers based on their employment status. According to the Government, the number of fixed-term workers fell in early 2008, with many companies converting fixed-term contracts into regular employment relationships. The Labour Relations Commission has started to render decisions to redress discrimination against non-regular workers. However, no information is yet available on the effects of the Act on equality of opportunity in employment and occupation of women and men. **The Committee requests the Government to provide this information, as soon as it is available, and to continue to provide information on the Act's implementation more generally.**

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

Kuwait

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

Access of women to particular occupations. In its previous observation, the Committee continued to draw the Government's attention to the under-representation of women in particular occupations under the Government's control. Having noted that certain laws of Kuwait appeared to rule out the possibility of women working in certain posts in the military, the police, the diplomatic corps, the Administration of Justice Division and the Department of Public Prosecutions, the Committee had reminded the Government that under the Convention, a State undertook to pursue a policy of equality of opportunity and treatment in respect of employment under its direct control and that any exclusions from occupations contrary to the Convention had to be repealed (*Article 3(c) and (d) of the Convention*). **Noting the Government's intention to communicate the information requested in its next report, the Committee trusts that this report will contain the following information:**

- (i) **the legal basis for excluding women from certain posts in the abovementioned occupations and the progress made with regard to removing any exclusions contrary to the Convention;**
- (ii) **the steps taken to examine and take measures to overcome the practical barriers that exist in society that prevent women from accessing certain posts and careers, and to pursue a policy of equal opportunity and treatment for men and women in occupations under its direct control; and**
- (iii) **statistics on the number of men and women in all the different posts of the military, police, diplomatic corps, Administration of Justice Division and Department of Public Prosecutions.**

Discrimination on the basis of race, colour and national extraction. The Committee notes the Government's statement that it will communicate any new developments that may arise on the amendment of the Penal Code so as to include the specific provisions relating to race discrimination. However, the Committee must note with regret that the Government once again has failed to supply concrete information on the measures adopted to prevent discrimination on the basis of race, colour and national extraction in practice and the impact of such measures. The Committee therefore continues to be concerned about the Government's apparent lack of commitment to put in place effective measures to ensure that no person, including foreign workers, is subjected to discrimination and unequal treatment on the basis of race, colour or national extraction. The Committee reiterates the importance of taking action on this matter, particularly in the light of the high number of foreign nationals from different ethnic and racial backgrounds working in Kuwait. ***The Committee urges the Government to take practical measures to prevent discrimination against all workers on the basis of race, colour and national extraction in regard to employment and occupation, including measures to foster public understanding and acceptance of the principles of non-discrimination and equality, and to provide information on the progress made in this regard. In addition, please provide information on any amendments to the Penal Code aimed at including express provisions concerning racial discrimination.***

Application of the Convention to migrant domestic workers. In its previous observation, the Committee continued to raise concerns regarding the absence of legal measures or practical steps taken to address discriminatory treatment against migrant domestic workers in Kuwait. The Regulation of Domestic Service Agencies (Act No. 40 of 1992) did not appear to include provisions prohibiting discrimination against domestic workers either in terms of their access to employment or their conditions of work. The draft Labour Code (section 5) continued to exclude domestic workers from its scope of application. The Committee notes the Government's response that domestic workers have been excluded from the scope of application of the draft Labour Code in view of the difficulty of applying certain provisions of the Labour Code, in particular those on inspection, to this category of workers. The Government, however, does not indicate what other legal or practical measures it has taken to address discriminatory treatment of migrant domestic workers. The Committee recalls the particular vulnerability of (migrant) domestic workers to multiple forms of discrimination based on race, colour, religion or sex due to the individual employment relationship, lack of legislative protection, stereotyped thinking about gender roles and undervaluing of this type of employment. Women, both nationals and migrant workers, are usually particularly affected. The Committee understands that in Kuwait the majority of migrant domestic workers are women who, under the Convention, should be protected against discrimination in all fields of employment and occupation as defined by *Article 1(3)* of the Convention and Paragraph 2(b) of the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111). The Committee specifically draws the attention of the Government to subparagraph (iv), relating to equality of treatment with respect to security of tenure of employment, subparagraph (v) relating to equal remuneration for work of equal value, and subparagraph (vi) relating to conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and health as well as social security measures and welfare facilities and benefits provided in connection with employment. The fact that coverage of domestic workers by the Labour Code may not be "a method appropriate to national conditions and practice" does not relieve the Government from the obligation to ensure that domestic workers are protected in an effective manner against all forms of discrimination covered by the Convention. This also includes the provision of appropriate and effective enforcement mechanisms and means of redress and remedies for domestic workers who wish to raise complaints concerning discrimination. ***The Government is therefore urged to examine the nature and extent of employment discrimination against migrant domestic workers and to take the necessary legal or practical measures to protect them in an effective manner against all forms of discrimination covered by the Convention, and to report on the progress made in this regard. This should also include information on the number and outcome of complaints of discrimination submitted by domestic workers under Act No. 40 of 1992 against their employment agencies or guarantors, and the remedies provided and sanctions imposed. The Committee also reiterates its request that the Government provides information on the deliberations and outcomes of an interregional forum on expatriate labour that was planned for early 2007, in particular with regard to the issue of discrimination and domestic workers.***

National policy. The Committee regrets that the Government's report does not contain any information on the progress made in declaring and implementing a national policy designed to promote equality of opportunity and treatment in employment and occupation with a view to the elimination of any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin. It recalls that the effective application of such a policy requires the implementation of specific measures and programmes to promote genuine equality in law as well as in practice, and correct de facto inequalities which may exist in training, employment and conditions of work. ***The Committee urges the Government to take the necessary steps to develop and apply a national policy on equality, and to report on the results achieved of any specific measures and programmes undertaken.***

The Committee asks the Government to reply to the issues raised in its previous direct request of 2007.

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

[The Government is asked to supply full particulars to the Conference at its 98th Session and to reply in detail to the present comments in 2009.]

Latvia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)

Discrimination on the basis of national extraction. The Committee recalls its previous observation on the discriminatory effects that might follow from the application of the State Language Act of 1999 and its implementing regulations on the employment and occupation of minority groups, including the Russian-speaking minority. The Committee notes the Government's statement that the requirement for skills in the state official language responds to legitimate interests of the State and that training in the Latvian language is provided to persons whose mother tongue is not Latvian under Regulation No. 774/2004 of the Cabinet of Ministers establishing the National Agency for the Latvian Language Training (NALLT). The Committee also notes the Government's indication that section 3(4) of the Act on the unemployed and the persons seeking employment recognizes that the promotion of public knowledge of the state official language represents one of the means of reducing unemployment. ***The Committee requests the Government to provide full information on the activities of the NALLT, including information on the percentage of men and women belonging to minority groups that have participated in the language training courses. The Committee also requests the Government to supply information on the situation of minority groups in the labour market, and on any measures taken to assess the impact of the State Language Act and its implementing regulations on the employment opportunities of minority groups. Please also provide information on any relevant administrative and judicial decisions concerning the application of the State Language Act and the remedies provided or sanctions imposed.***

Discrimination on the basis of political opinion. Further to its previous observation concerning the application of some provisions of the Police Act of 1999 and the State Civil Service Act of 2000 which may result in discrimination on the ground of political opinion in respect of access to employment, the Committee notes from the Government's report that section 28 of the Police Act was repealed on 15 June 2006. As regards the restrictions on the access to public employment contained in the State Civil Service Act, the Committee notes the Government's indication that it is not in a position to supply information on the number of applicants who have been refused employment under the State Civil Service Act since, pursuant to section 9 of the Act on State Administration, the fulfilment of the criteria required in relation to a vacancy in the public service is evaluated autonomously by each public institution. ***Recalling the obligation of the Government to ensure the application of the principle of non-discrimination in respect of employment under the control of a national authority, the Committee requests the Government to monitor the application of the State Civil Service Act with a view to ensuring that applicants for jobs in the public service do not suffer from discrimination on the ground of political opinion, and it requests the Government to supply detailed information on the measures taken in this regard. The Committee also reiterates its request for information on any judicial or administrative decisions handed down in relation to the application of the Act, in particular as regards appeals against exclusion or dismissal from the public service on the ground of political opinion.***

Regarding section 8(9) of the State Civil Service Act which makes access to employment in the public service conditional upon the requirement that the applicant is not or has not been a participant in organizations prohibited by law or judicial decisions, the Committee notes that the Government does not provide the information solicited. ***The Committee therefore again requests the Government to supply information on the application of this provision, the requirements for the prohibition of organizations, a list of all prohibited organizations, as well as indications as to the number of persons that have been excluded from being a candidate for a civil service position based on section 8(9) of the State Civil Service Act.***

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

Liberia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)

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

Having previously noted that there was no legislation or national policy to implement the Convention, the Committee hopes the Government will soon be in a position to provide full information on any administrative, legislative or other measures which are explicitly designed to eliminate discrimination based on all of the seven grounds prohibited by the Convention (race, colour, sex, religion, political opinion, national extraction or social origin) and to promote equality of opportunity and treatment in respect of employment and occupation. The Committee also requests the Government to provide full information on how the Convention is applied in practice in conformity with Parts II–V of the report form.

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

Madagascar

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

In its previous observation, the Committee welcomed the adoption of Act No. 2005-040 of 20 February 2006, protecting the rights of persons living with HIV/AIDS, and it noted with interest that Chapter IV of the Act expressly protects their rights in the workplace. In particular, it noted that section 44 prohibits all forms of discrimination or stigmatization at the workplace based on proved or presumed serological status. The Committee also noted that a national strategy would be formulated to guide action for the fight against HIV/AIDS. The Committee solicited information on the implementation of the Act, including information on any judicial decisions applying its provisions, as well as information on the abovementioned national strategy.

The Committee notes the Government's indication of the priorities and the strategies of the fight against HIV/AIDS and its statement that no relevant judicial decisions are available at the moment. ***The Committee again requests the Government to provide information on the implementation and enforcement of the provisions of Act No. 2005-040 relating to equality of opportunity and treatment in employment and occupation of men and women living with HIV/AIDS, including information concerning the national strategy referred to in section 3 of the Act, as well as information on any relevant court decisions.***

The Committee notes the communication submitted by the Confederation of Malagasy Workers (CTM) dated 28 May 2008. In its communication, the Confederation alleges the violation of, among other things, *Articles 1 and 2 of the Convention* following the adoption in December 2007 of Law No. 2007-037 on export processing zones (EPZs) and Law No. 2007-036 on investments in Madagascar, on the basis that section 5 of the Law on EPZs expressly provides for the non-application of the provisions of the Labour Code prohibiting women's night work, notably section 85 to the EPZs. The Committee notes that this communication was submitted to the Government for comments. ***The Committee requests the Government to provide with its next report its observations on this point and refers to its comments under the Night Work (Women) Convention (Revised), 1934 (No. 41).***

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

Malawi

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1965)

Application of the principle in the civil service. The Committee recalls its previous observation pointing out that the current occupational segregation of women in the civil service may result in remuneration gaps between men and women, and that the collection of statistical data on the distribution of men and women in the various grades of the public service and on their corresponding salary levels is crucial both in order to evaluate the nature, extent and causes of gender pay differentials and to assess the application of the Convention. The Committee notes the Government's statement that no gender wage gap exists in the civil service since the same "remuneration package" is applied to women and men. The Committee also notes the Government's acknowledgement that few women hold managerial positions as their short-lived employment prevents them from progressing in the job hierarchy. The Committee further notes the Government's indication that efforts are currently being made to promote women's longer term employment and to enable them to gain access to the educational careers and jobs which have traditionally been predominantly held by men. Moreover, the Committee notes that the statistical information requested will be provided as soon as it becomes available. ***Referring to its 2006 general observation on the Convention, the Committee asks the Government to ensure that equal remuneration is recognized not only for women and men performing the same job, but also for men and women performing jobs of a different nature but which are, nonetheless, of equal value. The Committee also asks the Government to provide more complete information on the measures taken or envisaged to retain women in the public service with a view to encouraging their advancement towards decision-making positions. It also requests information on the measures taken to promote women's access to a wider range of educational and job opportunities, including information on the impact of such measures on the application of the principle of the Convention.***

Wage disparities between men and women in rural areas. Further to its previous observation on the communication submitted by the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), regarding the discrimination faced by women in rural areas, the Committee notes from the Government's report that the minimum wage established in the country following consultations with the social partners applies to all economic sectors, including agriculture. The Committee also notes the Government's indication that awareness-raising campaigns on the principle of the Convention and strengthened inspection are needed and that, in the districts where discrimination cases have been reported, labour inspection has already been intensified. With regard to the promotion of measures aimed at facilitating the reconciliation of work and family responsibilities and the equal sharing of family responsibilities between men and women rural workers, the Committee notes the Government's statement that gender roles are deeply rooted in the cultural texture of society and they can only be changed in the long run with the involvement of all stakeholders. ***The Committee encourages the Government to promote, in cooperation with the social partners, the adoption of adequate measures to assist rural women to reconcile their work and family responsibilities***

and to have a more equitable sharing of family responsibilities between men and women workers. The Committee also asks the Government to provide information on the measures taken or envisaged to strengthen the labour inspection services with respect to the application of the principle of the Convention to the agricultural sector, including the supply of specific training, as well as information on any violations detected and the remedies provided or the sanctions imposed in this regard. Please also provide information on the sensitization and awareness-raising campaigns carried out with regard to men's and women's right to equal remuneration for work of equal value in the rural areas.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)

While noting the Government's indication that the President is committed to promoting the participation of women in higher positions, that women have been appointed to some ministerial positions and high-ranking posts in the public service, the Committee notes that the report does not contain replies to the specific issues raised in the Committee's previous observation. *The Committee therefore again requests the Government to provide information on the following:*

- (i) *the measures taken to address unequal access of women to training and education at all levels, together with statistical information on the participation of women in training and education;*
- (ii) *the measures taken or envisaged, especially with regard to the recruitment policy and further training policy, to achieve an overall increase in the participation of women in higher-level posts in the public service. In this regard, please also provide updated statistical information, disaggregated by sex, showing the progress made in ensuring equal access of women to public service employment at all levels; and*
- (iii) *the measures taken or envisaged to facilitate access to soft loans for rural women as a means of assisting them to run small businesses, thereby reducing unemployment and poverty. The Committee also requests information on the number of rural women who have benefited from credit facilities.*

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

Mauritania

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

The Committee notes the Government's report and the communication from the International Trade Union Confederation (ITUC) dated 30 September 2008 containing observations made by the General Confederation of Workers of Mauritania (CGTM) concerning the application of the Convention. In its observations, the CGTM emphasizes the marginalization still suffered by women in Mauritania. In particular, the CGTM observes that the overall activity rate for women has not changed significantly for around 20 years (27.7 per cent in 2000, compared with 25.3 per cent in 1988), and that they are still broadly concentrated in certain types of jobs, namely agriculture (48.6 per cent), general administration (14 per cent), commerce (13 per cent) and health and education (10 per cent). The CGTM adds that women's wages are on average 60 per cent lower than those of men. The Committee notes that no comment by the Government has been received in reply to these observations. The Committee also notes that in its concluding comments, the Committee on the Elimination of Discrimination against Women (CEDAW) observed that, while the legislation guarantees gender equality, there is in practice considerable discrimination against women in the labour market (see CEDAW/C/MRT/CO/1, 11 June 2007, paragraph 37). *The Committee asks the Government to provide detailed information on the conditions of women in the labour market in Mauritania, including statistical data on the wage levels of women and men, disaggregated by economic sector, occupation and job. The Committee also asks the Government to indicate the measures adopted or envisaged to reduce the existing gap between the remuneration of men and women, including information on any relevant measures that have been taken in this respect in the context of the National Strategy for the Promotion of Women (2005–08) and their impact.*

Article 1(b) of the Convention. Equal remuneration for work of equal value. In its previous comments, the Committee emphasized that an examination of the provisions of the Labour Code, and particularly section 191, and Act No. 93-09 on the public service, did not clearly establish whether the principle set out in the Convention was fully reproduced in the national legislation, which could give rise to misinterpretations in practice. In this respect, the Committee notes that the Government would like to receive the Office's technical assistance in the form of specific training on the concept of "work of equal value" and on how to apply it correctly in practice. Referring the Government to its 2006 general observation on the Convention, the Committee draws the Government's attention to the importance of amending the national legislation so that it gives full expression to the principle of equal remuneration for work of equal value. This is all the more important because the labour market in Mauritania is characterized by significant gender segregation and a very considerable gap between the remuneration of women and men. *The Committee urges the Government to amend the national legislation so as to give full expression to the principle of the Convention, in both the private and public sectors. The Committee also encourages the Government to take the necessary measures to obtain technical assistance from the Office.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1963)***

Article 1 of the Convention. Discrimination on the basis of race, colour, national extraction or social origin. The Committee recalls the allegations by the Free Confederation of Workers of Mauritania (CLTM) emphasizing discriminatory practices in recruitment, occupation and job classification to which certain Mauritians, particularly slaves, former slaves or descendants of slaves, are regularly exposed. Further to these allegations, the Committee asked the Government to indicate the specific measures taken to promote access on equal terms to training, employment and occupation for disadvantaged social and ethnic groups, irrespective of their race, colour or social origin. The Committee also expressed the hope of receiving statistics concerning the situation of these workers in the labour market in order to be able to evaluate the impact and progress of the national non-discrimination policy.

The Committee notes the Government's indication that the labour administration services do not have any statistics based on ethnic origin or race as national policies cover all citizens, without any distinction made on the basis of race, social origin, religion or sex. The Committee also notes from the Government's report that particular attention is given to the most disadvantaged sections of society in order to ensure their integration in the labour market. In particular, the Committee notes that measures have been taken to promote access to training, employment and occupation, particularly measures to promote literacy, vocational training and further learning. The Committee also notes that, according to the 2007–08 report of the National Committee on Human Rights, unequal access to education and employment, among other things, is causing increasing disparities between citizens. ***The Committee requests the Government to supply detailed information on the following:***

- (i) the disadvantaged social and ethnic groups to which the Government gives particular attention;***
- (ii) the resulting measures taken to eliminate any discrimination towards them and promote their access to training, employment and occupation irrespective of race, colour, national extraction or social origin; and***
- (iii) the number of persons belonging to these groups who have been able to benefit from these initiatives in practice.***

Recalling the importance of collecting statistics to evaluate the impact and progress of the Government's non-discrimination policy and to determine whether it is necessary to take special measures for certain disadvantaged groups, the Committee requests the Government to take the necessary steps to be able to provide such information in its next report.

With regard to the specific situation of slavery and practices similar to slavery which are still continuing today, the Committee notes the adoption on 9 August 2007 of the Act Criminalizing and Penalizing Practices Similar to Slavery. The Committee also notes the setting up of an inter-ministerial committee responsible for formulating a National Strategy to combat the effects of slavery, instituted by Decree No. 115.2006 of 12 October 2006. ***The Committee asks the Government to provide information on the progress made in adopting the national strategy, and on the measures that have been taken or envisaged in the context of this strategy to improve the training and employment opportunities of former slaves and descendants of slaves and to reduce discriminatory practices against them with respect to employment and occupation. The Committee also requests information on any court decisions concerning the application of the Act Criminalizing Practices Similar to Slavery. Please also provide information regarding the legal procedures and remedies available to disadvantaged men and women of all ethnic groups, in particular the former slaves and their descendants, who consider that they have been discriminated against. The Committee also requests the Government once again to indicate the measures taken or contemplated to ensure that the labour inspectorate is able to prevent such discriminatory practices in an effective manner.***

With regard to the situation of black Mauritanian workers of Senegalese origin who, in terms of their employment, have suffered the consequences of the conflict with Senegal in 1989, the Committee continues to examine the action taken on the recommendations adopted in 1991 by the Governing Body with regard to a representation made by the National Confederation of Workers of Senegal (CNTS) under article 24 of the ILO Constitution. The Committee notes from the 2007–08 report of the National Committee on Human Rights that on 12 November 2007 the Mauritanian Government, the Senegalese Government and the Office of the United Nations High Commissioner for Refugees (UNHCR) signed an agreement establishing the legal framework for organizing the return of Mauritanian refugees. The Committee also notes that public discussions have taken place on measures for the integration or reintegration of these refugees and for establishing appropriate mechanisms in this regard. ***The Committee requests the Government to provide information on the progress made towards the practical application of these initiatives and, in particular, to supply detailed information on the measures taken or contemplated to reintegrate black Mauritanian workers of Senegalese origin into public employment or to compensate them or their dependants for the discrimination suffered following the events of 1989, including information on the number of persons who have benefited from these measures.***

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

Mexico

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Pregnancy testing in export processing enterprises and other discriminatory practices. During the discussion in the Conference Committee on the Application of Standards in June 2006, issues were addressed that the Committee has been examining for several years and which concern allegations of a number of systematic discriminatory practices against women in export processing zones (*maquiladoras*) and vacancy announcements that discriminate on grounds of race and colour.

Mechanisms to assess the impact of measures adopted and progress achieved. The Committee notes that, according to the Government's report, no formal reports of discrimination were received during the inspections carried out by the Ministry of Labour and Social Insurance (STPS) in export processing enterprises during the period covered by the report. The Committee notes that the Government has not provided the information requested by the Committee on the mechanisms to monitor the situation in practice and any changes in the situation or any other information enabling the Committee to gain a clearer understanding of the situation and of the impact of the action taken. ***The Committee asks the Government to provide this information, in particular with regard to mechanisms to monitor the situation in practice which will allow an assessment to be made of the impact of the measures adopted to eliminate discrimination in export processing enterprises. It also requests information on the cases alleging discrimination based on sex in export processing enterprises presented to local and federal conciliation and arbitration boards or to Mexican tribunals or any other competent body, and on the manner in which these cases have been resolved.***

Legislation. The Committee notes that, according to the Government's report, it has not yet published the amendment to the Federal Labour Act expressly prohibiting discrimination based on sex and maternity in recruitment and employment. ***The Committee requests the Government to continue its efforts to have this amendment adopted, and hopes that it will be able to report progress in this regard in its next report.***

Promotional and preventive activities. In 2007, the Committee noted that the National Programme for the Prevention and Elimination of Discrimination aims, under the objective "work" in strategic guideline 3(IV), "to ensure compliance with the statutory prohibition on requiring pregnancy testing as a condition for obtaining or remaining in a job and achieving promotion" and that point 7 refers to a system of indicators and monitoring of the extent to which the anti-discrimination legislation is applied and the impact and effectiveness of public policy on equal treatment. The Committee notes that, according to the Government's report, the National Programme for the Prevention and Elimination of Discrimination published in 2006, to which it referred in its previous report, was valid for only six months due to a change in leadership of the Federal Executive and that, for that reason, the National Council for the Prevention of Discrimination (CONAPRED) did not have the opportunity to establish indicators and carry out the planned monitoring.

The Committee notes that the executive, legislative and judicial authorities signed the 2007 National Pact on equality between men and women, the general objective of which is to give priority to the promotion of equality of treatment and opportunity between men and women and eliminate violence towards women. The specific objective is to establish the commitment of the various government bodies and authorities as well as public and private entities to give effect to the provisions of the Constitution and of the international treaties concerning equality between men and women. It also notes that, on 10 March 2008, the National Programme for Equality between Men and Women 2008-12 (PROIGUALDAD) was presented. ***The Committee asks the Government to provide information on the measures and activities undertaken and progress achieved under the 2007 National Pact and PROIGUALDAD, including details regarding any monitoring mechanisms and indicators, and copies of any reports or evaluations prepared.***

Sexual harassment. In 2007, the Committee requested the Government to indicate whether it has envisaged introducing machinery and easily accessible procedures for women workers to lodge complaints of sexual harassment and also asked the Government to address the issue of remedies and sanctions in this regard. The Committee notes that, according to the report, the various proposals for the reform of the Federal Labour Act include a proposal relating to sexual harassment which provides for a fine of between 250 and 5,000 times the monthly salary for employers who commit discrimination or acts of sexual harassment. The Committee draws the Government's attention to its continued concern about the fact that, as noted previously, the procedures available end in the termination of the employment relationship and the payment of compensation. It previously commented that, even though the victim of harassment is entitled to compensation, their dismissal is a penalty against the victim rather than the harasser and may dissuade victims from bringing complaints. As indicated by the Committee in its General Survey of 1988 on equality in employment and occupation, "Effective protection against discrimination in employment presupposes recognition of the principle of protection against dismissal" (paragraph 226). ***The Committee asks the Government to ensure that complaints of sexual harassment under the Federal Labour Act do not result in the termination of the victim's employment, and that appropriate sanctions and remedies are available. It also requests the Government to provide information on the number and nature of cases of sexual harassment filed pursuant to the Federal Labour Act, how long the procedure has taken, and the results thereof.***

Cooperation with employers' and workers' organizations. In 2007, the Committee noted that the Confederation of Mexican Workers (CTM) indicated that it had joined forces with the employers' organizations and the Federal Government to apply a policy promoting equal opportunities in employment and occupation and to eliminate all forms of discrimination. The Committee requested the Government to provide information on the practical measures taken pursuant to this cooperation and the results achieved. The Committee notes that, according to the report, the CTM has not yet replied to the request of the Government of Mexico to provide such information. ***The Committee requests the Government to provide information on the activities being developed by the Government in cooperation with employers' and workers' organizations to promote equal opportunities in employment and occupation and to eliminate all forms of discrimination.***

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

Morocco

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1979)

Articles 1 and 2 of the Convention. Application in the private sector. In its previous comments the Committee continued its dialogue with the Government on measures to address sex-based wage discrimination in the textile and clothing sector and the informal manufacturing industry, where the large majority of the workers are women. The Committee recalls that under a new methodology for interventions, labour inspectors are specially called upon to monitor the application of the principle of equal remuneration for work of equal value, introduced by section 346 of the Labour Code, and to encourage social partners to implement the principle when determining remuneration. The Committee had asked the Government for additional information demonstrating the effective enforcement of section 346 of the Labour Code by the labour inspectorate and the courts, as well as information on the new methodology concerning equal remuneration and the type of contraventions identified by the labour inspectors and the manner in which they had been remedied. The Committee had also requested information on the measures taken by the enterprises or social partners to ensure compliance with section 346, including objective job evaluation or review of wage scales, and on the measures taken to address discrimination in remuneration in the informal manufacturing sector.

The Committee notes that 624 contraventions concerning the payment of wages were addressed by the labour inspectorate in 2007, primarily relating to failure to respect the minimum wage and the non-issuing of salary bulletins; and that no decisions have been handed down by the courts concerning sex-based discrimination. The Committee further notes the Government's statement that labour inspection interventions also cover the informal manufacturing sector, as well as the Government's explanations as to the new methodology for labour inspections. The Government, however, does not indicate how this methodology has been used with a view to monitoring equal remuneration for work of equal value. The Committee further notes that, with the assistance of the ILO, a good practices guide on equal employment strategies has been developed for private enterprises that wish to implement such a strategy in order to improve their productivity. The guide offers, among other things, various measures to assist enterprises in undertaking an objective evaluation of jobs without gender bias.

While appreciating this information and welcoming the development of the good practices guide, the Committee is bound to observe that insufficient information has been provided to enable the Committee to reach definite conclusions on whether inequalities in remuneration between men and women in the textile and clothing industry and in the informal manufacturing industry have been addressed effectively. The Committee also wishes to point out that the absence of complaints or contraventions with respect to equal remuneration does not necessarily mean that the Convention and the national legislation are effectively applied. ***The Committee, therefore, hopes that the Government's next report will contain full information:***

- (i) demonstrating the effectiveness of the labour inspection services in monitoring the principle of equal remuneration for men and women for work of equal value in the textile and clothing sector and the informal manufacturing industry, through the new methodology or otherwise;***
- (ii) indicating the progress made by enterprises and the social partners in developing objective job evaluation methods or reviewing wage scales, using the good practice guide on equal employment strategies; and***
- (iii) indicating more generally any other measures taken or envisaged to ensure that the principle of equal remuneration for men and women for work of equal value is being respected in the determination of wages and benefits.***

Please also continue to provide information on the type of violations concerning remuneration detected through labour inspections and on the decisions handed down by the courts involving section 346 of the Labour Code, as well as on the remedies provided.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)

Equality of opportunity and treatment between men and women. The Committee recalls its previous observation in which it had requested, in light of the persisting concerns relating to the employment situation of women, information on the implementation of the measures under the National Strategy for Equity and Equality between the Sexes through Gender Mainstreaming of Development Policies and Programmes to promote women's access to vocational training, employment and occupation and to combat gender stereotypes. The Committee had also requested information on any measures taken to ensure the effective enforcement of legislative provisions concerning non-discrimination and equality in employment and occupation, particularly section 9 of the Labour Code, and to supply any administrative or judicial decisions concerning these provisions.

The Committee notes that the Government has taken further measures to promote equality between men and women, including the adoption of a new Strategic Plan 2008–12 aimed at promoting the rights of women, the gender dimension and equal opportunities, which include approaches and measures similar to the 2006 National Strategy (i.e. integrating a gender dimension in policies, programmes and development projects; promoting women's access to posts of responsibility and decision-making; women's representation in elected bodies; promoting women's entrepreneurship; combating violence against women and girls; and combating gender stereotypes). The Committee further notes that in the context of the abovementioned National Strategy, the Minister of Labour is currently pursuing measures based on equality at work and the promotion of gender in the production units under its control with a view to improving the working conditions of women and combating all forms of discrimination. The Committee welcomes the commitment and efforts by the Government in developing appropriate strategies to promote equality between men and women. However, the Committee has yet to observe whether the National Strategy adopted in 2006 has generated any progress in removing obstacles, including sexist stereotypes and prejudices, to the implementation of gender equality and reducing inequalities that exist in practice between men and women in employment and occupation. ***The Committee, therefore, hopes that the Government's next report will be able to demonstrate that the measures envisaged under the National Strategy of 2006 and the Strategic Plan 2008–12 are having an impact on improving women's access to the labour market and improving protection from discrimination of women, particularly in the informal economy. The Committee particularly requests the Government to provide information on the impact of measures to improve the working conditions of women in production units under its control. The Committee also recalls the need for measures to ensure the effective enforcement of legislative provisions concerning non-discrimination and equality in employment and occupation, and asks the Government to provide full information in this regard. Finally, the Committee encourages the Government to establish mechanisms to enable it to assess in what areas progress has been made and in which areas more concerted efforts are needed.***

Public administration. The Committee recalls its previous comments in which it noted that women in the public administration are concentrated in areas such as health, youth or education, and in jobs at the lower end of the hierarchy. In 2004, 35.2 per cent of the civil servants were women. The Committee notes the statistics provided by the Government on women's participation in various sectors of employment and economic activities, but these do not provide an indication on the progress made in achieving a balanced representation of women and men in the various occupations nor in posts of responsibility in the public administration. ***The Committee requests the Government to indicate how it is monitoring the progress made in improving women's access to a wide range of occupations in the public administration and to posts of responsibility. Please continue to provide relevant statistics, disaggregated by sex, in this regard.***

Textile and clothing sector. The Committee recalls its previous comments concerning the situation of women employed in the textile and clothing sector who are particularly affected by job precariousness, wage discrimination, reduced access to on-the-job training, long working hours and poor working conditions. The Committee also recalls that, under the Decent Work Project, a pilot project is being implemented to improve the competitiveness of the textile and clothing industry through decent work, and to promote gender equality in this sector. The Committee notes the detailed information provided by the Government on the objectives and activities of the project. ***Noting, however, that the information does not indicate the steps taken to implement the action plan to promote effective gender equality in the clothing and textile sector, nor the results achieved, the Committee asks the Government to provide this information in its next report. Please also indicate how the cooperation of workers' and employers' organizations is being sought to implement the measures envisaged.***

Equality of opportunity and treatment with respect to ethnic origin. In its previous observation, the Committee continued its dialogue on the measures taken to ensure that members of ethnic minority groups, such as Berber (Amazigh), do not suffer, in practice, from discrimination and enjoy equality of opportunity and treatment in employment and work. The Committee notes that the Government indicates that Moroccans of Amazigh origin do not constitute a separate ethnic minority and, together with the Rifains, Arabs, sub-Saharan Africans and Andalus (Andalous), represent the multicultural diversity of the Moroccan population. The Committee notes from the report of the 2003 Working Group of Experts on Indigenous Populations/Communities of the African Commission of Peoples' and Human Rights, that the Berber population is estimated at around 12 million people (45 per cent of the population) and has a distinct identity, culture and language (Tamazight). The Committee notes that the Royal Institute of Amazigh Culture (IRCAM) has the mandate to promote the use of Tamazight in education and in social and cultural life and the media. The Committee recalls that under

the Convention the implementation of a national policy on equality requires the Government to take proactive measures to ensure that direct and indirect discrimination in employment and occupation do not exist in practice on the basis of national extraction. *In order to be assured that the Convention is being effectively applied in law and in practice to all groups of the population, the Committee therefore asks the Government to study the employment situation of the Berber population and to report on the progress made in this regard.*

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

Nepal

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1976)

Articles 1 and 2 of the Convention. Application in law. The Committee recalls that article 13(4) of the interim Constitution provides that there shall be no discrimination with regard to remuneration and social security between men and women for the same work. The Committee previously indicated that this provision is not in conformity with the Convention which requires equal remuneration for men and women for work of equal value. The concept of “work of equal value” includes, but goes beyond equal remuneration for the same work, because it also requires equal remuneration for work that is different, but that is nevertheless of equal value. The Government’s attention is once again drawn to the 2006 general observation on the Convention which further elaborates on this matter. *The Committee urges the Government to ensure that the Convention’s provisions are taken into account in the preparation of Nepal’s future Constitution and hopes that it will guarantee the right of men and women to equal remuneration for equal work and for work of equal value, in accordance with the Convention. Noting that the Government is in the process of preparing new draft labour legislation, the Committee also urges the Government to ensure that the future labour legislation gives full expression to the principle of equal remuneration for men and women for work of equal value.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1974)

Articles 1 and 2 of the Convention. Legislation. In its previous observation the Committee noted that in addition to the provisions concerning the right to equality and the right to employment, set out in the Interim Constitution of Nepal 2007, the inclusion of non-discrimination and equality provisions into the labour or other relevant legislation may be required to ensure that all men and women, in the private and public sectors, are effectively protected from discrimination in employment and occupation on all the grounds covered by the Convention. The Committee also stressed the importance of adopting legislation prohibiting sexual harassment at work. The Committee notes from the Government’s report that further progress has been made in preparing new labour legislation. A tripartite task force established for this purpose has submitted its report which is now scheduled for discussion in the Central Labour Advisory Committee and the approval of the Government. *The Committee urges the Government to ensure that the new labour legislation includes provisions prohibiting discrimination in employment and occupation, including in respect of recruitment, on all the grounds covered by the Convention, and that it also prohibit sexual harassment at work. The Committee asks the Government to continue to provide information on the progress made in this regard.*

Equality of opportunity and treatment in employment and occupation, irrespective of sex, ethnicity, indigenous origin, religion and social origin. The Committee notes that the Minister of Finance, in his budget speech in September 2008, highlighted that pervasive socio-cultural and economic discrimination and inequality on the basis of class, caste, region and gender had become a serious problem of the country and that it was urgent to properly address the demands raised by various oppressed castes, women, Dalits and indigenous and ethnic groups. The Minister announced a number of measures targeting these groups. The Committee also notes from the Government’s report that the current interim plan emphasizes the empowerment of women and marginalized groups, including through access to gainful employment. The adoption of a new National Employment Policy and employment generation programmes are envisaged under the ILO Decent Work Country Programme (2008–10) which stresses that all outcomes of the Programme should reach marginalized women, young people, Dalits, indigenous people (Janajati) and other minorities. *The Committee requests the Government to provide information on the following:*

- (i) *the progress made in adopting a National Employment Policy and the measures taken to ensure that it adequately addresses the situation of women, Dalits and indigenous peoples, in line with their rights and aspirations; and*
- (ii) *the specific programmes and projects aiming at promoting equality of opportunity and treatment of women, indigenous peoples, Dalits and other marginalized groups, including information on the outcomes of these programmes. In this regard, please provide statistical information on the position of men and women in the labour market, as well as statistical information indicating the progress made in addressing discrimination and inequality faced by Dalits, indigenous peoples and other marginalized groups.*

Article 3(d). Civil service. The Committee notes that according to the United Nations High Commissioner for Human Rights, Mashesis, Dalits, Janajatis and other marginalized groups continue to be severely underrepresented in most state and civil service structures, including courts, law enforcement agencies and local authorities A/HRC/7/68, 18 February 2008, paragraph 50). The High Commissioner also reports that a Civil Service Bill adopted in August 2007

reserved 45 per cent of posts for women, Madhesi, Janajati/Adivasi, Dalits and disabled persons and that quotas of posts for women and marginalized groups have been established in the Nepal police and armed police force regulations. ***The Committee requests the Government to provide the texts of the laws and regulations providing for reservations and quotas of posts for women and marginalized groups in the civil service, including the police. It also asks the Government to provide information on the specific steps taken by the Civil Service Commission to implement these provisions and to indicate the number of men and women from target groups that have been admitted to the civil service during the reporting period.***

Discrimination based on political opinion. The Committee recalls its previous comments concerning sections 10 and 61(2) of the Civil Service Act which provide that “moral turpitude” constitutes a ground for exclusion or removal from the civil service. The Committee concluded that there are no criteria established to determine what constitutes “moral turpitude”. Given the vagueness of the term “moral turpitude” and the resulting possibility that it could be applied in an arbitrary manner leading to discrimination based on political opinion, the Committee had expressed the hope that these provisions would be repealed in the context of the recent amendments to the Civil Service Act. ***Regretting that no information has been provided by the Government on this matter, the Committee requests the Government to indicate whether sections 10 and 61(2) of the Civil Service Act have been repealed.***

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

Netherlands

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1971)

General measures to address the gender wage gap and differences in remuneration of part-time workers. The Committee notes the communication from the Netherlands Trade Union Confederation (FNV), received on 29 August 2008, which was sent to the Government for its comments thereon. In its communication, the FNV, referring to an average wage gap between men and women of 18 per cent, calls upon the Government to formulate concrete and specific objectives, targets and timetables to narrow this gap. According to FNV, such specific targeted action is necessary, given that men are usually working full time whereas many women are working part time (an average of 23 hours per week). Surveys show that women working part time are often not getting the extra earnings and bonuses received by their male counterparts working full time in the same job. Furthermore, most of the jobs in which women are employed are paid less (i.e. governmental departments, non-profit sector and social service sector) than jobs in which men are employed.

The Committee recalls its previous comments in which it noted that in 2005 49.8 per cent of women and 17.4 per cent of men working in the Netherlands were employed half time, and that certain provisions in collective agreements, such as those excluding part-time workers from bonuses relating to overtime, lead to pay inequalities between men and women. The Committee also recalls that research was continuing into distinctions in working hours, and that the study group “Equal Pay Works!” had recommended that equal pay should be addressed in a wider context, by giving additional attention to combining work and family life, greater involvement of employees in more flexible working-time arrangements, and breaking the glass ceiling by encouraging diversity policies in companies and encouraging career ambitions of women. The Committee notes from the Government’s report that a Task Force Part-Time Plus was established in 2008 which has the aim of making it easier for employees to combine work and care duties and to encourage women who wish to work more hours to do so. The increase in labour participation is expected to lead indirectly to narrower differences in remuneration. The Committee further notes that various studies and surveys have been undertaken with a view to determining differences in remuneration and their underlying causes. A report from the CLOSE (Correction of Wage Gap in Sectors) project was presented to Parliament in December 2007 covering research on differences in remuneration in seven sectors (i.e. food and luxury industry, retail industry, financial institutions, cleaning industry, public administration, hospitals and other health care and welfare care) for which the uncorrected difference in remuneration remained relatively high. The Ministry of Social Affairs and Employment is also analysing the extent to which differences in remuneration can be traced back to emancipation, discrimination, sociological or economic factors. The results of the study were to be finalized by October 2008 and were expected to help focus solutions addressing remuneration differences. The Committee further notes that the report of the Labour Inspectorate on differences in remuneration in 2006, which has not yet been finalized, will devote attention to distinctions based on working hours in the various sectors. ***The Committee asks the Government to provide information on the impact of the Task Force Part-Time Plus on reducing differences in remuneration between men and women, including differences relating to part-time work. The Committee also hopes that results of the research undertaken by the CLOSE Project and on the causes of the wage gap will permit the Government to take more targeted action to reduce the wage 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.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1973)***

The Committee notes the communications from the Trade Union Confederation of Middle and Higher Level Employees Union (MHP), dated 27 August 2008, and the Netherlands Trade Union Confederation (FNV), dated 29 August 2008, concerning the application of the Convention, which have been sent to the Government for its comments thereon.

Legislative protection against discrimination. Social origin

The Committee recalls that the equal treatment legislation omits the ground of “social origin” and that according to the Government “social origin” is covered by the wording of article 1 of the Constitution which prohibits discrimination “on any grounds whatsoever”. The Committee notes the Government’s statement that it has no intention of including the ground of social origin in the national legislation since it considers it to be sufficiently covered by indirect discrimination based on one of the other grounds of discrimination such as race, nationality, religion or personal convictions, gender or civil status, covered by the Equal Treatment Act. The Committee notes that the MHP disagrees with this position and considers that addressing discrimination on the basis of social origin through indirect discrimination based on the abovementioned grounds is problematic. The explicit inclusion of the ground of social origin in the equal treatment legislation would lighten the burden of proof for persons alleging direct discrimination on the basis of social origin. The Committee recalls that the Convention covers both direct and indirect discrimination based on social origin. It also recalls that, where legislative measures are taken to give effect to the principle contained in the Convention, they should include all the grounds contained in *Article 1(1)(a) of the Convention*. ***The Committee therefore requests the Government to consider amending the legislation to explicitly include social origin as a prohibited ground of discrimination and to provide information on any progress in this regard.***

Discrimination on the basis of race, colour, national extraction and religion

The Committee recalls its previous observation in which it noted that uncertainty remained about the actual impact of the various measures taken by the Government on achieving genuine equality of ethnic minorities in employment and vocational training. Employment data continued to show a mainly negative trend as to the employment and education of men, and particularly women, belonging to ethnic minorities, including immigrant women of Turkish and Moroccan origin. The Committee had therefore requested the Government to increase its efforts to address discrimination against ethnic minority groups, particularly women, and to indicate the extent to which the measures taken had an impact on increasing their access to employment and occupation.

The Committee notes that the Government continues to undertake a number of projects and initiatives, including research, aimed at removing impediments faced by ethnic minorities when entering and advancing in the labour market. It notes that in April 2008 the Labour Foundation presented to the Government a “Declaration on promoting diversity inside and outside the company” addressed to policy-makers, workers’ and employers’ and minority organizations, and continued to call upon the social partners to fight discrimination at work and promote equal opportunities for ethnic minorities. Activities have also been organized in the context of the “European Year of Equal Opportunities for All!”. In addition, new legislation on municipal anti-discrimination facilities (ADVs) is being proposed requiring municipalities to provide accessible anti-discrimination services to assist local residents in handling their complaints. The Committee notes the Government’s indication that, while unemployment among non-Western minorities remains high, some positive trends can be noted. The Government refers to the statistics on the labour market position of “non-Western minorities”, including young people, for 2007, showing that between 2006 and 2007 the labour force participation of non-Western minorities increased by 5.9 per cent as compared to 1.2 per cent for native Dutch; it was the greatest for women belonging to non-Western minorities. The figures also show that the decline in unemployment was markedly greater for non-Western minorities, particularly women. With respect to migrant youth, the Government indicates that the Youth Unemployment Task Force was disbanded in 2007 because it had reached the target set of 40,000 young people finding jobs.

The Committee notes that the FNV, while welcoming the increase in the labour force participation of non-Western minorities, disagrees with the Government’s overall positive analysis of the abovementioned statistics. According to the FNV, clear government policies and measures to stimulate labour participation of non-Western minorities are lacking, especially in light of the results of the “Monitor on discrimination against non-Western minorities on the labour market” (“Discrimination Monitor”) (2007), which show that the labour force participation of non-Western minorities is precarious. The Committee notes that the FNV further highlights the lack of additional data in the Government’s report on the sectors and the quality of employment of non-Western minorities and the differences with native Dutch. Such data are needed to assess whether the measures taken by the Government to eliminate discrimination in the labour market of non-Western minorities are effective and sufficient to address inequalities. Finally, the FNV raises concerns about the very high unemployment rate of young people from ethnic backgrounds (in January 2008, this was 15 per cent against 6 per cent for native Dutch). According to the FNV, the drop in the unemployment rate of young people from ethnic backgrounds is mainly due to economic growth rather than specific measures taken by the Government. The FNV is therefore disappointed that the Government has not followed up on the measures proposed by the Social Economic Council in a report published in 2006 and that the Youth Unemployment Task Force has been disbanded.

The Committee notes from the above that the existence of discrimination and inequality of non-Western minorities in the labour market is widely recognized and documented. It notes from the results of “Discrimination Monitor” (2007) that discrimination against non-Western minorities, and in particular persons of Moroccan origin, impedes their access to the labour market and their ability to secure permanent employment. Non-Western minority jobseekers deal with discrimination by avoiding certain companies or sectors, not providing information on their birth in their application or removing headscarves at work. Furthermore, the figures provided by the Government also show that in 2007 the net labour participation for non-Western minorities was only 51.8 per cent as compared to 68.1 per cent for native Dutch. The unemployment rate of non-Western minority women and men in 2007 also remained as high as 11.4 per cent and 9.9 per cent, respectively, as compared to 5 per cent and 2.8 per cent for native Dutch women and men, respectively. The Committee further notes that complaints submitted to the Equal Treatment Committee in 2006 and 2007 concerning racial and religious discrimination mostly related to discrimination in job selection due to wearing of the headscarf, language requirements and colour of skin. *In light of the above and considering that the information by the Government remains general as to the outcomes of the measures taken with respect to the elimination of or decrease in discrimination in employment and occupation of certain ethnic minority groups, the Committee asks the Government to provide information on the following:*

- (i) *the policies adopted and measures taken, and their impact, to stimulate the labour participation of non-Western minorities, in particular young persons and women, in a wide range of occupations and sectors of employment;*
- (ii) *statistical data, disaggregated by sex, on the quality of employment of non-Western minorities and the sectors and occupations in which they are employed, indicating any differences with native Dutch;*
- (iii) *the status of the new legislation on municipal ADVs and information on the number and nature of complaints filed which relate to discrimination based on race, colour, religion and national extraction with the courts and the Equal Treatment Commission.*

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

Nigeria

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

Articles 1, 2 and 3 of the Convention. Discrimination based on sex with regard to employment in the police force.

The Committee previously considered that sections 118–128 of the Nigeria Police Regulations, which provide special recruitment requirements and conditions of service applying to women, are discriminatory on the basis of sex and thus incompatible with the Convention. Accordingly, the Committee urged the Government to bring the legislation into conformity with the Convention. The provisions in question provide the following:

- Section 118 excludes women who are pregnant or married from being eligible for seeking for enlistment in the police force. It also provides for a minimum age for enlistment of 19 years, while men can apply as of 17 years (section 72(2)(b)). The minimum height requirement of 1.67 metres applies to men and women.
- Section 119 provides that a specified form shall be used for the fingerprinting of women candidates and that the medical examination of women candidates shall take place at the Police College immediately prior to enlistment.
- Section 120 provides that women candidates shall be interviewed in the presence of a woman police officer and that interviewing officers shall bring to the attention of the women candidates the provisions of these Police Regulations governing the duties of women police, and the miscellaneous conditions of service attaching to women police (as laid down in section 123–128).
- Section 121 lists the duties that women police officers are permitted to perform, such as investigation of sexual offences against women and children, attendance when women and children are being interviewed by male police officers, searching, escorting and guarding women prisoners; school crossing duties; and crowd control, where women and children are present.
- Section 122 provides that women police officers may, in order to relieve male police officers from these duties, be employed in clerical duties, telephone duties and “office orderly duties”.
- Section 123 provides that women police officers shall not be called upon to drill under arms or take part in any baton or riot exercise.
- Section 124 requires women police officers wishing to marry to make a written request for permission to the police commissioner, providing the name, address and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years.
- Section 125 provides that a married woman police officer shall not be granted any special privileges by reason of the fact that she is married, and shall be subject to posting and transfer as if she were unmarried.

- Section 126 provides that a married woman police officer who is pregnant may be granted maternity leave, while section 127 provides that an unmarried women police officer who becomes pregnant shall be discharged from the force.
- Section 128 regulates the wearing of make-up as well as jewellery and hairstyles.

In its report, the Government expresses the view that sections 118 to 128 are not discriminatory. The Committee recalls that the Convention defines as discriminatory any distinction, exclusion or preference made on the basis of sex or other prohibited grounds which have the effect of nullifying and impairing equality of opportunity in employment and occupation. The Committee considers that sections 118 to 128, taken together, reflect an outdated and gender-biased approach as regards the role of women in general, and as members of the police force, in particular. The criteria and provisions relating to pregnancy and marital status contained in sections 118, 124 and 127 constitute direct discrimination. As regards the limitation of the duties that women police officers are permitted to perform, the Committee recalls that *Article 1(2)* provides that any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination. Whether or not a distinction is based on inherent job requirements and is thus acceptable has to be determined on an objective basis, free from gender bias. The Committee considers that sections 121, 122 and 123 are likely to go beyond what is permitted under *Article 1(2)*. A common height requirement for men and women is also likely to constitute indirect discrimination against women.

Recalling that each Member for which this Convention is in force, in accordance with Article 3(c), is under the obligation to repeal any statutory provisions which are contrary to equality of opportunity and treatment, the Committee once again urges the Government to bring the legislation into conformity with the Convention, and to indicate the measures taken to this end in its next report.

The Committee trusts that the Government, in collaboration with workers' and employers' organizations, will take the necessary measures to ensure equality of opportunity and treatment of women in the police force. It encourages the Government to have regard to the guidance concerning equality issues set out in the Guidelines on social dialogue in public emergency services in a changing environment, adopted by the ILO Joint Meeting on Public Emergency Services: Social Dialogue in a Changing Environment in January 2003.

Noting that the Government's report does not reply adequately to most of the Committee's previous comments, the Committee urges the Government to ensure that full information on all the pending issues is provided in its next report.

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

Norway

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)

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

The Committee notes with interest the adoption of new legislation in the field of equality and non-discrimination. It notes in particular the following: the Act (No. 33 of 2005) on the prohibition of discrimination based on ethnicity, religion, etc. (Anti-Discrimination Act); the Act (No. 38 of 2005) to amend the Act (No. 45 of 1978) respecting equality between the sexes, etc. (Implementation of Directive 2002/73/EC of the European Parliament and of the Council and incorporation into Norwegian law of the United Nations Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol); the Act (No. 40 of 2005) on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal (Anti-Discrimination Ombud Act); and Chapter 13 concerning protection against discrimination of the Act (No. 62 of 2005) relating to working environment, working hours and employment protection, etc. (Working Environment Act). The Committee notes that the Anti-Discrimination Act of 2005 prohibits and defines direct and indirect discrimination on the grounds of ethnicity, national origin, descent, skin colour, language, religion or belief, and prohibits harassment and instructions to discriminate on the basis of these grounds, as well as acts of reprisal. The Act also provides for positive action and the shifting of the burden of proof on the person allegedly responsible for breaching the provisions of the Act. The Committee further notes the new provisions pursuant to the amendments to the Gender Equality Act of 1978 concerning the obligation of employers, organizations and institutions to prevent sexual harassment, the shared burden of proof and the objective liability for damages in cases of infringements of the law. Finally, it notes that Chapter 13 of the Working Environment Act prohibits direct and indirect discrimination on the basis of political views, membership of a trade union, sexual orientation, disability or age, as well as harassment and the instruction to discriminate on the basis of these grounds. With respect to discrimination based on gender, the Working Environment Act specifies that the Gender Equality Act will apply and, with respect to discrimination on the basis of other grounds, the Anti-Discrimination Act will apply. The Working Environment Act further provides for protection against discrimination in all aspects of employment and contains provisions on the burden of proof and preferential treatment. ***The Committee asks the Government to provide information in future reports about the application in practice of the Gender Equality Act, the Anti-Discrimination Act, the Working Environment Act and the Anti-Discrimination Ombud Act.***

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

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

Panama

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)

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

1. *Article 1 of the Convention. Work of equal value.* In its previous comments, the Committee asked the Government to give legislative expression to the principle of equal remuneration for men and women for work of equal value by amending section 10 of the Labour Code, under the terms of which "equal wages shall be paid for equal work in the service of the same employer, performed in the same job, working day, conditions of efficiency and seniority", with a view to improving the application of the Convention. The Committee recalls that this section contains provisions that are more restrictive than the principle of equal remuneration for work of equal value, as it is limited to guaranteeing equal remuneration for equal work. In its report, the Government indicates that it disagrees with the views of the Committee of Experts and does not see any inconsistency between section 10 of the Labour Code and the principle set out in the Convention. The Committee considers that the difficulties relating to the application of the Convention in law and practice arise in particular from this lack of understanding of the scope and implications of the concept of work of "equal value".

2. The Committee, therefore, draws the Government's attention to its general observation of 2006, in which it clarifies the meaning of "work of equal value". The Committee reminds the Government that, as indicated in paragraph 3 of its general observation, in order to address occupational segregation, "where men and women often perform different jobs, under different conditions, and even in different establishments, the concept of 'work of equal value' is essential, as it permits a broad scope of comparison. 'Work of equal value' includes but goes beyond equal remuneration for 'equal', the 'same' or 'similar' work, and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value." In paragraph 6 of the general observation, the Committee indicates that "several countries still retain legal provisions that are narrower than the principle as laid down in the Convention, as they do not give expression to the concept of 'work of equal value', and that such provisions hinder progress in eradicating gender-based pay discrimination against women at work." *The Committee, therefore, urges the Government: (a) to amend section 10 of the Labour Code by including the principle of equal remuneration for work of equal value; (b) to take the necessary measures to clarify the meaning of this principle with the authorities and with workers' and employers' organizations; and (c) to provide information 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 very near future.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

The Committee notes the communication sent by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP), received on 7 October 2008 which was sent to the Government on 13 October 2008. The Committee notes that the Government's report has not been received. *The Committee hopes that the Government will make every effort to take the necessary action to submit its report in the near future, including replies to the Committee's 2007 observation and direct request and comments it may wish to make in reply to the observations made by FENASEP.*

Philippines

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)

The Committee notes the communication, dated 15 September 2008, received from the Public Services Labor Independent Confederation (PSLINK) denouncing pay differences between men and women in the public sector. The communication was sent to the Government for its comments thereon. The Committee will examine the comments of PSLINK together with the Government's reply at its next session.

Article 1(b) of the Convention. Work of equal value. The Committee recalls its previous observation in which it had continued to urge the Government to take the necessary steps to bring its legislation into conformity with the Convention. The Committee had noted in the past that, while section 135 of the Labour Code specifically referred to "work of equal value", section 5(a) of the 1990 Rules implementing Republic Act No. 6725 of 12 May 1989, defined work of equal value to mean "activities, jobs, tasks, duties or services ... which are identical or substantially identical". In the Committee's view, this provision restricted the application of the principle of equal remuneration for men and women to jobs which were essentially the same – a concept which was narrower than that required by the Convention. The Committee had further recalled that a proposed amendment of section 135(a) of the Labour Code had provided for equal remuneration for men and women "for work of equal value whether the work or tasks are the same or of a different nature". The Committee regrets to note that the Government, in its reply, merely restates section 135 of the Labour Code, without providing any further indication of its intention to bring its legislation into conformity with the Convention.

Article 3. Job evaluation. The Committee further regrets that the Government's report, once again, omits to provide information about any methods available which permit the objective evaluation of jobs in accordance with *Article 3(1)* of the Convention. The Committee had noted in the past that the Department of Labor and Employment (DOLE) was developing such methods.

The Committee once again refers to its 2006 general observation on this Convention, as well as its previous observation of 2007, in which it explained the concept of “work of equal value” and emphasized the importance of promoting and developing methods to undertake an objective evaluation of jobs free from gender bias. *The Committee strongly urges the Government to amend section 135(a) of the Labour Code or section 5(a) of the 1990 Rules implementing Republic Act No. 6725 of 12 May 1989 so as to finally bring its legislation into conformity with the Convention. The Committee also urges the Government to take measures to promote an objective evaluation of jobs, free from gender bias, taking into account the guidelines provided in its 2006 general observation. Please also supply information on any initiatives taken by the workers’ and employers’ organizations to determine wages on the basis of an objective evaluation of jobs.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

Article 1 of the Convention. Lack of protection against discrimination in hiring. The Committee recalls its long-standing comments since 1998 urging the Government to take the necessary legal measures to ensure that women are fully protected against discrimination in all aspects of employment and occupation, including hiring. While noting the Government’s very general statement that it is taking steps to address discrimination against women in hiring, the Committee regrets to note that the Government does not provide more detailed information on the nature and extent of the measures taken, including the amendment of section 135 of Republic Act (RA) of 12 May 1989, No. 6789, which continues to omit protection against discrimination in hiring. *The Committee strongly urges the Government to bring its legislation into conformity with Article 1 of the Convention so as to ensure that women are fully protected against discrimination in all aspects of employment, not only with respect to terms and conditions of employment, training and education opportunities and job security, but also in hiring. The Committee also asks the Government to provide full details on the measures taken to prevent and address discrimination against women in hiring, and the results achieved.*

Article 3(d). Application in the public service. For a considerable number of years (since 1999), the Committee has been asking the Government to provide information on the application of the Convention in the public service. In particular, the Committee requested information on the practical application of specific provisions on non-discrimination and equal opportunities of men and women under the Merit Promotion Plan (MPP) and the impact of the Civil Service Commission Resolution No. 99-0684 on the promotion of equal opportunities for men and women at third-level positions in the civil service. The Committee also requested information on the application in practice of Resolution No. 98-463 banning discrimination on the basis of gender, religious or political affiliation, minority or cultural extraction or social origin in respect of employment and occupation. The Committee regrets to note that the Government’s report once again remains silent on how the principle of equality of opportunity and treatment is ensured in the public service. *The Committee strongly urges the Government to provide full particulars in its next report on the following:*

- (i) *the application of the MPP and the impact of the Civil Service Commission Resolution No. 99-0684 on the promotion of gender equality;*
- (ii) *the application in practice of Resolution No. 98-463 banning discrimination on the basis of gender, religious or political affiliation, minority or cultural extraction or social origin in respect of employment and occupation; and*
- (iii) *the general measures taken to ensure the observance of the national policy on equality in the public service with respect to all the grounds set out in Article 1(1)(a) of the Convention.*

Please also provide up to date statistical data disaggregated by sex, religion and national extraction, if possible, on employment in the public service.

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

Qatar

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1976)

Article 1 of the Convention. Legislation. The Committee recalls that the provisions in the Constitution and Labour Law No. 14, 2004, are considerably narrower than the principle set out in the Convention as they do not cover discrimination based on political opinion, national extraction and social origin and only protect against discrimination in certain aspects of employment. Therefore, the Committee had asked the Government to consider amending its legislation so that it more fully reflected the principle of equal opportunity and treatment as set out in *Article 1* of the Convention. The Committee notes that the Government once again states that the Constitution and Labour Law No. 14, 2004, provide adequate protection against discrimination in employment and occupation on the grounds enumerated in the Convention. The Government states that, since the fundamental principle of non-discrimination and equality is laid down in the Constitution, all other laws should be in conformity with this principle. Rather than repeating this principle in supplementary legislation, the Government intends to concentrate on its practical application. The Committee recalls that while there is no general obligation to legislate in all the areas covered by the Convention, where provisions are adopted to

give effect to the principle of the Convention, they should include all the grounds of discrimination set out in *Article 1(1)(a)* of the Convention. While appreciating the Government's explanations, the Committee still maintains that an explicit non-discrimination provision in the Labour Code covering all the grounds would considerably improve the legal protection against discrimination in employment and occupation. ***The Committee, therefore, asks the Government to take the necessary steps to amend its legislation so that protection against discrimination is guaranteed with respect to all the grounds of discrimination set out in Article 1(1)(a) of the Convention, including national extraction, political opinion and social origin. Please also indicate how protection against discrimination on the grounds covered by the Convention is being ensured, in practice, with respect to access to vocational training and guidance, access to employment and particular occupations, including recruitment, as well as with respect to all terms and conditions of employment.***

Equality of opportunity and treatment and non-discrimination of migrant workers. Practical application. The Committee notes that Qatar is receiving a growing number of foreign workers, mainly from Asian and African countries. It notes from the Government's report that the National Human Rights Committee (NHRC) has received several complaints from domestic workers, who are mainly women, alleging excessive hours of work without weekly rest, prohibitions on leaving the house, and inhumane and severe mistreatment. The Committee further notes the report of 2006 of the NHRC in which it expresses concern about the working conditions and rights of migrant workers in the construction, digging and concrete-making industries, and of domestic workers. The NHRC is particularly concerned about the abuses against and mistreatment of migrant workers, as well as instances of human trafficking, resulting from the sponsorship system currently in place. According to the NHRC, the system prevents workers from changing their working conditions and has led to arbitrary practices by sponsors, including the non-payment of wages, withholding workers' passports, lack of adequate accommodation, shortage of food, involuntary long hours of work, battering, lashing, detention and sometimes sexual harassment or rape. Due to the high dependency on their employer, workers are reluctant to complain out of fear of losing their job and being deported. The NHRC is also extremely preoccupied by the fact that migrant workers, including domestic workers, are being held in the Deportation Detention Centre for long periods of time following a request by their sponsor or pending the resolution of civil and labour disputes with their sponsor. According to the NHRC there is an urgent need for the establishment of an effective and accessible mechanism within the Labour Department to settle disputes between migrant workers and their sponsors.

The sponsorship system. The Committee notes that Law No. 3 of 1963 on the entry and residence of aliens in Qatar, and its amending laws, and Act No. 3 of 1984 on the regulation of the sponsorship of the residence and exit of aliens, as amended by Law No. 21 of 2002 regulate the sponsorship system. Under the legislation, every foreigner asking for admittance or residence in Qatar to work, practice a profession or trade must have a sponsor. Section 19(1) of Law No. 63 provides that a foreigner who has been admitted for a certain job shall not leave that job for another, and shall leave the country in case of cancellation of the sponsorship for any reason whatsoever. However, the Minister of Internal Affairs may approve the transfer of sponsorship of a foreign worker to another employer, if this is considered in the interest of the country. Furthermore, section 5 of Ministerial Order No. 21 of 2001 provides that foreign workers may only change their employer, and therefore sponsor, if their sponsor agrees, and only under certain conditions. Furthermore, sections 21 and 22 of the Law of 1963 provide for the deportation of foreigners in a number of cases and their mandatory stay in certain areas for two weeks, which is renewable. The Committee notes that the NHRC has called for the abrogation of Law No. 3 of 1963 and Law No. 3 of 1984, and asked the Government to enact legislation that restores balance to the worker-employer relationship.

Legal protection of migrant workers and enforcement of their rights. The Committee recalls that article 35 of the Constitution provides that there shall be no discrimination on account of sex, origin, language, or religion, and that Labour Law No. 14, 2004, applies to migrant workers, although casual workers, domestic and similar occupations remain outside the scope of the Labour Law. However, the Committee notes that, following a recommendation of the NHRC, the Government has submitted a draft law regulating the employment of domestic workers to the Council of Ministers. The Committee further notes that migrant workers may submit complaints to the NHRC which, pursuant to section 2(3) of Decree Law No. 38, 2002, on the establishment of the National Committee of Human Rights, can investigate complaints of human rights and suggest suitable means to address them. The Committee notes that, in 2006, the NHRC received 1,202 complaints, of which 160 concerned deportation decisions, 340 sponsorship transfer requests and 230 complaints regarding disputes between sponsors and workers concerning money, travel, sponsorship transfer or the obligation to work for another employer; 31 complaints were received relating to the right to work. The Committee further notes that, according to the Government, the NHRC has always examined complaints from domestic workers as a matter of urgency or has appointed social officers to investigate the facts and the validity of the allegations. Complaining workers have been transferred to other employers, or an end is put to the employment relationship, and once the workers have received their financial entitlements, their repatriation is ensured.

The Committee's assessment. The Committee welcomes the fact that the situation of migrant workers in Qatar is being given increased attention, and that violations of their rights are now being documented and recognized. Nevertheless, noting the serious concerns expressed by the NHRC, the Committee is concerned about the disproportionate dependency of the worker on the employer created under the sponsorship system, which enhances workers' vulnerability to abuse and exploitation and contributes to the reluctance to report abusive working conditions. The Committee is also

concerned about the practice of holding migrant workers in the Deportation Detention Centre awaiting the outcome of labour disputes with their sponsor, although some measures appear to have been taken to address this issue. **Concerned that the possibility for employers under the sponsorship system to exert disproportionate power on migrant workers leads to discrimination against migrant workers on the basis of race, sex, religion and national extraction with respect to their conditions of work, the Committee asks the Government to provide the following information:**

- (i) **the concrete measures taken, including by the NHRC, to address discrimination of migrant workers based on race, sex, religion or national extraction in employment and occupation, and in particular in relation to their conditions of work;**
- (ii) **any follow up to the recommendation of the NHRC to abrogate Law No. 3 of 1963 on the entry and residence of aliens in Qatar and Law No. 3 of 1984 on the regulation of the sponsorship of the residence and exit of aliens, as amended by Law No. 21 of 2002; pending legislative steps in this regard, to examine the extent of discrimination of migrant workers based on the grounds set out in the Convention, including the discriminatory impact that the sponsorship system may have on migrant workers;**
- (iii) **measures taken to strengthen further the enforcement of the legislation applicable to migrant workers with a view to eliminating and preventing discriminatory or abusive practices and treatment contrary to the Convention and the legislation, including through providing accessible and effective complaints procedures and providing adequate information, counselling and legal assistance to migrant workers;**
- (iv) **the number and nature of complaints relating to employment discrimination submitted by migrant workers, and in particular domestic workers, to the NHRC or other authorities competent to monitor their situation, as well as the remedies provided. Please also indicate any activities undertaken by the labour inspection services to address discrimination against migrant workers; and**
- (v) **the status of the draft law on the employment of domestic workers, which the Committee hopes will be in conformity with the principle of the Convention. Please also indicate whether any legislative steps are being considered to extend the Labour Law to casual workers.**

Equality between men and women. Access to vocational training and education. The Committee notes the statistics concerning the distribution of men and women in training and educational institutions. With respect to the enrolment in university courses, the figures show that 89.9 per cent of the students enrolled in the College of Arts and Science are women and that women constitute 68.3 per cent of the students of the College for Business and Economics, 80.4 per cent of students of the College of Education, 70.8 per cent of students in the College for Sharia and Islamic Studies, 58.2 per cent of the students in the College of Law, 51.8 per cent of the students in the College of Engineering and 76.2 per cent in the Foundation Programme Unit. The Committee also notes that some of the courses do not have any women enrolled, or in very low numbers, while in others they constitute 100 per cent of the student body. The Committee further notes that a help desk has been opened which has a wide variety of tasks aimed at assisting jobseekers in obtaining a job that matches their specializations, skills and tendencies. The help desk also prepares studies and compiles statistics on employment and presents conclusions and recommendations in this regard. **The Committee asks the Government to continue to provide comparable statistical information on the distribution of men and women among the various educational and training institutions, as well as information on how the education and training received by women translate into employment opportunities once they complete the courses. Please also provide information on the activities of the help desk to promote women's employment.**

Discrimination based on sex. Job advertisements. The Committee recalls its previous observation in which it noted that jobs were advertised and filled based on stereotyped assumptions. It had expressed concerns about the Government's explanations that advertisements referring to "female secretary" and "male accountant" were not discriminatory but based on the employer's evaluation of the most suitable applicant for a specific post, based on expertise and gender. The Committee notes the Government's statement that certain professions are still exclusively held by men because women do not apply for such positions. The Government also states that, in Arabic, job titles are referred to in the masculine which does not mean that women are prohibited from applying or that the employer refuses to employ women. The Committee recalls that stereotyped assumptions regarding women's capabilities and "suitability" for certain jobs contribute to discrimination in hiring. While noting the Government's explanations, the Committee is unable to conclude that no discriminatory practices exist with respect to job advertisements and hiring. **The Committee urges the Government to take more proactive measures to address discriminatory advertising and hiring practices, such as awareness raising to eliminate stereotyped assumptions by employers of women's or men's suitability for certain jobs, as well as measures encouraging women to apply for posts traditionally or exclusively held by men, for example, by explicitly stating that both men and women are encouraged to apply for the job.**

National human rights machinery. In addition to the information mentioned above on the complaints received by the NHRC, the Committee notes the extensive information provided by the Government on the awareness-raising and promotional activities of the NHRC on the promotion of human rights. The Committee further notes that the Government's statement that the NHRC has never encountered any discrimination in employment and occupation on the ground of religion which can be attributed to the freedom of creed and belief of all citizens of Qatar. The Committee notes that the Government's report does not include any information on complaints received by the NHRC or other competent

bodies relating to discrimination based on any of the other grounds covered by the Convention. The Committee recalls that the Convention covers citizens and non-citizens and that the absence of complaints relating to employment discrimination based on religion or on other grounds covered by the Convention is not an indication of the absence of such discrimination in the country. *The Committee asks the Government to continue to provide information on the following:*

- (i) *the measures taken, and their impact, by the NHRC and other competent bodies to promote equality of opportunity and treatment in employment and occupation with respect to all the grounds covered by the Convention;*
- (ii) *the complaints received by the NHRC and the courts regarding discrimination relating to the grounds set out in the Convention, and the remedies provided; and*
- (iii) *the measures taken to increase awareness among workers and employers about the manifestations of employment discrimination covered by the Convention. Please also indicate how collaboration with workers' and employers' organizations is being sought in this regard.*

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

Rwanda

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1980)

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

1. In its previous observation, the Committee commented on section 84 of the Labour Code which provides that equally competent workers carrying out the same type of work under the same conditions must be equally remunerated, without any consideration as to their origin, sex or age. Having noted that this provision was narrower than the principle of the Convention because it emphasized equal remuneration for the "same work" rather than for work of equal value as required by the Convention, the Committee asked the Government to indicate whether consideration was being given to amending section 84 to bring it into line with the Convention. In its report, the Government states that the draft Labour Code no longer provides for the provisions currently contained in section 84. The Government indicates that section 7 of the draft Labour Code, more generally, prohibits any discrimination based on sex in employment, including as regards remuneration.

2. The Committee observes that, while a general prohibition of discrimination based on sex in employment is important, it may not be sufficient in itself to ensure the full application of the principle of equal remuneration for men and women for work of equal value, as set out in the Convention. *The Committee, therefore, urges the Government to ensure that equal remuneration provisions in accordance with the Convention will be introduced into the Labour Code, giving full legislative expression to the principle of equal remuneration for men and women for work of equal value, and asks the Government to indicate the steps taken concerning this matter in its next report.*

3. The Committee recalls that violations of the current section 84 are not subject to penalties. *Emphasizing that without effective means of redress against sex-based discrimination in respect of remuneration the application of the Convention cannot be effectively promoted, the Committee asks the Government to ensure that the new Labour Code will contain equal remuneration provisions that are properly enforceable by the competent authorities.*

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)

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

1. *Legislation. Grounds of discrimination and scope of protection.* Recalling its previous comments concerning section 12 of the Labour Code (Act No. 51/2001), the Committee notes the Government's statement that a draft Labour Code had been drafted, section 7 of which would replace section 12 of the existing law. According to the Government, the new section 7 of the draft Labour Code prohibits discrimination on all the grounds listed in *Article 1(1)(a) of the Convention* with respect to all stages of the employment process. *The Committee hopes that the revision of the Labour Code will introduce provisions on equality of opportunity and treatment in employment and occupation in accordance with the Convention, and encourages the Government to seek, in this regard, the assistance of the ILO. The Committee requests the Government to provide the text of the draft Labour Code to the Committee for examination.*

2. *Sexual harassment.* The Committee notes the Government's indication that section 16 of the draft Labour Code provides that a worker cannot be sanctioned for having been sexually harassed or for having objected to acts of sexual harassment by the employer, a representative of the employer or any other person abusing his or her authority. The same provision also protects workers who report sexual harassment. The Committee hopes that the new provisions on sexual harassment will not only address the protection of workers from reprisals, but also define and prohibit sexual harassment as such. The Committee urges the Government to have due regard to its 2002 general observation on sexual harassment for further guidance. *The Committee requests the Government to keep it informed of the steps taken to include appropriate provisions on sexual harassment in the Labour Code.*

3. *Application to the civil service.* The Committee notes that the Government's report refers to section 181 of the Constitution which envisages the establishment of a civil service commission as an independent national institution responsible for organizing an objective, impartial and transparent system for the selection of candidates. *Noting the observations made by the Congress of Labour and Brotherhood of Rwanda (COTRAF) according to which the civil service commission has not yet been*

established, the Committee requests the Government to provide full information on the establishment and functioning of this commission, including on the measures taken by it to ensure that recruitment to the civil service is free from discrimination.

4. Practical application. In its previous comments, the Committee noted observations from workers' organizations concerning discrimination in practice on the grounds of sex, ethnicity, religion, political affiliation or social origin, despite the fact that the law prohibits such discrimination. In reply to the requests for information made by the Committee in this regard, the Government indicates that no cases of discrimination have been reported to the labour inspection services. No information was provided on whether and how the National Human Rights Commission, the Office of the Ombudsperson or the courts had addressed instances of discrimination.

5. The Committee emphasizes that prohibiting discrimination by law is an important element in ensuring the application of the Convention. However, a national policy to promote equality of opportunity and treatment in employment and occupation, as envisaged under *Article 2* of the Convention, also requires the Government to take specific measures to ensure that equality of opportunity and treatment can be enjoyed in practice. *In this regard, the Committee recommends that the Government examine whether the available administrative and judicial remedies are appropriate to address discrimination in employment and occupation, as well as any other obstacles for the detection and resolution of instances of discrimination in employment and occupation. In this context, the Committee recommends that awareness raising and training on equality issues be strengthened. The Committee requests the Government to provide detailed information on the measures taken or envisaged in this regard, indicating how the cooperation with workers' and employers' organizations and other appropriate bodies, such as the National Human Rights Commission, has been sought. The Committee also requests the Government to indicate any cases of discrimination in employment and occupation dealt with by the competent authorities.*

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

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

Saint Lucia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)

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

1. *Definition of remuneration.* The Committee noted previously that the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, which provides for equal remuneration for work of equal value, did not define the term "remuneration". The Government in response, points to the provision of the Act which provides that "equal remuneration" means rates of remuneration that have been established without differentiation based on the grounds of gender" (section 6(2)). While acknowledging the importance of this provision in applying the principle of the Convention, the Committee notes that it does not define "remuneration", which pursuant to *Article 1(a) of the Convention*, is very broad, including "the ordinary, basic or minimum wage or salary, and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment". *The Committee asks the Government to confirm that the term "remuneration" as used in the Equality of Opportunity and Treatment in Employment and Occupation Act is to be understood as defined in Article 1(a) of the Convention, and to provide any administrative or court decisions in this respect.*

2. *Different wage rates for women and men.* The Committee has been commenting for a number of years on the existence of legislation establishing different wage rates for men and women, which is clearly a violation of the Convention, and asking that all laws and regulations containing different wage rates for men and women be repealed. *Regretting that the Government provides no information on this point, the Committee urges the Government to ensure that all laws and regulations containing differential wages for men and women are repealed. Recalling the Government's previous indication that older legislation stipulating different wage rates for men and women would be revoked with the adoption of the new Labour Code, the Committee urges the Government to confirm its intention to adopt the new Code without delay. Please keep the Committee informed of progress in this regard, and forward a copy of the Code upon its adoption.*

3. *Contracts of Service Act and Factories Regulations.* In its previous comments, the Committee noted that there were different ages for men and women with respect to entitlement to severance pay pursuant to the Contracts of Service Act. It also raised concerns regarding the provisions of the Factories Regulations, which single out women and young boys for exclusion from certain jobs. The Government indicates that pursuant to the draft Labour Code, there would no longer be different ages for men and women with respect to entitlement to severance pay, but that the Factories Regulations remain in force. *The Committee hopes that the Contracts of Service Act will be brought into conformity with the Convention soon, and asks the Government to consider amending the Factories Regulations Act, and to keep the Committee informed of steps taken in this regard.*

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

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

Saudi Arabia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)

Article 1 of the Convention. Work of equal value. The Committee has over a number of years expressed the hope that full legislative expression would be given to the principle of equal remuneration for work of equal value. The Committee noted in its previous comments that the new Labour Code, which came into effect on 23 April 2006, contained no reference to equal remuneration for men and women for work of equal value. The Committee notes the Government's assertion that the law is applied equally to men and women, and no laws set out separate wage rates for women and men. The Government also states that the provision providing that employers are obliged "to treat men and women employees

on equal terms as regards remuneration when the conditions and circumstances of the work are the same” (Order No. 37 of 1994) covers the principle of the Convention.

The Committee recalls that neither the absence of separate wage rates for women and men nor the absence of legislative provisions discriminating against women is sufficient to apply fully the principle of the Convention, because the concept of equal value is not addressed. Nor does Order No. 37 address work of equal value, as it is limited to work that is undertaken under the same conditions and circumstances, whereas the Convention also requires comparisons between jobs that are carried out under different conditions and circumstances. The Committee draws the Government’s attention to the Committee’s 2006 general observation underscoring the importance of providing expressly for equal remuneration not only for work that is equal, the same or similar, but also for work that is of an entirely different nature, but which is nevertheless of equal value. This is particularly important given that occupational sex segregation remains a prominent feature of the Saudi labour market. The Committee stated in its general observation that legal provisions which are narrower than the principle as laid down in the Convention, hinder progress in eradicating gender-based pay discrimination against women at work as they do not give expression to the concept of “work of equal value”. ***The Committee, therefore, asks the Government to take the necessary measures for the adoption of legislation to ensure application of the principle of equal remuneration for men and women for work of equal value in both the public and private sectors, and to provide information on the steps taken to this effect.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1978)

National equality policy

Multi-stakeholder task force. The Committee has for many years been commenting on the need to declare and pursue a national equality policy. In its previous observation, the Committee noted that in the course of the High-level mission, which took place in September 2006, the Saudi authorities had acknowledged that there was no national equality policy, and requested ILO assistance to develop such a policy. The mission provided terms of reference, which included the establishment and mandate of a multi-stakeholder task force. The Committee regrets that the Government provides no information in its report on whether the task force has been established, or on the progress made in the development of a national equality policy. The Committee recalls that *Article 2 of the Convention* requires the Government to declare and implement a national equality policy, and that Paragraph 2 of the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), describes in further detail the various objectives to be achieved by the national policy. ***The Committee urges the Government to take measures to declare and pursue a national policy designed to promote equality of opportunity and treatment in employment and occupation, with a view to the elimination of any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin, as required under Article 2 of the Convention. The Committee hopes that the Government will establish the task force without further delay, and take the necessary steps to secure ILO technical assistance. The Committee again requests the Government to provide information on the status of the national survey on the situation in the country with regard to discrimination on all the grounds set out in the Convention, and the establishment of an action plan.***

Prohibition of discrimination in employment and occupation. The Committee notes that the Labour Code, which came into force in April 2006, contains no specific provision prohibiting discrimination in employment and occupation. The Government had stated previously that the Labour Code was based on the principle of equality and, in its most recent report, the Government states that the Labour Code covers all persons without discrimination on the grounds of sex, race, religion or colour unless expressly excluded from its scope. The Committee recalls that *Article 3(b)* of the Convention indicates that the State must enact such legislation as may be calculated to secure the acceptance and observance of the policy defined in *Article 2* of the Convention. The necessity of introducing legislative measures in order to give effect to the Convention must thus be assessed within the framework of the national policy as a whole, having regard in particular to the other types of measures which may be taken and to the effectiveness of the overall action pursued. ***Given that serious concerns regarding discrimination in employment and occupation have been raised by the Committee for many years, as well as by the Conference Committee on the Application of Standards, the Committee requests the Government to include as part of its national equality policy, legislation specifically prohibiting discrimination, both direct and indirect, in the public and private sectors, on all the grounds set out in the Convention, applying to all aspects of employment, and ensuring effective means of redress.***

Scope of protection. In its previous observation, the Committee asked the Government to provide information on how domestic workers, agricultural workers, part-time workers, and “incidental, seasonal and temporary workers”, are effectively protected against discrimination. The Committee notes that the Government replies in a general manner that the Islamic sharia, the system of government and other regulations, guarantees the right to non-discrimination of all persons found on the territory of Saudi Arabia. ***The Committee requests the Government to provide detailed information regarding how in practice domestic workers, agricultural workers, part-time workers, and incidental, seasonal and temporary workers can bring a claim of discrimination in employment and occupation, whether any such claims have been filed and, if so, how they have been addressed. The Committee also requests the Government to provide information on the status of the adoption of the regulation on domestic workers, and to provide a copy as soon as it has***

been adopted. The Committee also urges the Government to ensure that any new legislative non-discrimination provision covers all workers, including those who are at present excluded wholly or partially from the scope of the Labour Code.

Equal opportunity and treatment for men and women

Occupational segregation. The Committee notes that occupational sex segregation remains a prominent feature of the Saudi labour market, with women being concentrated in education, health and social work. The Committee notes that the Committee on the Elimination of Discrimination against Women expressed concern that “the level of representation of women in public and political life, at the local, national and international levels and in particular in decision-making positions, is very low. It is further concerned that women were excluded from the first municipal elections in Saudi Arabia [and] ... women do not participate in the country’s Consultative Council” (CEDAW/C/SAU/CO/2, 8 April 2008, paragraph 25). The Committee notes that the Government points to measures taken in accordance with Decree No. 120 of 2004 to improve women’s access to a broader range of job opportunities at all levels. Women’s units have been established in a number of government bodies, including the Ministry of Labour and the Human Resources Development Fund, and women’s employment offices have started to receive applications from women in order to find them employment in the private sector. ***The Committee requests the Government to provide information on any further measures taken or envisaged to increase the participation of women in a broad range of sectors and occupations and to higher level and decision-making positions, including in public and political life. It also requests the Government to continue to provide information on the measures taken to implement Order No. 120, and the practical impact of such measures on increasing women’s employment opportunities.***

Education and vocational training. The Committee notes the continuing efforts made by the Government to improve the educational and training opportunities of women, including in non-traditional areas. The Committee also notes the concerns raised by the Special Rapporteur of the United Nations Human Rights Council on Violence against Women, its Causes and Consequences, that the progress in women’s education has not been accompanied by a comparable increase in their labour force participation (United Nations press release, 13 February 2008). The Committee notes the numerous programmes of the Human Resources Development Fund, and that it has opened a women’s branch to support business women and jobseekers, with 4,049 female trainees benefiting from the placement and training programme, 495 benefiting from the programme of loans, and 18,547 women benefiting from the programme of qualification of female jobseekers for employment in the private sector. ***The Committee requests the Government to continue providing information on the measures taken to promote training and educational opportunities for women, particularly in areas that have traditionally been dominated by men, including information on the proportion of women in different subject areas. Please also continue to provide information on the distribution of women and men among the various educational and training institutions, including higher education. The Committee also reiterates its request for information on whether, and to what extent, women are entering the labour market once they complete education and training courses. The Committee again requests information on the results of any research and analysis of labour market needs, and on how such results are being used to target training and education for women to improve their employment opportunities.***

Sexual harassment. ***Noting that the Government has not replied to its previous comments on this point, the Committee is obliged to again request the Government to consider including a provision in the Labour Code that defines and explicitly prohibits sexual harassment, in line with its 2002 general observation on this topic. With respect to domestic workers, the Committee again expresses its hope that the proposed regulation on domestic workers will specifically address the issue of sexual harassment, as these workers are particularly vulnerable to such harassment, and asks the Government to provide information regarding any steps taken in this regard.***

Special measures of protection. The Committee noted in its previous comments that the legislative prohibition of women and men working together had been repealed, but that there was very little awareness of this change. The Government replies generally that women are involved in mass media. The Committee notes the concern raised by the CEDAW Committee that de facto segregation of women in the workplace continues to be an impediment to women’s employment (paragraph 31). The Committee had also raised concerns regarding the protective measures set out in section 149 of the Labour Code, confining women to jobs that are “suitable to their nature”. In its report, the Government states that “suitable to their nature” means suitable to their body. The Committee must again express its concern that provisions limiting women’s access to certain sectors or jobs due to stereotyped assumptions linked to gender, and unrelated to maternity, impede equality in employment and occupation. ***The Committee urges the Government to take measures to ensure that workers and employers and their organizations are aware that the law no longer prohibits women and men from working together, and to address de facto workplace segregation. The Committee also requests the Government to amend section 149 of the Labour Code, with a view to ensuring that any protective measures are strictly limited to protecting maternity. The Committee again requests the Government to clarify the meaning “suitable to them” in the Order of 21 July 2003, which approved women’s participation in international conferences “suitable to them”.***

Migrant workers

The Committee regrets that the Government provides no response to its previous comments raising concerns regarding discrimination against migrant workers. The Committee notes that the CEDAW Committee has also expressed

concern, particularly regarding female migrant domestic workers, stating that “they are not yet covered by the current labour code, often are not aware of their rights, and, in practice, cannot easily file complaints and gain redress in cases of abuse” (paragraph 23). Similar concerns have also been raised by the above-mentioned Special Rapporteur. **Noting the particular vulnerability of migrant workers, in particular female migrant domestic workers, the Committee urges the Government to take measures to address the issues of discrimination and exploitation of these workers, including providing legal protection against discrimination to migrant workers, on all the grounds enumerated in the Convention, as well as accessible dispute resolution mechanisms. The Committee again urges the Government to take the following measures:**

- (i) **to launch an investigation into the foreign sponsorship system, including an examination of the allegations of abuse raised before this Committee;**
- (ii) **to follow up in a concerted manner issues relating to discrimination of migrant workers, including examining the occupations in which migrant workers are employed, their conditions of employment, and the particular situation of female domestic workers; and**
- (iii) **to make addressing discrimination against migrant workers an important component of the national equality policy.**

Discrimination based on religion

With respect to the issue of job advertisements including a reference to religion, the Committee notes that the Government refers to Ministerial circular No. 211/8/1 of 22/2/1407H, which specifies that all job advertisements must be approved by the employment offices, and that information from these offices indicates that no job advertisements include references to religion. The Committee notes that the Government does not provide any information regarding concrete measures taken to address discrimination on the ground of religion in practice. **The Committee is therefore obliged to request the Government as follows:**

- (i) **to address the matter of religious discrimination in the national equality policy;**
- (ii) **to take concrete and proactive measures to address religious discrimination; and**
- (iii) **to provide information on any studies commissioned, awareness raising undertaken, and enforcement measures with respect to religious discrimination.**

Dispute resolution and human rights mechanisms

The Committee has previously stressed the need for effective mechanisms to address discrimination and provide effective remedies and enforcement, including for migrant workers. Weaknesses in the existing system identified were lack of effective inspection, complaints mechanisms and enforcement regarding issues of discrimination, linked to lack of physical access, lack of awareness among judges and members of the commissions of discrimination issues, and the absence of women on the courts and commissions. The potential for the Human Rights Commission to take a leading role in this area was also raised. The Committee notes the Government’s general reply that no complaints of discrimination have been received by the relevant bodies. The Committee notes that the absence of complaints of discrimination, given the findings of the High-level mission, confirms the inadequacy of the dispute resolution mechanisms. **The Committee, therefore, urges the Government to take measures to ensure that those involved in dispute resolution and enforcement, including labour inspectors, labour dispute commissioners, judges and members of the Human Rights Commission, receive appropriate training regarding non-discrimination and equality issues. The Committee also requests the Government to provide the following information:**

- (i) **the number and nature of complaints brought before labour inspectors, labour dispute commissioners, the Human Rights Commission or the courts regarding discrimination, and the outcome thereof;**
- (ii) **any awareness-raising activities of the Human Rights Commission with respect to equality and non-discrimination;**
- (iii) **any steps taken to include women on the commissions and the courts to address discrimination matters.**

Senegal

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)

The Committee recalls its previous observation referring to communications from the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), of 23 September 2003 and the National Union of Autonomous Trade Unions of Senegal (UNSAS) of 16 October 2006, which drew attention to occupational sex segregation and also to the high rate of female illiteracy and the low school enrolment rate for girls in the country. In this regard, the Committee requested the Government to harmonize the national legislation with the principle of equal opportunity and treatment provided for in the Convention and also asked it to take appropriate measures to establish an equal opportunities policy aimed at promoting greater access for women to education and work, including

access to traditionally male-dominated jobs, self-employment and managerial and decision-making posts. The Committee also asked the Government to take steps to promote awareness raising and training on issues relating to gender equality.

The Committee notes from the Government's report that numerous decrees have been adopted in order to remove the discriminatory provisions contained in the country's legislation which prevented women employees from having their spouses and children as dependants in relation to benefits such as family allowances. The Committee also notes that a "National Strategy on gender equality and equity" (SNEEG) was launched in December 2007, which was formulated with the assistance of employers' and workers' organizations. The Committee also notes that women are now being recruited for the customs service (since 2005), the national police force (since 2006), the armed forces (since 2007) and the gendarmerie (since 2006), areas which were traditionally reserved for men. The Committee also notes that, according to the Government's report, many activities to raise awareness with regard to the principle of the Convention are regularly conducted for the interested parties. Nevertheless, the Committee notes that no statistical data are available to enable it to gain a general picture of progress made in the application of the Convention.

The Committee requests the Government:

- (i) *to provide information on any progress made in harmonization of the legislation with the principle of equality of opportunity and treatment between men and women in employment or occupation;*
- (ii) *to supply detailed information on the measures taken or contemplated to implement the "National Strategy on gender equality and equity" and also their impact in practice;*
- (iii) *to provide further details on awareness-raising and training activities which are currently being conducted on the principle of equality, indicating, in particular, the beneficiaries of these initiatives and the manner in which employers' and workers' organizations participate in such activities;*
- (iv) *to provide statistical information on the participation of men and women in the various levels of education and training, disaggregated by sex, and on their participation in employment or work in the public and private sectors (according to categories of employment or occupations) and also in the informal economy; and*
- (v) *to provide information on any matters brought to the attention of the labour inspection services or judicial authorities with regard to the application of the Convention.*

Sierra Leone

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

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

1. *Articles 2 and 3 of the Convention. Lack of national policy.* The Committee regrets that the Government does not provide any new information in respect to the Convention's application. Since Sierra Leone has ratified the Convention, the Government has consistently reported that no legislative or administrative regulation or other measures existed to give effect to the provisions of the Convention and the Government has failed to provide information on any measures taken in this regard. In its latest report the Government repeats the general statement that it had a broad-based policy which ensured jobs for all who apply and are willing to work, regardless of sex, religion, ethnicity or political opinion. The Committee is therefore bound to recall that under the Convention, Sierra Leone has the obligation to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination regarding vocational training, access to employment and particular occupations, as well as terms and conditions of employment.

2. In connection with the above, the Committee recalls that articles 7 to 9 of the 1991 Constitution establish economic, social and educational objectives for the State that potentially promote the application of the Convention. Article 15 guarantees the right to equal protection of the law irrespective of race, tribe, place of origin, political opinion, colour, creed or sex, and article 27 of the Constitution provides constitutional protection from discrimination. The Committee considers that these provisions may be an important element of a national equality policy in line with the Convention, but recalls that provisions affirming the principles of equality and non-discrimination in itself cannot constitute such a policy. As stated in the Committee's 1988 General Survey on the Convention, the national policy on equality of opportunity and treatment should be clearly stated and should be applied in practice, presupposing state implementation measures in line with the principles set out in *Articles 2 and 3* of the Convention and Paragraph 2 of the accompanying Recommendation No. 111.

3. *While being aware of the many challenges the Government is facing in the process of consolidating peace, the Committee encourages the Government to give serious consideration to the application of the Convention in law and practice as an integral part of its efforts to promote peace and social and economic stability. The Government is requested to provide information on measures taken or envisaged to promote and ensure equal access to technical and vocational training, public and private employment, as well as equal terms and conditions of employment, including through educational programmes and cooperation with employers' and workers' organizations. The Committee also reiterates its previous requests to the Government to provide information in particular on the measures taken to ensure equality in employment and occupation between women and men and among members of the different ethnic groups.*

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

Spain

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)

The Committee notes that on 5 September 2008 a communication on the application of the Convention was received from the Trade Union Confederation of Workers' Commissions (CC.OO), which was forwarded to the Government on 18 September 2008. The CC.OO expresses concern at the negotiation of affirmative action measures in enterprises with fewer than 250 workers, because the Council on the Participation of Women has still not been established within the Ministry of Equality, and because many foreign women are having difficulty securing recognition of their right to enter the labour market owing to the fact that they work in the informal economy. ***The Committee will examine these matters together with any comments the Government may wish to make.***

Legislative and administrative measures. The Committee notes that the Government has adopted a series of legislative and administrative measures to promote equality. Regarding gender equality, it takes note of Basic Act No. 3/2007 of 22 March on effective equality between women and men. The Act transposes European Union Directive No. 2002/73/EC on equal treatment for men and women as regards access to employment, vocational training and promotion, and among other things amends the Workers' Regulations laying down the right of workers' representatives to receive information on the application of the principle of equal treatment at work, establishes the duty to negotiate measures to promote equal treatment, for inclusion in collective agreements, enhances protection against discriminatory dismissal, and contains provisions on reconciling family life and work. With regard to migrant workers, orders have been adopted (Nos TAS/3698/2006 and TAS/711/2008) to regulate the registration of non-community foreign workers in public employment services and employment agencies. As regards persons with disabilities, the Government has issued Royal Decrees Nos 1417/2006 and 1414/2006 on a system of arbitration to resolve complaints and on the application of Act No. 51/2003 on equality of opportunity for persons with disabilities. ***The Committee asks the Government to continue to provide information on these matters, including copies of the provisions of collective agreements setting out measures to promote equality, pursuant to Basic Act No. 3/2007, and on the practical implementation of the right of worker's representatives to receive information on the application of the principle of equality at work. Please also provide information on the number and nature of complaints filed alleging discrimination in employment and occupation and the outcome thereof.***

Discrimination based on race, colour, religion and national extraction. In its previous comments, the Committee requested information regarding the Spanish Observatory on Racism and Xenophobia which was established in 2003 and regarding the Council to Promote Equal Treatment and Non-discrimination with regard to racial and ethnic origin. The Committee once again notes with regret that the Government's report does not contain the information requested on the activities carried out by the Council. ***The Committee once again asks the Government to provide information on the activities carried out by the Council to Promote Equal Treatment and Non-discrimination with regard to racial and ethnic origin and by the Observatory, including information on any proposals that may have been made and the action taken on them. The Committee also hopes that the Government will provide information on programmes and plans of action to promote equality of opportunity and treatment with regard to racial or ethnic origin in employment; and on awareness-raising and educational programmes to promote better understanding and greater tolerance among the public, the competent authorities at all levels and in the working environment, in respect of persons belonging to minority groups, particularly migrants and nationals of non-European origin and the Roma people.***

Statistical information. The Committee takes note of the statistical information sent by the Government. ***It would be grateful if the Government would continue to provide such information and would indicate the proportion of men and women in precarious employment.***

Labour inspection. The Committee notes that according to the report, the Labour and Social Security Inspectorate 2008–10 has prepared a plan of action with a view to verifying that equality between men and women is effectively applied in enterprises, and that Instruction No. 2/2008 has been issued in this connection. ***The Committee requests the Government to provide information on the implementation of the plan of action.***

The Committee also requests the Government to provide further information on the application of the Convention in practice and in particular to ensure that the information more directly responds to the Committee's comments.

Sri Lanka

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

The Committee notes the comments by the Lanka Jathika Estate Workers' Union (LJEWU) attached to the Government's report, and the comments from the Ceylon Workers' Congress (CWC) received 29 August 2008, which were sent to Government for its reply.

Article 1 of the Convention. Legislation on equal remuneration. The Committee recalls that the principle of equal remuneration for men and women for work of equal value is not reflected in national legislation. The Committee also notes that although the Government consistently states that men and women receive equal wages and that the wages

boards and collective agreements do not make any distinctions between men and women, this only appears to relate to wages paid for work performed by men and women that is substantially the same. The Government has not yet provided any evidence that the principle of equal remuneration is also being applied to work of equal value. The Committee draws the attention of the Government to its 2006 general observation on this Convention stressing the importance of giving full legal expression to the principle of the Convention. Since the concept of “equal value” lies at the heart of the fundamental right of men and women to equal remuneration for work of equal value, it is important to ensure that the legislation goes beyond providing for equal remuneration for “equal” or “the same” work, and that it also encompasses work that is different in nature but which is nevertheless of equal value. ***In order to ensure that the principle of the Convention is effectively understood and applied, the Committee asks the Government to work towards the adoption of legislation on equal remuneration for men and women for work of equal value, and to report on the progress made in this regard.***

Additional allowances. The Committee recalls that section 64 of the Wages Boards Ordinance (Chapter 165) defines “wages” as including any remuneration in respect of overtime work or of any holiday. It also notes that section 68 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act (Chapter 145) defines “remuneration” as meaning salary or wages, including special cost-of-living and overtime allowances, and such other allowances as have been prescribed. The Committee also recalls that it had noted previously the practice by certain employers in rural areas of providing workers with certain payments in kind, such as meals, and if these payments are not provided, an extra payment is usually added to the wage rate. However, it appeared that only male workers enjoyed such benefits whereas female workers, in certain localities, were not provided with meals. The Committee notes that the Government states, referring to section 2 of the Wages Board Ordinance No. 27 of 1941 which provides that wages shall be paid in legal tender directly to the worker, that the national legislation does not provide for the partial payment of wages in kind. The Government also indicates that there are no legal provisions or practices for payment of wages in kind, but that most of the workers in the plantations sector are provided with free housing. The Committee recalls that the purpose of the broad definition of “remuneration” enshrined in *Article 1(a)* of the Convention is to capture all elements that a worker may receive for his or her work including additional allowances paid in kind, such as meals and housing facilities. ***The Committee asks the Government to take measures to ensure that in practice all emoluments – whether in cash or in kind – and, in particular, those not mentioned explicitly in the above provisions, are granted or paid without discrimination based on the sex of the worker.***

Article 2. Eliminating wage differentials between men and women in trades covered by the wages boards, and in particular in the tobacco and cinnamon trades. The Committee recalls its previous comments in which it aimed to assess the progress made in eliminating wage differentials between men and women in the plantation sectors, especially the tobacco and cinnamon trades. The Committee had noted in this regard that the wages board for the tobacco trade applied differential minimum daily wage rates for men and women and that under the wages board for the cinnamon trade differential time/piece rates were in force for men and women workers. However, the tripartite wages boards for these trades were not operative. In this context, it had asked the Government to examine and compile statistics on wages set above the minimum wage paid to men and women in the different sectors of the economy, and in particular in the tobacco and cinnamon trades as a whole, in order to gain a greater knowledge of the remaining wage inequalities between men and women. The Committee notes the 38 Wage Boards Ordinance Notifications published in the *Extraordinary Gazette* No. 1556/4 of 30 June 2008 increasing the minimum wages in the trades covered by these wages boards, including the tobacco and cinnamon trades. It notes with interest that the Wage Board Ordinance Notification (Cinnamon Trade) and the Wages Board Ordinance Notification (Tobacco Trade) no longer explicitly apply differential wage or time/piece rates for men and women.

The Committee further recalls that in view of the steps taken to review the wage policy, it had asked the Government to indicate the progress made in setting minimum wages for all sectors or establishing a national minimum wage, and to provide information on the progress made towards reducing the number of wages boards and simplifying the procedures for wage setting. The Committee notes the Government’s indication that it is currently benefiting from ILO technical assistance in this regard. The Committee further notes that the Government continues to maintain that in Sri Lanka there are no wage differences between men and women since the wage boards apply the same wage rates to all workers, women and men. The Committee recalls from its comments on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), that the Sri Lanka labour market is highly segregated, with women concentrated in only a few sectors of the economy and mostly performing low-skilled and low-paid jobs. The Committee also recalls its 2006 general observation on this Convention indicating that “historical attitudes towards the role of women in society, along with stereotypical assumptions regarding women’s aspirations, preferences, capabilities and ‘suitability’ for certain jobs, have contributed to occupational sex segregation” and the “undervaluation of ‘female jobs’ in comparison with those of men who are performing different work and using different skills, when determining wage rates”. Furthermore, the application of the Convention is not limited to comparisons between men and women in the same trade, sector or establishment.

The Committee wishes to point out that while setting minimum wage rates per trade or occupation certainly can be an important contribution to the application of the principle of the Convention, it needs to be assured that in setting minimum wage rates, so-called “female trades and jobs” are not being undervalued as compared to trades and jobs which are dominated by men. Care must also be taken to ensure that the criteria used by the wages boards for minimum wage

determination are free from gender bias. *The Committee therefore asks the Government to report on the progress made regarding the following:*

- (i) *compiling and analyzing statistics on the current wage rates for men and women in the different sectors and trades of the economy, and in particular the tobacco and cinnamon trades as a whole, to enable it to gain more detailed knowledge of the nature and scope of the remaining wage inequalities and the progress made with respect to their elimination;*
- (ii) *the measures taken or envisaged to ensure that the wages boards, in determining minimum wages rates, are not undervaluing work performed by women in comparison to that of men who are performing different work and using different skills, and that the procedures adopted are free from gender bias;*
- (iii) *developing the new wage policy, in particular in setting a national minimum wage, the simplification of the procedures for determining wages and reducing the number of wages boards. The Committee trusts that during this process, it will be ensured that the principle of equal remuneration for men and women for work of equal value will be taken into account.*

Article 3. Objective job evaluation. For a number of years, the Committee has been asking the Government whether any methods were available to enable the objective evaluation of jobs in the public and private sectors in accordance with *Article 3(1)* of the Convention. The Committee notes that the Government continues to refer to the use of performance appraisal systems, particularly in the public sector. The Committee recalls that unlike performance appraisals, objective job evaluation methods aim to evaluate the job and not the individual worker. The Committee recalls its 2006 general observation on this Convention in which it points out that “in order to establish whether different jobs are of an equal value, there has [to be] an examination of the respective tasks involved, based on entirely objective and non-discriminatory criteria. ... While the Convention does not prescribe any specific method for such an examination, it does presuppose the use of appropriate techniques for objective job evaluation (*Article 3*)”. The Committee notes that the LJEWU underlines the need for developing methods for objective job evaluation along with the necessary training in applying such methods, and encourages the Government to request technical assistance from the Office in this regard. ***The Committee urges the Government, in cooperation with workers’ and employers’ organizations, to promote, develop and implement practical approaches and methods for the objective evaluation of jobs with a view to applying effectively the principle of equal remuneration for men and women for work of equal value in the public and private sectors.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1998)

The Committee notes the comments by the Lanka Jathika Estate Workers’ Union (LJEWU) attached to the Government’s report, and the comments from the Ceylon Workers’ Congress (CWC) received on 29 August 2008.

Legislative protection against discrimination in employment and occupation. The Committee recalls its previous comments regarding the lack of national legislation explicitly incorporating a prohibition of direct and indirect discrimination in employment and occupation on the grounds enumerated in *Article 1(1)(a)* of the Convention. The Committee notes that the Government, in its reply, continues to refer to the constitutional provisions guaranteeing equality before the law and generally protecting citizens against discrimination on the grounds of “race, religion, language, caste, sex, political opinion, place of birth or any of such grounds” (article 12), guaranteeing the freedom to engage in employment and occupation (article 14) and guaranteeing the right of every person to apply to the Supreme Court in respect of violations of these rights by the State (article 17). However, the Committee notes that the Constitutional guarantees against discrimination only appear to cover citizens and do not prohibit discrimination on the grounds of colour or national extraction. In this respect, the Committee notes the Grant of Citizenship to Persons of Indian Origin Act, No. 35/2003, and the Act to Repeal the Indian Immigrant Labour Ordinance No. 23/1993 (Chapter 132), No. 18/2006, but recalls that the Convention does not make any distinction between citizens and non-citizens as to the protection against discrimination. The Committee therefore considers that, in addition to these constitutional guarantees, the inclusion of non-discrimination and equality provisions into the labour or other relevant legislation may be required to ensure that all men and women, citizens and non-citizens, are effectively protected from discrimination in employment and occupation on all the grounds covered by the Convention, including race, colour, sex, religion, political opinion, national extraction or social origin. The Committee also recalls that the adoption of comprehensive legislation has proven to be one of the most effective means to address discrimination in employment and occupation. ***The Committee urges the Government to make every effort to introduce in the national legislation provisions ensuring that all men and women, citizens and non-citizens, are effectively protected from discrimination in all aspects of employment and occupation on all the grounds covered by the Convention. Awaiting further steps being taken to adopt any such legislation, please provide information on the concrete measures taken to protect, in practice, citizens and non-citizens against discrimination on the basis of race, colour, national extraction, religion, political opinion and social origin. Please also provide information on the number and nature of employment discrimination cases that have been handled by the Supreme Court pursuant to articles 12(1) and 17 of the Constitution, as well as how persons can obtain redress with respect to discrimination by private employers on the grounds enumerated in Article 1(1)(a) of the Convention.***

Non-discrimination and equality of opportunity between men and women. The Committee recalls its previous observation concerning the under-representation of women in many areas of employment and their concentration in self-employment and unskilled work, often in the informal economy, as well as the high incidence of sexual harassment in the private sector, especially on the tea plantations, and the poor working conditions in the export processing zones (EPZs). The Committee also recalls that the Government, together with the workers' and employers' organizations, had taken some measures that addressed some of these issues, but that further efforts were needed to promote equality of opportunity of men and women in employment and occupation. The Committee notes the comments by the LJEWU that some employers are reluctant to employ women because of the need for special requirements such as maternity leave and nursing intervals, and that sexual harassment is not only evident in the tea plantations but also in other occupational sectors. However, according to the LJEWU, the Ministry of Labour does not have the legal mandate to deal with the issue and incidences of sexual harassment are being referred to the police. Penal provisions have recently been adopted on sexual harassment at work and in public places. The Committee also notes that the "Women's Rights Bill" has not yet been finalized. The Committee further notes from the statistical data for 2005 provided by the Government that between 1991 and 2005 women's participation in private sector employment increased by 5.9 per cent, particularly in the professional, technical and related occupations and the skilled and semi-skilled occupations where their participation increased by 14.9 and 10.5 per cent, respectively. However, women continue to be over-represented in the skilled and semi-skilled (59 per cent) and unskilled (53.4 per cent) occupations; however in the occupational group of "foreman and supervisor" their participation decreased from 29.7 per cent in 1991 to 23.8 per cent in 2005.

The Committee notes from the Government's report that the Gender Bureau of the Ministry of Labour Relations and Manpower, the Women's and Children's Affairs Division and the National Institute of Labour Studies (NILS) have provided training and awareness-raising programmes on gender mainstreaming for the working population. The Committee further notes with interest that workers' and employer's organizations have taken certain measures to address sexual harassment in the workplace. The Ceylon Chamber of Commerce and the Employers' Federation of Ceylon (EFC) have launched the "Code of Conduct and Procedures to address Sexual Harassment in the Workplace: a Guideline", and the collective agreement between the CWC and the Employers' Federation of Ceylon covering the plantation sector introduced a clause discouraging sexual harassment and providing for female supervisors in tea harvest areas. However, the Committee remains concerned about the fact that legislative protection against sexual harassment is mainly being approached in the context of criminal law. Sex-related offences established under the penal law generally cover severe forms of sexual harassment and may not be adequate to prevent and address many other forms of sexual harassment at work, whether quid pro quo or hostile working environment harassment, as identified in the Committee's general observation of 2002. While welcoming the initiatives to promote training and awareness on gender mainstreaming, the Committee has yet to observe their real impact, as well as of those previously taken by the Government to promote gender equality in employment and occupation. ***In order to be able to assess more fully the progress being made in the application of the Convention, the Committee asks the Government to provide the following information:***

- (i) *information (e.g. surveys, studies, as well as statistics disaggregated by sex) demonstrating the impact of the measures taken to promote women's upward mobility and access to a wider range of jobs and occupations;*
- (ii) *the measures taken, and their impact to improve the working conditions in the EPZs as well as to address the employment situation of women in the informal economy;*
- (iii) *the steps taken to include provisions prohibiting and preventing sexual harassment in national labour law;*
- (iv) *any other measures taken to effectively address discrimination against women and promote their equality of treatment and opportunities in employment and occupation.*

The Committee also reiterates its request for information on the results of the legislative research commissioned by the National Committee on Women with respect to the laws identified as being detrimental to women in the area of employment and occupation.

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

Switzerland

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Articles 2 and 3 of the Convention. Equality of opportunity and treatment in relation to race, colour, national extraction and religion. In its previous comments, the Committee noted the report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. According to Special Rapporteur, there is a dynamic of racism and xenophobia in Switzerland due, among other factors, to deep-rooted cultural resistance against the multi-culturalization process and the growing prevalence of racist and xenophobic stances during elections and various votes. The Rapporteur noted the absence of a coherent and resolute political and legal strategy against racism and xenophobia. During the meetings held by the Special Rapporteur with the representatives of trade unions, the trade unions reported the existence of discrimination in hiring foreigners and the low level of legal protection provided to the victims of these acts. The Special Rapporteur recommended the implementation of comprehensive

national legislation to combat discrimination, accompanied by a cultural and ethical strategy to combat the stereotypes affecting certain groups of the population. In previous comments, the Committee encouraged the Government to give due consideration to the recommendation of the Federal Commission against Racism to introduce an explicit prohibition of racial discrimination in employment and occupation. The Committee recalled that there is no provision in law prohibiting racial discrimination in employment and occupation. It drew the Government's attention to the fact that this explicit prohibition would afford better protection to workers against discriminatory treatment and would be in line with the full application of the principles set out in the Convention. The Committee encouraged the Government to introduce into the legislation an explicit prohibition against discrimination in employment and occupation and asked the Government to keep it informed of any progress made in this respect. It also asked the Government to continue providing information on the application in law and practice of the principle of equality of opportunity and treatment in employment and training without discrimination on grounds of race, colour, religion, national extraction or social origin.

The Committee notes the Government's indication that political debate is focusing on this issue with great attention and appears to be following the direction of the various observations made by the Committee of Experts. Various parliamentary interventions have been submitted recently to strengthen not only the measures to combat racism, but also to reinforce equality in general. A motion dated 17 December 2004 called for the drafting of a law against racial discrimination at the workplace, although the Federal Council wished to give priority to the instruments developed by the social partners based on collaboration and free consent before envisaging the adoption of binding legal provisions. A parliamentary initiative was submitted on 23 March 2007 with the objective of preventing and eliminating any form of discrimination on the grounds, among others, of skin colour, ethnic origin and religion. This initiative has not yet been examined by the competent chamber of Parliament. On 30 August 2007, the Federal Council adopted a catalogue of 45 integration measures, as well as a plan of action including numerous measures to promote equality of opportunity in employment and occupation. In December 2008, three departments of the Confederation are to engage in in-depth reflection on the issue of legislation respecting racial discrimination.

The Committee invites the Government to take all the necessary measures (legislative, administrative and other measures) to guarantee equality in employment and occupation without distinction on grounds of race, colour, national extraction or religion, and to provide it information on the measures adopted. The Committee also asks the Government to continue providing information on its plan of action for the elimination of discrimination on grounds of race, colour, national extraction and religion. Recalling that the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance held discussions with the representatives of the trade unions, who reported the existence of discrimination in relation to hiring and the low level of legal protection available to the victims of such acts, the Committee requests the Government to provide information on the measures adopted to eliminate racial discrimination in respect of hiring and to reinforce the legal protection available to victims of such acts. The Committee also asks the Government to continue to provide information on the role of the social partners in promoting and ensuring equality in employment and occupation.

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

Syrian Arab Republic

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)

Article 2 of the Convention. Application in practice of the principle of equal remuneration for work of equal value. In its previous observation, the Committee drew the Government's attention to the fact that wage inequalities between men and women may exist in practice despite the adoption of non-discriminatory laws, rules and regulations governing the determination of wages. The Committee stressed the importance of determining the nature, extent and causes of wage inequalities existing in practice, in order to identify specific measures to address these inequalities.

While noting that the Government does not provide information on any measures taken in this regard, the Committee notes the Government's request for ILO technical assistance to help it undertake the necessary studies, in collaboration with the social partners. The Committee also notes that the Government refers to an occupational classification system approved by an order of the Council of Ministers. *The Committee again urges the Government to undertake the necessary studies to determine the nature, extent and causes of inequalities in remuneration existing in practice between men and women for work of equal value in the public and private sectors, and to identify specific measures to address these inequalities. The Committee also encourages the Government to take steps to obtain any necessary assistance from the Office in this regard. The Committee also asks the Government to provide full information on the occupational classification system referred to in its report, including information on the criteria used to ensure that this classification system is free from gender bias.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

Articles 2 and 3 of the Convention. Application of the Convention with regard to the grounds of race, colour, religion, political opinion, national extraction and social origin. In its previous observation, the Committee pointed out

that it was not in a position to assess adequately the progress made by the Government in applying the provisions of the Convention owing to the insufficient information provided by the Government in its report. The Committee therefore urged the Government to provide full information on a number of points relating to the practical application of the principle of equality of opportunity and treatment in employment and occupation, including the concrete steps taken to pursue a national policy promoting this principle with respect to race, colour, religion, political opinion, national extraction and social origin, and the results achieved.

Noting that the Government submits once more that the national legal framework currently in force in the country does not contain any discriminatory provisions, the Committee wishes to emphasize that the absence of discriminatory provisions in the national legislation is not sufficient to fulfil the obligations under the Convention, and is not an indicator of an absence of discrimination in practice. In particular, the Committee stresses that by ratifying the Convention, the Government has undertaken to take measures to promote equality of opportunity and treatment in employment and occupation in the framework of a national policy, with a view to the elimination of discrimination. While the choice of the concrete measures to be taken is left to the Government in view of the national conditions and practice, the Convention requires that these measures be effective. The Committee also recalls that under *Article 3(f)* of the Convention, the Government is called to indicate in its report the action taken in pursuance of this national policy and the results secured by such action. The Committee notes that the Tenth Five-Year Plan for 2006–10 aims, among other things, at developing specific measures to increase employment opportunities and that one of the objectives of the Decent Work Country Programme 2008–10 is to increase employment opportunities and to promote compliance with the ILO Declaration on Fundamental Principles and Rights at Work. ***The Committee requests the Government to provide full information on the concrete measures taken, including any relevant follow-up under the Five-Year Plan and the Decent Work Country Programme, to promote equality of opportunity in employment and occupation with respect to race, colour, religion, political opinion, national extraction and social origin, and the impact of such measures on eliminating discrimination on those grounds.***

Access of women to employment and occupation. The Committee notes from the Decent Work Country Programme 2008–10 that unemployment rates among young women are almost twice as high as those among young men and that 50 per cent of young women (aged 15–29) are neither in the labour force nor in school, indicating the existence of barriers to their access to the labour market. The Committee notes the Government's indication that various measures have been taken to address traditional stereotypes regarding women's role in society hindering their participation in the labour market. The Committee also notes that a national strategy for women (2006–10) was developed by the Women's Federation Union in collaboration with UNDP and the Central Office of Statistics. The Committee further notes that according to the Government's report, women's participation in decision-making positions increased as a result of the implementation of the Five-Year Plan and their representation in the Parliament reached 12 per cent. ***The Committee requests the Government to provide further information on the measures taken or envisaged with a view to promoting women's access to a wider range of occupations and increasing their chances of career advancement in both the public and the private sectors. In particular, the Committee requests specific information regarding steps taken to address the obstacles to women's access to the labour market and the persistent occupational sex segregation, including pursuant to the follow-up to the Five-Year Plan and the Decent Work Country Programme. Please also provide further details on the National Strategy for Women (2006–10) and the measures taken or envisaged to implement it. Recalling the importance of gathering statistical information on the distribution of men and women in the different economic sectors, occupational categories and positions in order to have a general appreciation of the progress made in applying the Convention, the Committee further requests the Government to collect and submit such information.***

Access of women to education and vocational training. The Committee notes from the Government's report that in 2005–06 women represented 48 per cent of the total number of students enrolled in primary school and 49 per cent of the students enrolled in secondary school. As to the access to university education, while complete statistics were not provided, the Committee notes from the Government's report that women are mainly enrolled in colleges or arts and education, with men being concentrated in colleges of science, medicine, engineering, computing and politics. The Committee also notes that women account for approximately 29 per cent of those holding master's degrees and 28.5 per cent of those with doctorates. With regard to vocational training, the Committee notes the initiatives carried out by the Ministry of Agriculture with respect to rural women as well as the training in, among other things, sewing, hairdressing, ceramics and pottery supplied by the Women's Federation Union. ***The Committee requests the Government to provide specific information on measures taken to promote women's access to education and vocational training courses traditionally dominated by men, including information on the impact of the general educational strategies. Please also provide statistics, disaggregated by sex, on the participation of women and men in the training courses and vocational training centres, and in the various university programmes.***

Enforcement. The Committee notes the Government's statement that, since all citizens are equal before the law, no difficulties are encountered by specific segments of the national population in having access to complaints procedures. The Committee draws the Government's attention to the fact that some groups of the population may find themselves particularly vulnerable to discrimination, despite the existence of legislative protection. Owing to the lack of awareness of the principle of the Convention, lack of practical access to procedures, or fear of reprisals, they may also encounter serious

difficulties in lodging complaints before the competent authorities. *The Committee therefore once again requests the Government to provide information regarding the following:*

- (i) *the measures taken to increase the knowledge and understanding, including among ethnic minority Kurds and Bedouins, of the objectives of the Convention and of the legal provisions providing for equality of opportunity and treatment in employment and occupation; and*
- (ii) *the measures taken, through surveys or otherwise, to undertake an evaluation of the effectiveness of the complaints procedures, including any practical difficulties encountered by women or men, including minority groups, in seeking judicial remedies with regard to cases of discrimination on the basis of all the grounds covered by the Convention.*

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

United Republic of Tanzania

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 2002)***

Articles 1 and 2 of the Convention. Practical application. The Committee notes the adoption of the Employment and Labour Relations (Code of Good Practice) Rules, 2007, made under section 99(1) of the Employment and Labour Relations Act, 2004. It notes with interest that Part III of the Rules contains detailed provisions on the elimination of discrimination at the workplace. The rules set out definitions of direct and indirect discrimination, and elaborate on the employers' obligation to develop, publish at the workplace and implement a plan to prevent discrimination and to promote equal opportunity in employment. These plans have to be developed in consultation with trade unions and should, if possible, be included in a collective agreement. The Rules further state that collective agreements shall not contain provisions which discriminate against employees on any of the prohibited grounds. Further, specific guidance concerning equal opportunity and treatment in advertising, selection, training, and performance reviews is provided. The Committee notes the Government's indication that it is carrying out sensitization activities to raise knowledge among workers and employers of the new labour legislation and that the process of developing equality plans was ongoing. *The Committee requests the Government to provide information on the measures taken to promote and ensure the implementation of the equality provisions of the Employment and Labour Relations Act, 2004. In this regard, please provide information on the number of equality plans that have been registered with the Labour Commissioner and indicate whether any administrative or judicial decisions have been issued concerning the Act's equality provisions.*

Public service. The Committee notes with interest the detailed information provided by the Government on the application of the Convention in the public service. The Public Service Management and Employment Policy provides that selection and recruitment must not involve overt or unintended discrimination against women, persons with disabilities and other vulnerable groups. Job advertisements specify that women are encouraged to apply. The Public Service Regulation 2003 provides that, where a man and a woman are equally competent, preference as regards selection should be given to the woman (section 4(12)). The Government also stated that in 2007 the President's Office was undertaking a review of public service rules and regulations governing affirmative action, discrimination and diversity. The creation of gender focal points in all ministries and government agencies is envisaged and short-term and postgraduate training has been provided to women public servants. The Committee also notes the information concerning measures taken with regard to developing guidelines to manage public servants with disabilities and guidelines on HIV/AIDS at the workplace. *The Committee requests the Government to continue to provide detailed information on the measures taken to promote and ensure equality of opportunity and treatment in the public service, including information on the results achieved by such action. In this regard, please provide updated statistical information on the number of women and men employed at the different levels of the public service.*

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

Trinidad and Tobago

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)

Assessment of the gender pay gap. The Committee notes from the statistical data provided by the Government that in 2007 women earned 80.3 per cent of men's monthly income (average and median), which amounts to a gender pay gap of 19.7 per cent. It is concerned that this gap was considerably higher than in 2006, where it was 14.8 per cent (2005 – 15.8 per cent; 2004 – 16.4 per cent). In 2007, the gender wage gap was highest in the occupational group of service and sales workers (47 per cent) and legislators, senior officials and managers (39.4 per cent). *The Committee asks the Government to indicate the measures taken or envisaged to address the apparently widening gender pay gap. It also asks the Government to continue to provide detailed statistical information on the earnings of men and women according to occupational group and industry, as well as on an hourly basis, if possible.*

Articles 1 and 2 of the Convention. Legislation. The Committee recalls its previous comments concerning the Equal Opportunity Act, 2000, which prohibits discrimination in employment, including in respect of remuneration. However, the

Act contains no specific provisions regarding equal remuneration for men and women for work of equal value. **Recalling its previous comments on this matter, as well as its 2006 general observation, the Committee asks the Government to provide information on any measures taken to give full legislative expression to the Convention's principle.**

Collective agreements. The Committee previously asked the Government to provide information on the progress made in removing sex discriminatory provisions from collective agreements. **Noting that the Government has not yet replied to this request, the Committee asks the Government to provide this information in its next report. It also asks the Government to provide the report of the Joint Working Party on Reclassification regarding all the jobs in the bargaining unit represented by the National Union of Government and Federated Workers, which has still not been received by the ILO.**

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1970)***

Legislation. The Committee recalls that the Equal Opportunity Act which set up an Equal Opportunity Commission and an Equal Opportunities Tribunal was declared unconstitutional by the High Court of Trinidad and Tobago in May 2004. In its report, the Government indicates that the decision of the High Court was appealed and that the Court of Appeal delivered its judgement on 26 January 2006, upholding the decision of the High Court. A further appeal was made to the Privy Council (No. 84 of 2006) which delivered its judgement on 15 October 2007. The Privy Council overturned the decision of the Court of Appeal, ruling that the creation of the Equal Opportunity Tribunal by the Act is not unconstitutional. The Committee notes that the members of the Equal Opportunity Commission were appointed in April 2008 and that the Government is preparing for the setting up of the Equal Opportunity Tribunal. **The Committee requests the Government to continue to provide information on further developments with regard to the establishment and functioning of the Equal Opportunity Commission and Tribunal, and the implementation and enforcement of the Equal Opportunity Act.**

The Committee recalls its longstanding comments expressing concern about the discriminatory nature of the provisions of several government regulations, which provide that married female officers may have their employment terminated if family obligations affect their efficient performance of duties (section 57 of the Public Service Commission Regulations; section 52 of the Police Commission Regulations; and section 58 of the Statutory Authorities' Service Commission Regulation). It also noted that a female officer who marries must report the fact of her marriage to the Public Service Commission (section 14(2) of the Civil Service Regulations). With respect to section 14(2) of the Civil Service Regulations, the Committee had taken note of the Government's view that this provision is not considered discriminatory in Trinidad and Tobago, as it is an administrative matter related to the practice of women changing their names upon marriage. However, in order to avoid the potential discriminatory impact of such a provision on women, the Committee had suggested that the Civil Service Regulations be amended to require notification of name change of both men and women. The Committee notes the Government's statement that steps are being taken to have the relevant regulations amended in accordance with the Committee's comments. **Noting the statement of the Government and given the serious nature of the matter, the Committee urges the Government to take the necessary action to bring the regulations concerned into conformity with the Convention, and to indicate in its next report the specific steps taken, the progress, if any, made or any difficulties encountered in this regard.**

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

Ukraine

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

Articles 1 and 2 of the Convention. Equal remuneration for men and women for work of equal value. The Committee previously noted that section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men 2006, which requires the employer to ensure equal pay for men and women for work involving equal skills and working conditions, is more restrictive than the principle of equal remuneration for men and women for work of equal value, as set out in the Convention. The Committee recalls that jobs performed by a man and a woman may involve different skills and working conditions, but may nevertheless be jobs which are of equal value and thus would have to be remunerated at an equal level. Further, by linking the right to equal remuneration for men and women to two specific factors for comparison (skills, working conditions), section 17 may have the effect of discouraging or even excluding objective job evaluation on the basis of a wider range of criteria, which is crucial in order to eliminate effectively the discriminatory undervaluation of jobs traditionally performed by women. In addition to skills and working conditions, factors such as physical and mental effort and responsibility are important and widely used criteria for the objective evaluation of different jobs.

Noting that the Government's report contains no information in reply to the Committee's previous comments on these issues, the Committee recalls its 2006 general observation in which it stressed that legal provisions which are narrower than the principle laid down in the Convention hinder progress in eradicating gender-based pay discrimination against women. **The Committee urges the Government to take the necessary steps to amend the legislation to 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 indicate the steps taken or envisaged in this regard, and it also reiterates its request to the Government to provide information on the implementation and enforcement of the equal remuneration provisions of section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men 2006, including information on the number and outcome of any relevant cases dealt with by the competent administrative authorities and the courts.

Article 2(2)(c), and Article 4. Collective bargaining. Section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men 2006, provides that collective agreements at the different levels should include provisions which ensure equal rights and opportunities of women and men and that agreements should, inter alia, envisage the elimination of inequality in the remuneration of labour of men and women, wherever it exists. **Noting that no information was provided in reply to the Committee's previous requests in this regard, the Committee once again asks the Government to provide detailed information on the implementation of these provisions, including information on how collective agreements promote equal remuneration for men and women in accordance with the Convention, as well as examples of relevant provisions of collective agreements.**

Article 3. Objective job evaluation. **Noting that no information has been provided in response to the Committee's previous comments on the application of this Article, the Committee once again asks the Government to supply information on the measures taken to promote the use of objective job evaluation methods, free from gender bias.**

Statistical information. The Committee notes from the Government's report that according to data from the State Statistics Committee, monthly wages in 2006 were 885 Ukrainian Hryvnia (UAH) for women and UAH1,216 for men. In 2007, wages were UAH1,150 for women and UAH1,578 for men. The Committee notes that according to these figures women earned around 27 per cent less than men in 2006 and 2007. **The Committee asks the Government to continue to provide statistical data on the earnings of men and women, in as much detail as possible, including data on the earnings in the different sectors and occupations.**

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

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

Discrimination on the basis of sex.

1. In its previous observation the Committee noted that, according to the Confederation of Free Trade Unions of Ukraine (KSPU), women were facing unequal treatment in the labour market, including discriminatory recruitment practices and were concentrated in low-paid jobs, occupations and sectors. The KSPU also referred to instances where the state employment service requested employers to indicate whether they preferred to employ men or women, and where it included the sex of the worker in vacancy announcements. The Committee requested the Government to provide detailed information on the measures taken to eliminate discriminatory recruitment practices in the private and public sectors, and well as on the specific measures taken to tackle the existing inequalities between men and women in employment and occupation.

2. In this context, the Committee notes with satisfaction that the Parliament of Ukraine has adopted a Law on Ensuring Equal Rights and Equal Opportunities of Women and Men which entered into force on 1 January 2006. The Law is aimed at ensuring equality of women and men in all spheres of society, including employment, through enforcement of equal rights, the elimination of gender discrimination, and positive action to address the existing inequalities between men and women. Under section 17, equal rights and opportunities shall be granted to women and men in the field of employment, job promotion, skills development and retraining. Discriminatory job advertisements and seeking information on the private life of job applicants is prohibited. Section 17 also states that the employer has an obligation to create working conditions which enable women and men to perform work on an equal basis. Employers are authorized to take positive action aimed at achieving a balanced ratio of men and women in the different types of work and categories of workers. The Committee also notes that the Law establishes a national machinery for the promotion of gender equality, assigning specific responsibilities to a number of public bodies and institutions. Persons who deem that they have been subjected to discrimination on the grounds of gender have the right to appeal to these bodies (section 22). **The Committee requests the Government to provide in its next report information on the progress made in implementing the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, including information on any examples of positive action taken by employers, and the activities carried out by the different parts of the national machinery to promote gender equality at work. Please also indicate the number, nature and outcome of any appeals concerning employment discrimination filed under section 22 of the Law.**

3. *Sexual harassment.* The Committee notes that, under the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, the employer must take measures to prevent sexual harassment (section 17), which is defined as "actions of a sexual nature, expressed verbally (threats, intimidation, indecent remarks) or physically (touching, slapping), which humiliate or insult persons who are in position of subordination in terms of their employment, official, material or other status" (section 1). The Committee notes that this definition would not appear to cover situations where conduct of a sexual nature creates a hostile working environment, irrespective of whether there is a relation of subordination between the harasser and the victim. The Committee recommends that the definition of sexual harassment be expanded to cover such situations. **Please provide information on any consideration given to this matter, as well as information on any complaints of sexual harassment received and addressed by the competent authorities.**

4. *Situation of men and women in the labour market.* The Committee notes from the statistical information provided by the Government that the employment rate for women (15–70 years) amounted to 53.1 per cent, compared to 62.8 per cent for men. The unemployment rate for women (15–70 years) was 7.7 per cent, while that of men was slightly higher at 7.9 per cent. The Committee also notes that, in 2005, 60.8 per cent of those receiving vocational training to increase their competitiveness in the labour market were women, while the rate of women among participants in public works programmes was 68 per cent.

According to the report, half of those provided with work by the state employment service in 2005 were women. *While the statistical data provided is useful to assess the overall situation of women in the labour market, the Committee requests the Government also to provide data on the participation of men and women in the different jobs, occupations and sectors of the economy, including data on women's employment in managerial and decision-making positions (private and public sectors). Emphasizing that the provision of employment services free from gender-bias and discrimination is crucial to promoting and ensuring equal access of women to employment, the Committee requests the Government to indicate any specific measures taken to ensure that the operations of the state employment service are non-discriminatory and actively promote women's equality in the labour market, particularly in the light of the newly adopted gender equality legislation.*

5. *Cooperation with employers' and workers' organizations.* The Committee recalls that a gender analysis of collective agreements was undertaken within the ILO/USDOL technical cooperation project promoting fundamental principles and rights at work. In this regard, the Committee welcomes the fact that section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men recognizes that collective bargaining should contribute to the promotion of gender equality at work by providing that collective agreements and contracts should contain provisions promoting gender equality, including timelines for the implementation of such provisions. *The Committee requests the Government to provide information on the implementation of section 18 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, including examples of collective agreements that promote and ensure gender equality in accordance with the Law. Please indicate any measures taken to seek the collaboration of employers' and workers' organizations on this matter, and any measures taken to support and provide assistance to the social partners concerning gender equality matters.*

Discrimination on the basis of race, colour and national extraction

6. On a number of occasions, the Committee sought information from the Government concerning the measures taken or envisaged to ensure and promote equality of opportunity and treatment in employment and occupation on the grounds of race, colour and national extraction, particularly the measures taken in respect of the Crimean Tartars and the Roma. Noting that the Government's latest report once again fails to provide any information in reply to the Committee's comments, the Committee wishes to point out that the Government has an obligation to adopt and implement a policy to promote equality in employment and occupation with a view to eliminating discrimination on all the grounds referred to in the Convention, including discrimination on grounds of race, colour or national extraction in employment faced by groups and communities such as Crimean Tartars and the Roma. The Committee emphasizes that under *Article 3(f) of the Convention*, the Government must inform the ILO of the action taken pursuant to the national equality policy and the results achieved by such action. In this context, the Committee also notes the concerns expressed by the Committee on the Elimination of Racial Discrimination over reports indicating that many Roma are deprived of their right to equal access to employment and education. Crimean Tartars reportedly remain underrepresented in the public service of the Autonomous Republic of Crimea and many of them have been excluded from the agrarian land privatization process (Concluding observations of 17 August 2006, CERD/C/UKR/CO/18, paragraphs 11, 14 and 15). *The Committee requests the Government to provide in its next report full information on the measures taken to promote and ensure equality of opportunity and treatment in employment and occupation of the Crimean Tartars and the Roma. This information should include statistical data indicating the extent to which members of both communities participate in vocational training, as well as in public and private employment.*

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

United Kingdom

Gibraltar

Equal Remuneration Convention, 1951 (No. 100)

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes that the Equal Opportunities Act, 2006, entered into force on 1 March 2007. Section 31 provides for equal pay for men and women for like work, equivalent work, or work which is in terms of the demands (for instance under such headings as effort, skill and decision) of equal value. The Committee notes with interest that the provision explicitly incorporates the notion of work of equal value and that pay is defined broadly (section 31(6)(a)), in accordance with the Convention. *The Committee asks the Government to provide information on the implementation and enforcement of section 31 of the Equal Opportunities Act, including information on any cases brought before the courts and their outcomes. It also asks the Government to indicate measures taken to promote awareness of the Act's equal pay provisions.*

The Committee recalls that the Convention does not limit the application of the principle of equal remuneration for men and women for work of equal value to the level of the enterprise or undertaking. In this regard, the Committee notes that section 31 allows men and women to bring equal pay claims against their employers using comparators employed by the same employer or by any associated employer in Gibraltar in which common terms and conditions of employment are observed either generally or for employees of the relevant classes. Two employers are considered to be associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person has (directly or indirectly) control. In addition, the Committee notes that under section 63 of the Act, terms contained in a collective agreement or any rule made by an employer are void where "the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of this Act" or "the term or rule is included or made in furtherance of an act which is unlawful by virtue of this Act" (section 63(2)(a) and (b)). *The Committee asks the Government to indicate whether section 63 renders void terms of collective agreements or terms or rules of undertakings that violate the right to equal remuneration for men and women for work of equal value.*

Assessment of the gender pay gap. The Committee notes from the Employment Survey Report published by the Statistics Office in March 2008 that the gender wage gap for October 2007 (average monthly earnings for full-time work)

was as wide as 31 per cent. The gender pay gap was wider in the private sector (33.3 per cent) than in the public sector (26.7 per cent). As regards the different industries, the gender pay gap was particularly wide in “financial intermediation” (47.6 per cent). *The Committee asks the Government to provide updated information on the earnings of women and men that would allow the Committee to assess the progress made in closing the wide gender pay gap. In this regard, the Committee also asks the Government to provide detailed information on the measures taken to analyse and correct the causes of the continuing income gap between men and women and the results achieved by such measures.*

Article 3. Objective job evaluation. Noting that the Equal Opportunities Act’s equal pay provisions refers to the notions of “work rated as equivalent” and “work of equal value” in terms of the demands made on the employee, the Committee asks the Government to provide information on any measures taken or envisaged to promote the development and use of methods for the objective evaluation of jobs, in accordance with Article 3 of the Convention.

Bolivarian Republic of Venezuela

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1971)

The Committee notes the communication of the Confederation of Workers of Venezuela (CTV), forwarded to the Government on 26 October 2007 and the communication of the Venezuelan Association of Actors (AVA), forwarded to the Government on 12 February 2008. It also notes that the Government has not provided information on these comments. The Committee notes that the communication of the CTV reiterates its communication of 19 June 2007 and that the communication of the AVA states that, following the disagreement expressed by an actress concerning the draft constitutional reform, the Culture Minister indicated in public statements that perhaps certain actors should not be granted access freely to public media and that they could be banned from the “Villa del Cine”, a public institution comprising film production studios. *In this regard, the Committee expresses concern at statements which would appear to make access to employment and occupation dependent on ideological support for government positions and requests the Government, for the purposes of guaranteeing that there is no discrimination based on political opinion, to refrain from issuing statements or undertaking action which relates to limiting access to employment and occupation for reasons of political opinion.*

Furthermore, the Committee notes that the Government has not provided the information requested by the Committee in its 2007 observation, to which the Committee had requested a detailed reply in 2008. *The Committee expresses its deep concern at the lack of reply from the Government to the serious matters raised in its previous observation, and urges the Government to reply to all the matters set out in its previous observation, which read as follows:*

1. The Committee notes the Government’s report and the communication sent by the Confederation of Workers of Venezuela (CTV), which was forwarded to the Government on 19 June 2007, and the Government’s reply thereto received on 20 September 2007. The Committee notes that the Government has not replied specifically to the communications from the National Single Federation of Public Employees (FEDE-UNEP), affiliated to the CTV, which were forwarded to the Government on 23 November 2004 and 22 March 2006.

2. *Discrimination on political grounds. Tascón list.* The communications of the FEDE-UNEP refer to threats, harassment, transfers, the worsening of working conditions and the dismissal of employees of the Central and Decentralized National Public Administration in response to their participation in the collection of signatures to initiate a referendum to revoke the public offices assigned by popular election, in accordance with the Constitution. FEDE-UNEP provided 700 names of dismissed workers. The names of the workers who participated in initiating the referendum process were published prior to their dismissal on a list on the Internet which, according to FEDE-UNEP and CTV, was used as a source of information for reprisals. In its communication of 2007, the CTV refers to the fact that, on 15 December 2005, the President of the Republic recognized the discriminatory use made of the list and stated that the list “should be discarded”. Nevertheless, according to the union, the discrimination has continued and has worsened in the public sector.

3. *Discrimination on political grounds in Petróleos de Venezuela (PDVSA).* On the matter of the 19,500 workers dismissed from the PDVSA, the Committee notes that the CTV cites statements allegedly made by the President of the PDVSA which illustrate that these dismissals were politically motivated. According to the CTV, the President of the PDVSA expressed his determination to continue to dismiss employees to ensure that the enterprise “is in line with and reflects the love our people have expressed towards our President”. In its reply to the CTV’s comments, the Government refers to the legislation providing protection against discrimination and provides information on the status of complaints filed by dismissed employees of the PDVSA. However, the Government does not comment on statements allegedly made by the President of the PDVSA. *The Committee strongly urges the Government to take the necessary measures to investigate the allegations of management practices in the public sector, including the PDVSA, that discriminate against employees on the basis of their political opinion, and to end such practices where they are found to exist. Please keep the Committee informed in this regard. The Committee also refers in this regard to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).*

4. *The armed forces.* The CTV indicates that, although there have not been changes in the provisions establishing the institutional and non-political nature of the armed forces, soldiers and officers are obliged to shout the slogan “Fatherland, socialism or death” and that the President of the Republic has stated that whoever is not prepared to give voice to this slogan must resign.

5. The Committee notes that, in its communication, the Government refers to section 7 of the Organic Labour Act which excludes the members of armed corps, meaning the armed corps of the national armed forces, the police services and other bodies involved in the defence and security of the nation and the maintenance of public order from the scope of the Act. The Committee

stresses that, although the Organic Labour Act does not apply to members of armed corps, they, like other workers, enjoy the protection laid down by the Convention. The Committee reminds the Government that, according to paragraph 47 of its Special Survey of 1996 on this Convention, “the general obligation to conform to an established ideology or to sign an oath of political allegiance would be considered discriminatory”.

6. *Pressure on public officials.* The CTV adds that the President of the Republic has decided to establish a new political party and observes, indicating that a political organization is being established by the State, that action in support of this party is undertaken in state schools and that there have been many complaints of pressure exerted upon public officials to join that organization. The Government indicates in this connection that the Constitution of the Bolivarian Republic of Venezuela provides for the freedom to join to any party. The Committee notes that the issues arising under the Convention do not relate in this case to the forming of a political party, but the pressure exerted on workers, whether from the public or the private sector, to join a given party.

7. The Committee stresses that threats, harassment, transfers, worsening of working conditions and dismissal of employees on the basis of their activities expressing opposition to the established political principles, as well as the requirement to conform to a specific ideology constitute discrimination on political grounds within the meaning of the Convention (see General Survey of 1988, paragraph 57, and the Special Survey of 1996, paragraph 47).

8. *The Committee expresses deep concern at the facts referred to above and urges the Government to adopt all the necessary measures in law and practice to provide redress for the effects of the acts of discrimination referred to above, to prevent such situations recurring and to protect workers in both the public and private sectors from discrimination on the ground of political opinion, in accordance with the Convention. It requests the Government to provide detailed information on the specific measures taken in this regard.*

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

[The Government is asked to reply in detail to the present comments in 2009.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 100** (Albania, Argentina, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cambodia, Canada, Cape Verde, Chad, Chile, China, China: Macau Special Administrative Region, Congo, Croatia, Democratic Republic of the Congo, Denmark, Djibouti, Ecuador, El Salvador, Estonia, Finland, France: French Guiana, France: Guadeloupe, France: Martinique, France: Réunion, France: St Pierre and Miquelon, Gambia, Georgia, Ghana, Greece, Guinea, Guinea-Bissau, Guyana, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Malawi, Mali, Malta, Mauritania, Mauritius, Mongolia, Morocco, Nepal, Netherlands, New Zealand: Tokelau, Nicaragua, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Spain, Sri Lanka, Swaziland, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Uzbekistan, Bolivarian Republic of Venezuela, Zambia, Zimbabwe); **Convention No. 111** (Albania, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Canada, Cape Verde, Chile, China: Macau Special Administrative Region, Congo, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Estonia, Finland, France: French Guiana, France: French Southern and Antarctic Territories, France: Guadeloupe, France: Martinique, France: Réunion, France: St Pierre and Miquelon, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Guinea-Bissau, Guyana, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kenya, Republic of Korea, Kuwait, Latvia, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Nepal, Netherlands, New Zealand: Tokelau, Nicaragua, Nigeria, Norway, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Seychelles, Sri Lanka, Switzerland, Syrian Arab Republic, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, United Arab Emirates, Uzbekistan, Bolivarian Republic of Venezuela, Zambia, Zimbabwe); **Convention No. 156** (Belize, Bolivia, Ethiopia, Guinea, San Marino).

Tripartite consultation

Barbados

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

Effective tripartite consultations. The Committee notes that the Government's report, due in 2008, has not been received. It further notes the comments submitted to the Government by the Congress of Trade Unions and Staff Associations of Barbados, and transmitted to the Office in June 2008. The Congress of Trade Unions and Staff Associations of Barbados indicates that the tripartite committee was established and has met and had discussions, albeit too infrequently. It expresses its hope that the tripartite committee will convene more regular meetings in an effort to fulfil the mandate of the Convention and to discuss the pertinent matters which require a policy position and, therefore, should be discussed at the tripartite level. The Congress of Trade Unions and Staff Associations also advises that, since 1993, there is a Tripartite Social Partnership with a subcommittee which meets on a monthly basis. In 2006, the Committee noted the Barbados Employers' Confederation's indication that there was a need to harmonize the reports being forwarded to the ILO. The employers' organization requested that, after a report is compiled by the Ministry, it should be sent to the Barbados Employers' Confederation and to the Congress of Trade Unions and Staff Associations of Barbados before being forwarded to the ILO. In its 2006 observation, the Committee indicated that the request by the employers' organization was in conformity with the procedure provided for in *Article 5, paragraph 1(d), of the Convention*. **The Committee refers to its 2006 observation and requests the Government to provide a report, including its own views, on the points raised by the Congress of Trade Unions and Staff Associations of Barbados. The Committee hopes that the report will include information on any appropriate arrangements made by the social partners to ensure "effective consultations" on the matters concerning international labour standards covered by the Convention (Article 5, paragraph 1, of the Convention). Furthermore, the Committee asks the Government to report on the nature of any reports and recommendations produced as a result of the activities of the tripartite committee.**

[The Government is asked to reply in detail to the present comments in 2009.]

Belize

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)

Article 5, paragraph 1, of the Convention. Tripartite consultations required under the Convention. The Committee notes the information supplied by the Government in May 2008 in response to the Committee's previous comments. The Government indicates that while the Labour Advisory Board was not active for the purposes of the Convention, written communications were effected through the representative organizations of employers and workers. The Government also advises that draft reports under articles 19 and 22 of the ILO Constitution were forwarded to the respective workers' and employers' organizations for their comments. **The Committee therefore asks the Government to provide a report containing particulars of the consultations held on each of the matters required under Article 5 of the Convention, including information on the nature of any reports or recommendations made as a result of such consultations.** The Committee recalls that certain matters covered by the Convention (e.g. replies to questionnaires, submissions to Parliament, reports to be made to the ILO) necessitate annual tripartite consultations, while others (e.g. re-examination of unratified Conventions and Recommendations, proposals for the denunciation of ratified Conventions) involve less frequent examination:

- (a) *Items on the agenda of the Conference.* Under the terms of this provision, the Government is bound to consult the representative organizations of employers and workers before finalizing the text of its replies to ILO questionnaires.
- (b) *Submission to the National Assembly of the instruments adopted by the Conference.* Convention No. 144 calls upon the Government to consult the representative organizations before finalizing the proposals to be made to Parliament when submitting instruments adopted by the Conference, as per article 19 of the ILO Constitution. The Committee refers to its observations on the fulfilment of this constitutional obligation and asks the Government to supply information on the submission of the pending instruments adopted by the Conference in October 1996, and the other 17 sessions held between 1990 and 2007 to the National Assembly.
- (c) *Re-examination of unratified Conventions and of Recommendations.* Tripartite consultations in this regard are intended to promote the implementation of international labour standards by enabling the Government to envisage measures which could be taken to facilitate the ratification of a Convention or the application of a Recommendation, in the light of changes in national law and practice.
- (d) *Reports on ratified Conventions.* This provision goes further than the obligation set out in article 23, paragraph 2, of the ILO Constitution to communicate reports to the representative organizations. Convention No. 144 thus provides for consultations to be held on the problems which may arise in preparing the reports due under article 22 of the ILO

Constitution on the application of ratified Conventions; in general, these consultations concern the substance of replies to the comments of the supervisory bodies.

- (e) *Proposals for the denunciation of ratified Conventions.* Under the terms of this provision, the Government is bound to consult the representative organizations whenever it considers denouncing a ratified Convention.

Article 4, paragraph 2. Training. The Committee takes note of the Government's statement indicating that, if required, it would be prepared to finance training initiatives because the Ministry of Labour has provision within its annual budget for training activities and workshops. **The Committee asks the Government to include information on any initiative taken for the organization of training for the participants in the consultative procedure, with a view to supporting the operationalization and functioning of the Labour Advisory Board.**

Botswana

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its 2007 observation, which read as follows:

Effective tripartite consultations. The Committee notes the Government's reply received in May 2007 to its previous observation indicating that no consultations had been held on matters set out in *Article 5, paragraph 1, of the Convention*. The Government was consulting the social partners and other stakeholders on the establishment of consultative machinery for the purpose of implementing the Convention. The Committee recalls that in paragraph 21 of the conclusions of the 11th ILO African Regional Meeting (Addis Ababa, April 2007), it was highlighted that "effective tripartism is a mechanism of governance that enables labour markets to function efficiently and equitably. ... Tripartism furthermore can make a major contribution to improving the effectiveness and accountability of government. Ratification and application of the Convention is an important support to the development of tripartism." **The Committee hopes that the Government will establish appropriate social dialogue procedures in accordance with Article 2 of the Convention. It requests again the Government to report on the content of consultations which are held during the period covered by the next report on each of the matters set out in Article 5, paragraph 1, indicating their frequency and the nature of any reports or recommendations resulting from these consultations. Please also supply information on the financing of training necessary for persons participating in the consultative procedures (Article 4, paragraph 2) and on consultations held with the representative organizations concerning the operation of the procedures (Article 6).**

The Committee recalls that the Government can call upon, if it considers it appropriate, the advice and assistance of the Office on the matters raised by this observation so that effective tripartite consultations can be held on the subjects relating to international labour standards covered by the Convention.

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 2006 observation, which read as follows:

Articles 2 and 5, paragraph 1, of the Convention. Consultation mechanisms and effective tripartite consultation required by the Convention. The Committee acknowledged in 2006, the national plan for the implementation of the African Union Plan of Action for the Promotion of Employment and Poverty Alleviation, published by the Ministry of the Public Service, Labour and Employment of Chad in June 2005, which one of the objectives is to promote social dialogue and tripartism. In Chad, social dialogue, in the form of a permanent consultation process with the social partners on problems relating to labour in the broadest sense of the term, has been institutionalized, but is inadequate in certain ways, mainly due to the weakness of the institutions set up for this purpose. In order to improve social dialogue, the national plan envisages providing these institutions with operating resources and reinforcing the capacity of the social partners through the provision of training and information. The Committee also noted that the social dialogue institutions – particularly the High Committee for Labour, Employment and Social Security – had been indicated by the Government in its previous reports as being in charge of the tripartite consultations required by the Convention. **The Committee asks the Government to provide information on any progress that is made in reinforcing social dialogue institutions with a view to ensuring that the consultations held between representatives of the Government, employers and workers, on all the issues set forth in Article 5, paragraph 1, of the Convention, are effective within the meaning of Article 2, paragraph 1.**

Article 4. Administrative support and training. The Committee noted that the Government indicates in its report that, under section 15 of Decree No. 184 of 16 April 2002, the operating costs of the permanent secretariat of the High Committee for Labour and Social Security rest with the State and are covered by the state budget. The Committee noted that, by virtue of section 2 of the Order of 3 May 2000, the main task of the national committee responsible for monitoring social dialogue in Chad is to make proposals concerning the continued training of the social partners and of the administration. **The Committee asks the Government to describe all the arrangements made for the financing of any necessary training of participants in consultative procedures.**

Article 6. Issuing of annual reports on the working of the procedures. The Committee noted that, under the terms of section 13, paragraph 1, of Decree No. 184 of 16 April 2002, minutes are prepared for each session of the High Committee for Labour and Social Security. **The Committee asks the Government to indicate whether an annual report on the working of the procedures provided for in the Convention is issued or envisaged and, if not, to give particulars on the consultations that have taken place with the representative organizations on this question.**

Chile

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its 2007 observation, in which the following matters were raised.

Article 5, paragraph 1(b) and (c), of the Convention. Tripartite consultations required by the Convention. The Committee noted the Government's report received in September 2007, in which the Government stated that there had been no changes in the information sent in the previous report. It notes that the ratification of Convention No. 169 was registered on 15 September 2008. ***The Committee hopes that in its next report the Government will be able to provide information on the prospects for ratification of the other Conventions referred to in previous reports (Conventions Nos 152, 160, 171 and 181).*** The Committee refers the Government to its observation on compliance with the obligation to submit the instruments adopted by the Conference to the National Congress and hopes that the Government will shortly provide information on the tripartite consultations required by the Convention in respect of the abovementioned constitutional obligation.

Effective tripartite consultations. The Committee noted the observations made by the National Union of Workers of Chile (UNT), received in June and August 2007. On 17 August 2007, the Office sent a copy of these observations to the Government. The UNT alleged systematic discrimination, complaining that it was excluded from the meetings convened in accordance with the Convention, particularly meetings to discuss ILO-related matters. The UNT wished to be consulted in accordance with *Articles 2, 3 and 5* of the Convention. The Committee noted that in its report the Government stated that Chilean workers were organized in three confederations: the Single Central Organization of Chilean Workers (CUT), the Autonomous Central Union of Workers (CAT) and the UNT. ***The Committee asks the Government to communicate more detailed information on how Articles 1, 2 and 5 of the Convention are applied, so as to ensure that the most representative organizations of workers, like the UNT, participate fully in the tripartite consultations on international labour standards required by the Convention.***

China

Hong Kong Special Administrative Region

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (notification: 1997)

Article 3 of the Convention. Free choice of workers' representatives. In its 2005 observation, the Committee noted the views of the Hong Kong Confederation of Trade Unions (HKCTU) on the method of appointing workers' representatives to the Labour Advisory Board (LAB), according to which one workers' representative is appointed by the Government ad personam, while the other five are elected by trade unions regardless of their "most representative" character. The Committee further noted that the Government was ready to consider the views of the HKCTU and review the method for electing workers' members. In the report received in November 2007, the Government indicates that pursuant to a review conducted in 2006, it considers that the current method of returning representatives to the LAB is most suitable to local circumstances and in compliance with the requirement of the Convention as applied to the Special Administrative Region of Hong Kong. The Committee recalls that in May 1998 the Office registered a new government notification in relation to *Article 3 of the Convention* indicating that employers and workers are represented by six members on each side on the Labour Advisory Board. Five of the employers' representatives are freely nominated by their respective associations and five workers' representatives are elected biennially by workers' trade unions in a secret ballot. The remaining members are direct appointees of the Chief Executive. In the report received in November 2007, the Government also indicates that members of the LAB were consulted in respect of reviewing the methods for returning LAB representatives and concurred that the current election method should be maintained for the new LAB term beginning in 2007. ***The Committee therefore hopes that in its next report the Government will continue to provide information on the activities of the Committee on the Implementation of International Labour Standards (CIILS) under the auspices of the LAB on all matters relating to international labour standards covered by the Convention. It further requests the Government to indicate whether the HKCTU was included in the consultations and in reviewing the election method.***

Colombia

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)

Strengthening of social dialogue and tripartite consultations. In its observation of 2007, the Committee requested the Government to send its report with detailed information on any written communications undertaken to satisfy the

requirement for consultations with regard to international labour standards and to indicate whether the Standing Committee for Joint Action on Wage and Labour Policy is participating in the consultations required by the Convention. With regard to the application of Convention No. 144, the Single Confederation of Workers of Colombia (CUT) sent the Committee the report on labour rights and freedom of association in Colombia which had been made available to the ILO High-level Mission which visited Colombia in November–December 2007. In the communication received in May 2008, the Government stated that the Standing Committee for Joint Action on Wage and Labour Policy had been established and that an agreement had been signed with the ILO to implement a project intended to strengthen social dialogue, fundamental labour rights, and the inspection, supervision and monitoring of labour in Colombia. In its report received in September 2008, the Government states that no tripartite consultations have been held on the subjects covered by the Convention. The Government adds that it will be a matter for the Standing Committee for Joint Action on Wage and Labour Policy to jointly formulate the procedure, as a matter of urgency, for carrying out the consultations provided for in the Convention. ***The Committee refers once again to its previous comments and reiterates its conviction that the Government and the social partners should undertake to promote and reinforce tripartism and social dialogue on the matters covered by the Convention. The Committee refers to the 2008 ILO Declaration on Social Justice for a Fair Globalization, which affirms that “social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards”. The Committee therefore repeats its invitation to the Government and social partners to undertake “effective consultations” on international labour standards as required by Convention No. 144, which is most significant from the viewpoint of governance.***

Article 5, paragraph 1(b). Tripartite consultations prior to submission to the National Assembly. In its report of 2008, the Government refers to the consultations which may be held in the Standing Committee for Joint Action on Wage and Labour Policy in relation to the obligation of submission. The Committee notes that the consultations required by the provisions of the Convention do not appear to have been held. The Committee also notes that the procedure for submission has not been implemented either. ***The Committee refers to its observation on the obligation of submission, under article 19, paragraphs 5 and 6, of the ILO Constitution, and notes that 31 instruments adopted by the Conference are awaiting submission. The Committee requests the Government to provide information on the effective consultations which will be held with the social partners concerning the proposals presented to the Congress on the occasion of the submission of the instruments adopted by the Conference.***

Article 5, paragraph 1(d). Reports on ratified Conventions. The Committee notes a communication sent to the Government by the CUT in October 2008. ***The Committee invites the Government to formulate its comments on the communication from the CUT. The Committee also hopes that, when replying to the questions raised in the present observation and drawing up the report due in 2009, the Government and the social partners will hold the consultations required by the Convention.***

Congo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)

Article 2 of the Convention. Effective tripartite consultations. In its report received in January 2008, the Government indicates that in compliance with the Convention an Advisory Technical Committee on International Labour Standards, composed of representatives of the administration, unions and employers, was established by Order No. 788 of 6 September 1999. The Committee refers to its previous comments in which it noted the Government’s statement that, due to a lack of adequate financial resources, the Advisory Technical Committee was still not operational. ***The Committee therefore requests the Government to provide information on the steps taken to establish the Advisory Technical Committee on International Labour Standards, with a description of the consultation procedures established within the Committee in accordance with Article 2 of the Convention.***

Article 4, paragraph 2. Training. The Government indicates that the necessary training for participants in the consultation procedures is provided by the State. ***The Committee requests the Government to continue providing information on training for persons participating in consultation procedures, with an indication of whether arrangements have been made or are envisaged to finance the necessary training for such participants.***

Article 5, paragraph 1. Tripartite consultations required by the Convention. The Government indicates that the consultations cover general conditions of labour and government replies to questionnaires concerning items on the agenda of the Conference. The Committee recalls that, under the terms of *Article 5, paragraph 1*, tripartite consultations also have to be held on the submission to the National Assembly of the instruments adopted by the Conference, the re-examination at appropriate intervals of unratified Conventions and of Recommendations, reports on ratified Conventions and the denunciation of ratified Conventions. ***The Committee refers to its comments on the constitutional obligation of submission and requests the Government to provide detailed information on the tripartite consultations held, including those in the Advisory Technical Committee on International Labour Standards, on each of the issues covered by Article 5, paragraph 1, during the period covered by the next report.***

Democratic Republic of the Congo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)

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

The Committee notes with regret that the Government has provided no information on the application of the Convention since its first report, received in July 2004. In its observation of 2005, the Committee took note of comments from the Confederation of Trade Unions of the Congo (CSC), endorsed by the World Confederation of Labour (WCL) and sent to the Government in September 2005. Noting these organizations' statement that the report on the Convention had not been sent to trade union organizations, the Committee asked the Government to comment. The Committee reminds the Government that it is important to send precise and up to date information on a regular basis to allow it to assess the extent to which effect is given to the provisions of the Convention. *The Committee requests the Government to provide a report containing specific and up to date information in response to the comments the Committee has been making since 2004, particularly on the following matters.*

Articles 2 and 5, paragraph 1, of the Convention. Effective tripartite consultations required by the Convention. The Committee noted previously from the Government's report received in June 2004 that the National Labour Council, a tripartite advisory body, has general competence in the field of labour and that a tripartite committee for the implementation of international labour standards was to be established. It further noted that, since the establishment of procedures was pending, no consultations had been held on the subjects listed at *Article 5, paragraph 1*, of the Convention. *The Committee again draws the Government's attention to the fact that any Member ratifying the Convention undertakes to establish procedures for effective consultations on all the matters covered by Article 5.* The nature and form of the procedures are to be determined by each country in accordance with national practice and following consultation of the representative organizations, where such procedures do not yet exist. *The Committee trusts that the Government will provide detailed information on the operation of the procedures established pursuant to Article 2 and on the content and outcome of tripartite consultations held, particularly in the National Labour Council, on each of the matters listed in Article 5, paragraph 1. It also hopes that the Government will be in a position to provide details of the administrative support provided for the procedures required by the Convention (Article 4, paragraph 1) and on all consultations held with representative organizations on the operation of the procedures (Article 6).*

Article 3, paragraph 1. Free choice of representatives. *With reference to its previous comments and the observations sent by the Confederation of Trade Unions of the Congo, the Committee requests the Government to describe the manner in which representatives of employers and workers for the purposes of the Convention are chosen.*

Guatemala

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1989)

Articles 2 and 5 of the Convention. Effective tripartite consultations. In its observation of 2006, the Committee expressed the hope that it would receive detailed information on the progress made by the Government and social partners to ensure effective tripartite consultations. The Committee also requested information on the work of the Tripartite Committee for International Labour Affairs in relation to the matters covered by the Convention. In the report received in August 2007, the Government attached a copy of all the correspondence exchanged with the social partners, as well as the notifications and records of proceedings signed by the representatives of the three sectors in 2005, 2006 and 2007. Also attached was a report on the possible ratification or denunciation of certain international labour Conventions. The Committee notes with interest that there has been a tripartite examination of the ratification prospects for updated and recent Conventions – and a number of Conventions are already the subject of a specific legislative initiative for their ratification (for example, Conventions Nos 175, 183 and 184). Procedures were also set in motion for the denunciation of Conventions Nos 58 and 112. The Government also attached a report on achievements and matters pending for the 2004–07 period, strengthening the Government's position that the Tripartite Committee for International Labour Affairs has fulfilled its mandate as contained in Convention No. 144. Progress has not been made on all subjects but the tripartite dialogue is open.

The Committee notes the observations from the Union Movement, Guatemalan Indigenous and Agricultural Workers for the Defence of Workers' Rights, which were sent to the Government in September 2007. These observations contain the claim that the ratification of the Part-Time Work Convention, 1994 (No. 175), would lead to greater insecurity with regard to employment. In the Tripartite Committee, the workers' organizations issued a negative opinion in relation to its possible ratification. However, the Government and the employers' organization expressed their interest in ratification being approved. In addition, the trade union refers to a possible contradiction between Convention No. 144 and Government Agreement No. 285-2004, whereby new rules for the functioning of the Tripartite Committee for International Labour Affairs were established. The Government Agreement was examined by the Committee of Experts in its previous comments, particularly in its observation of 2004. *Taking into account the continuing difficulties in the national context for consolidating a constructive social dialogue, the Committee very much hopes that the consultations covered by the Convention will enable the Government and social partners to maintain and reinforce tripartism and social dialogue. In order to be able to examine the practical application of Convention No. 144, the Committee requests the Government to supply a report containing information on the tripartite consultations held on*

all the matters relating to international labour standards covered by the Convention. It also requests the Government to continue supplying information on the meetings of the Tripartite Committee for International Labour Affairs and on all the recommendations made on international labour standards issues covered by the Convention.

Guinea

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)

The Committee notes with regret that the Government's report has not been received. It is therefore bound to repeat its previous observations, which read as follows:

Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention. In a report received in May 2005, the Government recalled that, with a view to holding tripartite consultations on matters relating to ILO activities, it established an Advisory Committee on Labour and Social Legislation (CCTLS) in 1995. However, the Government recognized that this body has met rarely since its establishment and that there has been no tripartite dialogue on the items on the agenda of the Conference. The Government indicated that this situation is due, among other factors, to the lack of reaction of the social partners. Furthermore, the Government reported that, following a tripartite workshop on international labour standards held in October 2004, the Department of Employment and the Public Service renewed the officers of the CCTLS and relaunched legislative activities. The Committee expresses again the firm hope that the Government will be in a position to provide information in its next report on the measures adopted to ensure effective tripartite consultations on the matters covered by the Convention. *It requests the Government to provide reports regularly containing detailed information on the consultations held on all the subjects covered by Article 5, paragraph 1, of the Convention, including precise information on the activities of the Advisory Committee on Labour and Social Legislation.*

Article 4. Financing of training. The Government indicated that there are no specific arrangements for the training of participants. However, when training is initiated at the national level by the competent authority in the context of social consultations, it is generally tripartite in nature. In this respect, the Committee recalls that, where training for participants in the consultations proves to be necessary to enable them to perform their functions effectively, its financing should be covered by appropriate arrangements between the Government and the representative organizations (see General Survey of 2000 on tripartite consultation, paragraphs 125 and 126). It requests the Government to take measures for this purpose and to describe in its next report, where appropriate, the content of these arrangements (*Article 4, paragraph 2*). Finally, the Government indicated that a training programme was envisaged in the context of the Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF), but that, in the absence of any reaction by the social partners, it was limited to activities initiated by the Ministry of Employment and the Public Service and carried out at the national level. *The Committee requests the Government to describe in its next report the training activities undertaken in relation to international labour standards. It also requests the Government to provide information on any progress achieved in the implementation of the PRODIAF programme in relation to the necessary training for participants in the consultation procedures, as required by the Convention.*

Republic of Korea

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)

Tripartite consultations required under the Convention. The Committee takes note of the information provided in the Government's report, received in September 2008, in response to its 2007 comments. The Committee notes **with interest** that in the intervening period between the Government's last report in 2007 and its present report, the Government ratified the Asbestos Convention, 1986 (No. 162), the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The Committee also notes **with interest** that, in June 2008, the Council on International Labour Policies held consultations to plan the medium- and long-term ratification of ILO Conventions. The Government reports that the tripartite representatives have jointly drawn up a medium- and long-term plan to ratify the Conventions, and have actively cooperated to pursue this plan. *The Committee welcomes the positive development described above and hopes to be kept informed of the activities of the Council on International Labour Policies. It also invites the Government to continue to report regularly on the tripartite consultations held with regard to each of the matters listed in Article 5, paragraph 1, of the Convention.*

Madagascar

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

Tripartite consultations required by the Convention. In reply to the comments made in 2006, the Government indicates in the report received in October 2008 that the procedures ensuring tripartite consultations required by the Convention have yet to be defined. Moreover, in a communication sent to the Government in August 2008, the Malagasy Workers' Conference (CTM) indicates that the ministries responsible for drafting legislation relating to conditions of work in export processing zones have ignored the principle of consulting the National Labour Council. The CTM emphasizes that the National Labour Council is the tripartite consultation body within the meaning of the Convention provided for by

section 184 of the Labour Code. *The Committee again requests the Government to provide detailed information on the consultations held on each of the matters set out in Article 5, paragraph 1, of the Convention, specifying their purpose and frequency and the nature of any resulting reports or recommendations. With reference to the observation submitted by the CTM, the Committee requests the Government to state whether questions arising out of reports on the application of ratified Conventions have been raised in the National Labour Council (Article 5, paragraph 1(d), of the Convention). More generally, the Committee requests the Government to indicate whether the National Labour Council has been consulted on the preparation and implementation of legislative or other measures to give effect to the Tripartite Consultation (Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), and to other international labour Conventions and Recommendations (Paragraph 5(c) of Recommendation No. 152).*

Financing of training. The Government states that seminars held on international labour standards have provided participants with all necessary knowledge of standards, including the consultation procedures provided for by the Convention.

Functioning of consultation procedures. The Government indicates that the representative organizations will be consulted with regard to the production of an annual report on the functioning of the procedures set forth by the Convention, once these procedures are established. *Recalling that Article 6 of the Convention does not impose any obligation to produce an annual report but requires tripartite consultations to be held to decide whether or not it is appropriate to produce such a report, the Committee requests the Government to report on the results of tripartite consultations held on the working of the consultation procedures.*

[The Government is asked to reply in detail to the present comments in 2009.]

Malawi

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1986)

Article 5, paragraph 1, of the Convention. Tripartite consultations required under the Convention. The Committee notes a brief report received in May 2008 reiterating that the Government carries out consultations with the social partners as stipulated in the Labour Relations Act of 2000. *It asks the Government to include in its next report particulars of the tripartite consultations held on each of the matters covered by the Convention, including information on the nature of any reports or recommendations made as a result of such consultations.*

Article 5, paragraph 1(c) and (e). In its previous comments, the Committee recalled that the ILO Governing Body recommended the denunciation of Conventions Nos 50, 64, 65, 86, 104 and 107 concerning indigenous workers and the ratification of the most updated instrument, the Indigenous and Tribal Peoples Convention, 1989 (No. 169). In the Committee's 2005 direct request on the Underground Work (Women) Convention, 1935 (No. 45), the Government was invited to give favourable consideration to the ratification of the Safety and Health in Mines Convention, 1995 (No. 176), which shifts the emphasis from a specific category of workers to the safety and health protection of all mineworkers, and in turn to denounce Convention No. 45. *The Committee again invites the stakeholders concerned to hold consultations to re-examine unratified Conventions – such as Conventions Nos 169 and 176 – in order to promote, as appropriate, their implementation, ratification, or denunciation.*

Nepal

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)

Strengthening social dialogue. Support of the Office. In its 2006 observation, the Committee welcomed the consultations held in the Central Labour Advisory Committee and other tripartite committees, with the active involvement of the ILO Office in Kathmandu. It emphasized that, in view of the circumstances in the country, there are opportunities to further deepen tripartite consultation and to intensify social dialogue in Nepal. The Office has the technical capacity to help strengthen social dialogue and support the activities of the Government, employers' and workers' organizations to engage in the consultations required by the Convention, as a contribution to restoring democracy and the process of peace building. In this regard, the Committee notes with interest the information provided by the Government in the report for the period 2006–07. It notes that article 154 of the Interim Constitution of Nepal established a National Labour Commission and a draft Labour Commission Act 2008 has also been prepared. The Government states that the new Act will be a remarkable achievement once it is approved by the Constituent Assembly. The Government states that it has a staunch and firm belief in the principle and value of tripartite consultations for maintaining harmonious labour relations in the country. *The Committee refers to the 2008 Declaration on Social Justice for a Fair Globalization, which states that “social dialogue and the practice of tripartism between governments and the representatives of organizations of workers and employers within and across borders are now much more relevant to achieving solutions and building up social cohesion and the rule of law through, among other means, international labour standards”. The Committee*

therefore invites the Government and the social partners to continue to report on measures taken to promote tripartite consultation on international labour standards, as required by Convention No. 144, a Convention that is to be regarded as most significant from the viewpoint of governance.

Tripartite consultations required by the Convention. The Government indicates in its report that every effort has been made by the Government of Nepal to ensure consultations regarding the matters concerning the activities of the ILO, as provided for in *Article 5, paragraph 1, of the Convention*. The Government prefers to consult with the representatives of the social partners at various levels while preparing various reports or replies on the agenda of the Conference or before making proposals on the submission of the instruments adopted by the Conference to the competent authorities. All reports to be made to the ILO under article 22 are prepared in consultation with the social partners before dispatch. During the reporting period, some 79 meetings were held at the initiative of the Ministry of Labour to address various labour-related issues under the principle of tripartite consultations. The Committee further notes **with interest** that a book containing the instruments adopted by the Conference between June 1995 and June 2006 has been prepared and is ready to be submitted to Parliament for its consideration. The Committee recalls that the ratifications of Conventions Nos 105 and 169 were registered in August and September 2007. ***The Committee again welcomes this approach, including the assistance that the ILO is providing to the social partners in the field, and reiterates that social dialogue and, in particular, the tripartite consultation required by Convention No. 144 could contribute to promoting democracy and decent work in Nepal.***

Nigeria

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its 2006 observation, which read as follows:

1. *Consultations with representative organizations.* The Committee notes the Government's succinct replies in relation to its 2004 direct request. It notes that the Nigeria Employers Consultative Association (NECA) and the Nigeria Labour Congress (NLC) are consulted at the National Labour Advisory Council (NLAC) level with regard to some matters covered by the Convention. The Government further indicates that the National Labour Institutions Bill, which makes provision for the National Labour Advisory Council, is before the National Assembly. The Committee reminds the Government that it is important for employers' and workers' organizations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation (General Survey of 2000 on tripartite consultation, paragraphs 39 and 40). ***It asks the Government to keep the Committee updated as to the results of the ongoing legislative reform and its impact on the improvement of consultations with "representative organizations" which enjoy freedom of association, as required under this priority Convention (Articles 1 and 3 of the Convention).***

2. *Tripartite consultations required by the Convention.* The Committee recalls that the tripartite consultations covered by the Convention are essentially intended to promote the implementation of international labour standards and concern, in particular, the matters enumerated in *Article 5, paragraph 1, of the Convention*. ***The Committee therefore requests the Government to provide full and detailed information on the tripartite consultations dealing with:***

- (a) ***the Government's replies to questionnaires concerning items on the agenda of the International Labour Conference and the Government's comments on proposed texts to be discussed by the Conference (subparagraph (a));***
- (b) ***questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the Organization (subparagraph (d)).***

3. *Prior tripartite consultation on proposals made to the National Assembly.* The Committee notes that the instruments adopted at the 95th Session of the Conference were submitted to the National Assembly for noting on 21 August 2006. The Government further states that there was no tripartite consultation as there was no request for their ratification. The Committee points out that, for those States which have already ratified Convention No. 144, effective prior consultations have to be held on the proposals made to the competent authorities when submitting the instruments adopted by the Conference (*Article 5, paragraph 1(b), of the Convention*). Governments have complete freedom as to the nature of the proposals to be made when submitting the instruments, but even if the Government does not intend proposing the ratification of a Convention, the social partners must be consulted sufficiently in advance for them to reach their opinions before the Government finalizes its decision (please refer to paragraph 89 of the Committee of Experts' General Report of 2004, as well as Part VII of the 2005 *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*). ***The Committee trusts that the Government and the social partners will examine the measures to be taken with a view to holding "effective consultations" on the proposals made to the National Assembly when submitting the instruments adopted by the Conference, as required by the Convention.***

4. *Operation of the consultative procedures.* ***Finally, the Committee recalls its previous comments and 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.***

Pakistan

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

Tripartite consultations required under the Convention. The Committee notes the information provided in the Government's report received in November 2008. The Government indicates that the Ministry of Labour has started its preparatory work for the establishment of a Tripartite Consultation Committee, while discussing the matter with the social partners. The Government aims to incorporate the discussion on international labour standards in the mandate of the Pakistan Tripartite Labour Conference. The Government indicates that once the preparatory work has been completed, the Tripartite Consultation Committee will start functioning and its meetings will be held in accordance with the provisions of the Convention. The Pakistan Workers' Federation observes, in a communication received in September 2008, that the tripartite machinery at the federal level is still very weak and needs to be strengthened, in particular by holding regular meetings in accordance with the principles of the Convention. The Pakistan Workers' Federation does, however, note that the principle of tripartism is being successfully observed in respect of various social security schemes. **The Committee asks the Government to supply information on the progress made towards the establishment of the Tripartite Consultation Committee. The Committee refers to its previous comments and asks that the Government's next report should also give particulars of the consultations held on each of the matters relating to international labour standards referred to in Article 5 of the Convention, including information on reports or recommendations made as a result of these consultations.**

[The Government is asked to reply in detail to the present comments in 2009.]

Poland

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)

Article 5, paragraph 1, of the Convention. Tripartite consultations required under the Convention. In its reply received in August 2008 to the 2006 direct request, the Government indicates that, due to the political situation in Poland in August and September 2007, all the representative organizations with the exception of "Solidarnosc" suspended their participation in the work on the social agreement, which included a programme for the revision of Polish law and practice. However, during the meeting of the Tripartite Commission Team for Cooperation with the ILO in April 2008, it was decided to continue the work of reviewing unratified Conventions. Analysis of the conformity of Polish law and practice with each Convention will be undertaken by the Ministry of Labour and Social Policy. The decision to initiate a ratification procedure will be taken following consultations on the results of the re-examination with the members of the Tripartite Commission Team for Cooperation with the ILO. The Committee also notes the information concerning the consultations held within the Tripartite Commission Team for Cooperation with the ILO on the prospects of ratifying the Instrument of Amendment of the ILO Constitution of 1997, the Private Employment Agencies Convention, 1997 (No. 181), the Maritime Labour Convention, 2006, and on the denunciation of the Underground Work (Women) Convention, 1935 (No. 45). Following these consultations, proposals were approved by the social partners such that Convention No. 181 and the Instrument of Amendment of the ILO Constitution were ratified, and Conventions Nos 45 and 96 were denounced. Poland intends to ratify the Maritime Labour Convention, 2006, before the end of 2010. **The Committee notes with interest the information provided and invites the Government to continue to keep it informed of the content and scope of the tripartite consultations held on the matters set out in the Convention during the period covered by the next report.**

Saint Kitts and Nevis

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)

Effective tripartite consultations. The Committee notes with regret that the Government has not submitted a report since November 2004. It recalls that, in its first report on the application of the Convention, the Government indicated that the principle of social dialogue was still relatively new and its general acceptance and practice was being pursued. **The Committee again invites the Government to provide information on the activities of the National Tripartite Committee for International Labour Standards established to address the matters regarding the ILO.**

Tripartite consultations required under the Convention. The Committee also noted that feedback from the social partners had not been received regarding the items on the agenda of the Conference. It noted that the social partners were consulted before proposals were submitted to the competent authority. The Committee refers to its observation on the obligation to submit the instruments adopted by the Conference to the National Assembly, and recalls that the Government has not provided information on the submission of the instruments adopted by the Conference at the 11 sessions held between 1996 and 2007. **It asks the Government to supply information in its next report on the tripartite**

consultations held on each of the matters set out in Article 5, paragraph 1, of the Convention, including information as to the frequency of these consultations, and providing examples of any reports or recommendations made as a result of the consultations held under the established procedures.

[The Government is asked to reply in detail to the present comments in 2009.]

Sao Tome and Principe

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its 2007 observation, which read as follows:

Mechanisms for tripartite consultations and the consultations required by the Convention. In a brief report received in March 2007, the Government refers to the tripartite consultations carried out through the National Council for Social Dialogue. The Government also indicates that the National Council meets regularly. *The Committee refers to its previous observations and once again invites the Government to indicate in its next report the manner in which the National Council is involved in the consultations required by the Convention and to provide particulars of the consultations held on each of the matters on international labour standards referred to in Article 5, paragraph 1, of the Convention, including information on the reports or recommendations made on international labour standards as a result of such consultations.*

Sierra Leone

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1985)

The Committee notes with regret that the Government's report has not been received. It is therefore bound to repeat its previous observations, which read as follows:

Effective tripartite consultations. The Committee notes the Government's report supplied in June 2004 indicating its commitment to promote tripartite consultation throughout the country as well as supporting the tripartite delegation to the International Labour Conference. It recalls that, at its 90th Session (June 2002), the Conference adopted a resolution concerning tripartism and social dialogue in which it emphasized that social dialogue and tripartism have proven to be valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues in which the social partners play a direct, legitimate and irreplaceable role. *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.

Switzerland

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)

Effective tripartite consultations. In its previous comments, the Committee expressed the hope that the social partners would continue to examine the manner in which the Convention is applied and that they would report on initiatives taken in order to respond to the expectations of all the parties involved in the consultations on international labour standards required by the Convention. The Government states in its report received in August 2008 that the Tripartite Federal Commission on ILO Affairs met on 21 November 2006 and 22 March 2007. The minutes of each meeting were attached to the report. The Committee notes that the Government has approved a decision of the Tripartite Commission to maintain this institution. *The Committee would be grateful if the Government would continue to report regularly on the tripartite consultations held on each of the matters referred to in Article 5, paragraph 1, of the Convention.*

United Republic of Tanzania

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its 2006 observation, which read as follows:

Establishment of the Labour, Economic and Social Council. The Committee notes the Government's report for the period ending September 2006. The Committee notes that the Labour Advisory Council has been replaced by a new tripartite institution, the Labour, Economic and Social Council (LESCO), established under Act No. 7 of 2004 on labour institutions. The Government indicates that this Council began operating on 7 September 2005. *The Committee asks the Government to specify in its next*

report the procedures introduced to ensure effective tripartite consultations (Article 2 of the Convention), and the manner in which the members of the Council are chosen (Article 3).

Tripartite consultations required by the Convention. The Committee notes the Government's statement to the effect that two sessions of tripartite consultation have taken place within the LESCO. *The Committee once again asks the Government to provide detailed information on the content of the consultations that have taken place within the LESCO with regard to each of the matters set out in Article 5, paragraph 1, of the Convention, and on the recommendations resulting therefrom.*

Administrative support and training. The Committee notes the Government's statement to the effect that participants in tripartite consultations have received training in mediation and arbitration. *The Committee invites the Government to continue providing updated information on this matter and to indicate the manner in which the necessary administrative support is provided for tripartite consultations, as required under Article 4.*

Togo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

The Committee notes with regret that the Government's report has not been received. It is therefore bound to repeat its previous observations, which read as follows:

Consultation procedures. The Committee noted in 2004 the project to create a national task force on standards to be responsible for "consensus-based management of relations with the ILO essentially in matters pertaining to constitutional obligations and ongoing promotion of social dialogue". *It requests the Government to provide information on the effect given to this project.*

Tripartite consultations required by the Convention. The Committee also noted the information supplied by the Government on the activities of the National Labour Council. It noted that the information was not specific enough to enable it to assess the effect given to this priority Convention. *The Committee asks the Government to provide information on the consultations held on each of the matters set out in Article 5, paragraph 1, of the Convention, specifying their purpose, and frequency, and the nature of any reports or recommendations resulting from the consultations.*

The Government stated that the main difficulty is finding funds for the activities of the bodies that conduct social dialogue and that extra assistance would be essential to strengthen such dialogue, which is becoming increasingly indispensable. *The Committee hopes that the Office will be able to furnish its advice in response to the Government's request so that effective consultations can be held on the subjects covered by the Convention.*

Trinidad and Tobago

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)

Tripartite consultations required under the Convention. The Committee takes note of the information contained in the Government's report received in August 2008 in reply to its 2007 comments. The Government reports on the consultations held by the ILO 144 Tripartite Committee on matters set forth under the Convention. The Committee notes **with interest** that, following consultations held over this period, the Tripartite Committee agreed to recommend the ratification of the Employment Policy Convention, 1964 (No. 122), and the Occupational Safety and Health Convention, 1981 (No. 155). The Committee also recalls that ratification of the Labour Inspection Convention, 1947 (No. 81), and the Labour Administration Convention, 1978 (No. 150), was registered in August 2007. *The Committee welcomes being informed of such developments and expresses its wish to be kept informed of any follow-up on the recommendation by the Tripartite Committee concerning the ratification of other ILO Conventions (Article 5, paragraph 1(c), of the Convention). The Committee also requests the Government to continue to report regularly on the tripartite consultations held further to this Convention, and would be grateful if the Government would supply copies of reports and information on any recommendations produced as a result of such tripartite consultations held on each of the matters listed in Article 5, paragraph 1, of the Convention.*

United Kingdom

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1977)

Effective tripartite consultations. The Committee notes the information provided in the Government's report received in August 2008 and the comments transmitted by the Trade Union Congress (TUC) in September 2008. The Government indicates that it continues to consult social partners, both formally and informally, through regular pre- and post-Conference meetings and pre-Governing Body meetings. The Government states that every effort is made to provide all reports to the social partners in good time, notwithstanding other staff pressures during the reporting period and the need to consult a very wide range of government departments, as well as the devolved administrations on most of the reports prepared by the Government. The TUC again expresses its deep concern over the persistent late delivery of reports by the Government, which hinders the TUC's ability to provide its comments in accordance with the deadline set by the ILO. *The Committee invites the Government and the social partners to re-examine the effectiveness of the consultative*

procedures in place for consultations on questions arising out of reports to be prepared under article 22 of the Constitution (Article 5, paragraph 1(d) of the Convention).

Article 5, paragraph 1(c). Ratification prospects. The Committee notes with interest that the ratification of Convention No. 187 was registered on 29 May 2008. The Government also indicates that it considered its position on the ratification of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), in the context of preparations for its report under article 19 of the Constitution, and that it relayed its view thereon to the Conference Committee during its discussion of the 2008 General Survey. The TUC welcomes the ratification of Convention No. 187; however, it regrets the backlog of ratifications and the failure of the Government to move towards ratification of other instruments. The TUC recalls its view that the failure to re-ratify Convention No. 94 is inconsistent with other government initiatives that advise companies on contract compliance on labour clauses. ***The Committee invites the Government and the social partners to continue to report on measures taken to promote tripartite consultation on international labour standards, as required by Convention No. 144, in particular on the outcome of consultations held to re-examine the prospects of ratification of unratified Conventions, and on any follow-up to recommendations derived from such consultations.***

United States

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1988)

Effective tripartite consultations. The Committee notes the information provided in the Government's report and the comments of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), received in September 2008. In reply to the Committee's previous observation, the Government reports that the President's Committee on the ILO continued to operate as a federal advisory committee, and was renewed to 30 September 2009. The ILO Consultative Group met four times and held other less formal consultations over the reporting period. The Government indicates that it submitted three reports prepared further to article 22 of the Constitution, two reports prepared further to article 19 of the Constitution, and the annual reports prepared as a follow-up to the 1998 Declaration, to the Tripartite Advisory Panel on International Labour Standards (TAPILS) for its review and comment. The Committee notes that the instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to the House of Representatives and the Senate on 27 June 2008. The Government further indicates that the Department of State hosted a tripartite meeting to discuss the prospects of ratification of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the Maritime Labour Convention, 2006 (MLC, 2006), in February 2008. The Government states that it has continued to review both Conventions. In particular, the coast guard is conducting an intensive article-by-article analysis of the MLC, 2006, which will be followed by an intergovernmental review and, subsequently, an examination by TAPILS. In its comments, the AFL-CIO indicates that neither the tripartite meeting on matters of treaty law and procedure with respect to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and others, nor the TAPILS meeting on Convention No. 185 have taken place. The AFL-CIO states that there has been no follow-up to the tripartite consultations held to consider the prospects of ratification of Convention No. 185 and the MLC, 2006, and that it has seen no evidence of any progress made towards ratification of Convention No. 185, or the MLC, 2006. The AFL-CIO states that, while suggestions were raised in the tripartite consultations on ways to resolve certain issues regarding Convention No. 185, there has been no follow-up from the Government. ***The Committee again invites the Government and the social partners to continue to report on measures taken to promote tripartite consultations on international labour standards, as required by Convention No. 144, and to provide information on the outcome of consultations held to re-examine the prospects of ratification of unratified ILO Conventions and any follow-up thereto (Article 5, paragraph 1(c), of the Convention).***

Uruguay

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1987)

Effective tripartite consultations. In its 2007 observation, the Committee noted the observations of the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) and trusted that the Government and the social partners would examine measures to ensure that initiatives are taken to give satisfaction to all the parties concerned in the consultations required by the Convention. In the report received in September 2008, the Government confirms that the examination of the possible ratification of Conventions Nos 102, 135, 158, 173, 187 and 188 was continued. Furthermore, with a view to examining the Maritime Labour Convention, 2006, a special commission had been established and specific information was awaited which was required from other authorities competent in maritime labour matters.

With regard to the operation of the Tripartite Working Group, a restructuring plan was submitted in the first meeting in 2008. Ordinary monthly meetings and extraordinary meetings were proposed where required by the themes or issues to be addressed. Meetings were to be convened five days in advance. The agenda was to be pre-established and new items could only be included with the unanimous support of the participants. The issues addressed would be covered by a double discussion. During the first discussion, an issue would be presented and discussed. At the next meeting, following

a further discussion, a decision would be taken. The Government undertakes to transmit the report of the meeting to any of the sectors which did not attend. Failure to attend a meeting in which a decision was to be adopted would not prevent its adoption. Participants in meetings need to have a position determined when the issue has already been addressed in an earlier meeting. Decisions are adopted by majority, unless consensus or unanimity is achieved, with those who vote against or abstain being able to express their position, which should be recorded in the message sent to the legislative authority. *The Committee notes with interest these measures for improving the application of the Convention and trusts that indications will be provided in the next report on the manner in which consultations have been held on international labour standards as required by the Convention. The Committee would also be grateful for information on the action taken as a result of proposals made for the ratification or implementation of Conventions and Recommendations examined by the Tripartite Working Group.*

Bolivarian Republic of Venezuela

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

Strengthening social dialogue and tripartite consultations. In its previous comments, the Committee asked the Government to report on the manner in which representative organizations, enjoying the right of freedom of association, participate in the consultations required under the Convention, as well as on the consultations on the proposals put to the National Assembly when the instruments adopted by the International Labour Conference are submitted. Furthermore, the Government was asked to report on all the other consultations required under *Article 5, paragraph 1, of the Convention*. The Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), for its part, in October 2007 and August 2008, forwarded to the Committee its observations on Convention No. 144 and on the application of Convention Nos 26, 87 and 158. In its latest report on Convention No. 144, the Government points out the broadening of the participation of various social partners, to include the various employers' and workers' organizations which enjoy the full exercise of trade union activity. The Government confirms that, in accordance with the National Constitution, Convention No. 144 and the provisions of section 62 of the regulations under the Organic Labour Act, a broad basis for social dialogue has been legitimized. As part of this measure, a national social dialogue round table has been set up to review minimum wages. *The Committee refers to the outstanding issues relating to Convention No. 26 and asks the Government to specify the manner in which the Social Dialogue Round Table contributes to the application of Convention No. 144. The Committee once again refers to its previous comments and reiterates its conviction that the Government and the social partners should undertake to promote and strengthen tripartism and social dialogue on the matters covered by the Convention. The Committee refers to the ILO Declaration on Social Justice for a Fair Globalization, adopted in 2008, which states that "social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards". Consequently, the Committee reiterates its invitation to the Government and to the social partners to hold the "effective consultations" on international labour standards required under Convention No. 144, a major Convention that is to be regarded as most significant from the viewpoint of governance.*

Article 5, paragraph 1(b). Tripartite consultations prior to submission to the National Assembly. In its 2008 report, the Government refers to the information communicated previously, indicating that it would report in due course on developments in the submission procedure. The Government had reported that, in February 2006, the national labour authorities had asked the Ministry of Foreign Affairs to take the appropriate steps to have the instruments which were outstanding submitted to the National Assembly. The Committee notes that the consultations required under this provision of the Convention do not appear to have been held. Furthermore, the Committee also notes that no steps have been taken to submit the instruments concerned. *The Committee refers to its observation concerning the constitutional obligation of submission in which it notes that 41 instruments adopted by the Conference await submission, and asks the Government to report on the effective consultations that will be held with the social partners on the proposals tabled in the National Assembly when the instruments adopted by the Conference are submitted.*

Other tripartite consultations required by the Convention. The Government indicates in its 2008 report that, prior to the annual Conference, the office of the People's Ministry of Labour and Social Security convenes all the representatives of workers and employers so that they can examine the agenda and give their opinions in that regard. *The Committee invites the Government to indicate in its next report the manner in which the opinions expressed by the representative organizations consulted on the matters covered by Article 5, paragraph 1, of the Convention have been taken into account.*

Zambia

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1978)

Tripartite consultations required under the Convention. The Committee notes the Government's statement in its report received which indicates that two Tripartite Consultative Labour Council meetings had been held from February to March 2007. Two major issues were on the meetings' agendas: the global perspective of the casualization of labour and the review of the country's labour laws. Particular labour laws which affect the application of the Convention were reviewed and submitted to the Cabinet for adoption, and then to Parliament for enactment. The Committee recalls that it is necessary for the Government to provide, in its report, precise and up to date information on the implementation of the consultation procedures relating to international labour standards so that it can assess the manner in which effect is given to the provisions of this Convention. ***The Committee therefore requests the Government to submit a report containing precise and up to date information on the content and outcome of the tripartite consultations held, including in the Tripartite Consultative Labour Council, on each of the matters covered by Article 5, paragraph 1, of the Convention.***

Zimbabwe

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1989)

Strengthening social dialogue. Support of the Office. The Committee takes note of the Government's report received in September 2008, and comments provided by the Zimbabwe Congress of Trade Unions (ZCTU) in August 2008. The Government indicates that, with the assistance of the ILO Subregional Office, the Government and social partners have undertaken consultations on the manner in which the activities of the ILO will be undertaken within the framework of Zimbabwe's Decent Work Country Programme (DWCP) for 2006-07. The Programme provides for the establishment of a National Steering Committee to supervise implementation of activities, including those to do with the ratification and implementation of ILO Conventions. The Government indicates that cooperation, as provided for under the Convention, is guiding the tripartite consultations on the DWCP. The Committee notes that the creation of an enabling environment through upholding and strengthening social dialogue was identified as one of three priorities under the DWCP. In this regard, the DWCP envisages three outcomes to contribute to the creation of this enabling environment: (i) enhanced and institutionalized social dialogue; (ii) National Action Plan on gender issues; and (iii) effective implementation of ILO Conventions. The Committee refers to the 2008 Declaration on Social Justice for a Fair Globalization, which states that "social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now much more relevant to achieving solutions and to build up social cohesion and the rule of law through, among other means, international labour standards". ***The Committee therefore invites the Government and the social partners to report on the impact the Decent Work Country Programme has had on facilitating effective tripartite consultations as required under Convention No. 144, a Convention that is to be regarded as most significant from the viewpoint of governance.***

Effective tripartite consultations. The Government indicates that effective tripartite consultations are held, for example, within the Retrenchment Board and the Salaries and Wages Advisory Board. Furthermore, the Government states that tripartite consultations continue to be the working method for the implementation of various projects, including the project on the elimination of the worst forms of child labour. The Committee notes the concerns expressed by the ZCTU in which it states that the Government and employers in Zimbabwe do not take the concept of tripartism seriously, as the Tripartite National Forum (TNF) is not governed by any statutes and its decisions are subject to review by Cabinet. The ZCTU states that the TNF only makes recommendations, which will either be adopted or turned down by Government. The Committee also notes the Government's comments in this regard in which it states that the terms of reference of the TNF were subject to considerable debate which culminated in the conclusion of the document on the founding principles of the TNF. ***The Committee asks the Government to report on the operation of the Tripartite National Forum in respect of each of the matters listed in Article 5, paragraph 1, of the Convention. The Government is also requested to indicate the frequency of consultations held in this regard and to indicate the nature of any reports or recommendations made as a result thereof (Article 5, paragraph 2, of the Convention).***

Article 5, paragraph 1(d). Reports on ratified Conventions. The Government indicates in its report that reports on the application of standards are sent to the trade union without delay. The ZCTU indicates, however, that it did not receive a copy of the Government's reports on ratified ILO Conventions, and thus submitted its own comments without reference to the Government's reports. The Committee recalls that "the obligation to consult the representative organizations on the reports to be made concerning the application of ratified Conventions must be clearly distinguished from the obligation to communicate these reports under article 23, paragraph 2, of the Constitution. To fulfil their obligations under this provision of the Convention, it is not sufficient for governments to communicate to employers' and workers' organizations copies of the reports that they send to the Office, since any comments that these organizations may subsequently transmit to the Office on these reports cannot replace the consultations which have to be held during the preparation of these reports" (paragraph 92, General Survey on tripartite consultations, 88th Session of the International

Labour Conference, 2000). *The Committee trusts that the Government and the social partners will examine the measures to be undertaken to hold “effective consultations” on questions arising out of reports to be made to the ILO under article 22 of the Constitution.*

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 144** (*Antigua and Barbuda, Armenia, Bosnia and Herzegovina, Central African Republic, Djibouti, Guyana, Iraq, Ireland, Jordan, Kazakhstan, Kenya, Kuwait, Latvia, Liberia, Malaysia, Republic of Moldova, Montenegro, Mozambique, Nicaragua, Norway, Peru, Philippines, Portugal, Romania, San Marino, Senegal, Serbia, South Africa, Suriname, Swaziland, Syrian Arab Republic, Uganda, Ukraine, Yemen*).

Labour administration and inspection

Algeria

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

The Committee notes the information contained in the Government's report on the developments which have occurred in the organization and functioning of the general labour inspectorate with the implementation of Decree No. 05-05 of 6 January 2005 and also on their results in practice. It notes the redistribution of its functions among the central bodies and the restructuring of the decentralized labour inspection bodies with a view to adapting to the new realities of the working environment. In particular, the Committee notes with interest the provisions of the above Decree relating to: the formulation, implementation and evaluation of annual and multi-annual training plans for labour inspection staff (section 13 respecting the functions of the training and documentation subdirectorates); the formulation and implementation of a prevention and monitoring strategy in occupational health, safety and medicine, and also the implementation of cooperation between the labour inspection services and the partners and institutions concerned in the various areas of enforcement of labour standards (section 5 respecting the functions of the directorate of occupational relations and monitoring of working conditions); the formulation of a development strategy for the computerization and compilation of statistics and the establishment of a system for the collection, processing and consolidation of all statistical information in relation to the work of labour inspectors (sections 10 and 14 respecting the functions of the administration and training directorate and the computerization and statistics subdirectorates, respectively); the establishment and updating of the register of enterprises (section 9 respecting the functions of the standardization and methodology subdirectorates); and the periodic assessment of offences reported by the labour inspectorate and the evaluation of follow-up action taken by the competent authorities (same section). With reference to its observation of 2007, the Committee also notes with interest that the *wilaya* labour inspectorate (the decentralized inspection body at the departmental level) is responsible for monitoring the procedures and actions instituted by the labour inspectorate in the courts and for keeping the hierarchical authority informed (section 24).

The Committee also notes the adoption of the texts implementing the above Decree, namely: the Inter-ministerial Orders of 16 August 2005 concerning the organization and territorial competence of (i) labour inspection offices, and (ii) regional labour inspectorates, and also concerning the organization of labour inspection at the *wilaya* level; and the Inter-ministerial Order of 18 January 2006 establishing the office structure of the general labour inspectorate.

Articles 20 and 21 of the Convention. Publication and communication of an annual inspection report. Improvements to labour inspection statistics and dissemination of other information on labour inspection activities. The Committee notes *with satisfaction*, further to its repeated requests, the communication by the central labour inspection authority of two reports including information on developments in the working of the labour inspection system, statistics on inspection activities relating to the subjects covered by *Article 3, paragraph 1(a)*, of the Convention, and on their results for 2007 and the first six months of 2008. The statistics cover the enforcement of the relevant legal provisions (*Article 21(d) and (e)*) and also the information and advice provided to employers and workers at their request or through planned activities (*Article 3, paragraph 1(b)*).

The statistical summaries for inspections are disaggregated by sector of the economy (public and private), type of inspection (routine, follow-up and special) and branch of activity (agriculture, industry, construction and public works, services). Statistics of the offences reported by the labour inspectorate are disaggregated by the number of reported warnings issued and written comments.

The Committee also notes with interest that the construction sector has been the subject of particular vigilance on the part of the inspection services and that advice has been given by the inspectorate to strengthen observance of the legal provisions relating to safety and health. The reports also refer to the celebration for the fourth consecutive year of the World Day for Safety and Health at Work, organized by the National Institute for the Prevention of Occupational Risks, at the headquarters of the National Oil Well Services Company (ENSP), at the Hassi-Messaoud oilfield. Apart from communications on the management of occupational risks, particularly concerning a key aspect of the safety and health culture at the workplace, namely the principle of the use of personal protective equipment, reference was also made to the relevant ILO Conventions and Recommendations. Similarly, the World Day against Child Labour, with the participation of the ILO representative, provided an opportunity for the chief labour inspector to present occupational safety and health measures, and particularly the establishment of a national commission responsible for coordinating action by the ministerial departments concerned. The Day was celebrated by seven regional labour inspectorates (Annaba, Oran, Constantine, Batna, Taret, Ouargla and Bechar).

The Committee also notes with interest the inclusion in the reports published by the general labour inspectorate of technical, legislative and practical information for use by inspectors and employers and workers on issues related to conditions of work and the protection of workers. For example, the 2007 inspection report dealt with methods for preventing chemical hazards in industry and the role of the labour inspectorate in prosecuting breaches of the legislation respecting remuneration.

Article 7. Further training of labour inspectors, particularly through knowledge transfer (dissemination programme). The Committee notes with interest that internal further training programmes for inspectors covered a variety of subjects during the reporting period, for example the exercise of the right to organize, home work, investigation and monitoring techniques, the establishment of contracts covering the employment relationship and the organization of the prevention of occupational risks. The Committee also notes with interest that senior inspectors who attended training programmes abroad are given the task of transferring knowledge and competence thus acquired to other labour inspectors. It also notes that, in the context of its training programme, the Ministry of Labour, Employment and Social Security organized training on the treatment of psychological and social problems related to work, entitled the “SOLVE Programme”.

Article 11. Improving the conditions of work of labour inspectors. The Committee also notes with interest the information in the Government’s report and the general labour inspectorate’s reports concerning the adoption of specific financial measures taken by the Government to reinforce the operational resources of the inspectorate and enhance its credibility.

Labour inspection buildings (offices and staff housing). The Committee notes the completion of buildings housing the new labour inspection headquarters in several *wilaya* capitals and other local inspection services (Oum El Bouaghi, Adrar, Illizi, Ouenza), and also the detailed information on the progress made on other building projects across the country, which are due to be completed in 2009. It notes that a total of 43 projects are being undertaken for the construction of new inspection headquarters, the extension and equipment of other inspection offices, and the creation of official housing for each inspectorate.

Office equipment and transport facilities. The inspection services have more than 912 computers, or one per inspector, as they are considered an essential tool for the development of management and communication methods. It should be noted that, in the context of special programmes, 15 *wilayas* in the High Plateau region and five *wilayas* in the south of the country have been the recipients of office furniture, computers and copying equipment, and also 12 vehicles, including nine four-wheel drive vehicles, out of the 128 new vehicles purchased by the general labour inspectorate in 2006 and 2007.

The Committee hopes that adequate financial resources will be allocated so that the legal and organizational measures taken will be given effect in practice and will lead to a substantial improvement in the effectiveness of labour inspection activities in accordance with the objectives of the Convention. The Committee also hopes that relevant information will continue to be supplied by the Government in its report on the application of the Convention.

The Committee is also addressing a request on a number of other points directly to the Government.

Angola

Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)

The Committee notes that the Government’s report on the application of the Convention has not been received. While noting the annual reports on the work of the labour inspection services for 2006 and 2007 received by the Office, it is bound to repeat its previous observation on the following matters:

Need for legislative, structural and budgetary measures to ensure the effective operation of the labour inspection system. The Committee notes that, according to the report of the second methodological meeting of the heads of provincial labour inspection departments (4–5 May 2005), the labour inspectorate suffers from a number of shortcomings and dysfunctions preventing its effective operation: the absence of texts implementing the Labour Code; the absence of labour inspection structures in the provincial directorates of Huambo and Namibe; the excessively weak cooperation of provincial judicial and financial authorities; and the manifest inadequacy of the proportion of the budget allocated to cover the operating expenses of inspection services. ***The Committee hopes that the Government will not fail to ensure that these shortcomings are remedied rapidly through:***

- (i) *the identification of fields in which the legislation requires the adoption of regulations for its implementation in practice and tripartite consultation with a view to the formulation of appropriate provisions;*
- (ii) *the implementation of measures to facilitate effective and useful collaboration between the labour inspection services and other public or private bodies and institutions; and*
- (iii) *the determination of appropriate budgetary allocations for the normal operation of the inspection services taking into account the need for fuel, materials and office consumer items, as well as other ongoing operational expenses (rent, maintenance of premises, water supply, electricity, telephone, etc.).*

The Committee would be grateful if the Government would indicate in its next report any progress achieved in this respect, as well as the difficulties encountered.

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

The Committee is addressing a request directly to the Government on other matters.

Argentina

Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)

Further to its previous observation, in which it asked the Government for information on the legislative and practical measures taken to reinforce the labour inspection system and to give full effect to *Articles 20 and 21 of the Convention*, the Committee notes the Government's detailed report. It also notes the attached documents concerning the MERCOSUR Regional Labour Inspection Plan (PRIT), and its revision and implementation during the period covered by the report.

Regional economic cooperation and developments in the labour inspection system. The Committee notes that according to the Government, the PRIT has been revised to take account of member States' comments and remarks, but that the decisions on the minimum requirements for inspection visits and for the profiles of labour inspectors have been maintained. The Government also indicates that Brazil should shortly submit a proposal for the development of labour inspectors' training in the context of MERCOSUR.

The Committee notes the report of a joint pilot inspection operation carried out in September 2007 for three days in the common border area of Argentina, Brazil and Paraguay, pursuant to MERCOSUR decision No. 32/06 on minimum requirements regarding labour inspection procedure. The operation began with a meeting for an exchange of information between the three delegations on the technical aspects of labour inspection in each country and the relevant labour legislation. For the practical action, the inspectors formed two groups, one of which was responsible for the supervision of general conditions of work and the other for occupational safety and health conditions. The workplaces involved were a building materials establishment in Brazil; a commercial establishment in Paraguay; and a hotel establishment in Argentina. In each workplace inspected, verification focused on the documentation pertaining to general conditions of work, social security, equipment and premises and the application of specific standards. The members of the delegations participated in each inspection as observers and had the opportunity to make recommendations relating to their respective national procedures. According to the Government, following this pilot activity, Brazil proposed a broad outline for the training plan for labour inspectors within MERCOSUR.

The Committee also notes that the Ministry of Labour took part in a tripartite regional meeting on labour relations, employment and social security in MERCOSUR, which was held at Montevideo (Uruguay) in November 2007. In the course of the meeting, the Government referred to its difficulties in obtaining funds to finance the Regional Plan for the Eradication of Child Labour, and of the possibility of seeking support from the ILO and other international organizations. With regard to labour inspection in general, the meeting decided that each State party would in future propose holding joint operations for a specific economic activity and one border area per country. The Committee notes with interest that the participants agreed to exchange statistical information on labour inspection that has to be communicated to the ILO under this Convention.

In May 2008, another tripartite meeting on labour relations, employment and social security was held in Buenos Aires, which the ILO attended as an observer. The Committee notes, however, that according to the report of the meeting, employers were represented only by a Brazilian delegation. On that occasion, the Government delegation of Argentina proposed the establishment of a PRIT operations coordination committee consisting of the government bodies responsible for labour inspection, a new common regional inspection methodology, including the organization of an evaluation day with the participation of the social partners. It also proposed that each country should prepare a document setting out proposals to improve technical training for labour inspectors in the context of the MERCOSUR training system (STIT). With regard more specifically to child labour, the Government delegation of Argentina suggested that child labour issues should be dealt with in conjunction with other competent MERCOSUR bodies, such as the *Niño Sur* initiative, and that one of the member States should be responsible for establishing contacts with the Government representatives of the countries participating in the initiative. It also reported that the Government had taken measures to seek funding through the Inter-American Development Bank (IDB). ***The Committee would be grateful if the Government would continue to provide information on the impact of the PRIT on improving the professional qualifications of labour inspectors (Article 7 of the Convention), and to indicate the action taken on the proposals regarding the procedure for workplace inspection (Articles 12 and 13). Noting that, according to the Government, labour inspectors and local inspection offices enter information on their activities in the computer system, the Committee would be grateful if the Government would ensure that the central authority discharges its duty to publish and communicate an annual report on the work of the labour inspectorate (Articles 20 and 21).***

Article 5(a) and (b). Cooperation between the inspection services and other institutions, and collaboration with employers and workers. The Government states that, pursuant to the provisions of Act No. 25.877 of 2004, the Ministry of Labour has concluded agreements with other ministries, the Federal Public Revenue Department (AFIP) and the Social Security Administration (ANSES), as well as agreements with the trade unions. ***The Committee would appreciate receiving copies of the texts implementing the above Act and of such agreements.***

With reference to its general observation of 2007, the Committee notes with interest the information and documents provided by the Government on the measures taken to encourage effective cooperation between the labour inspectorate and the justice system in achieving common objectives for the protection of workers. It states that a meeting was held between the Minister of Labour, the Secretary of State for Labour, the Secretary of State for Social Security, the Chief Social Security Advisor, the Director of Legal Affairs and all the magistrates of the Social Security Chamber on the

complementarity of the powers conferred by Act No. 25.877 on the Ministry of Labour and the AFIP as they relate to compliance by employers with social security obligations. Furthermore, an electronic data entry system on social security cases is available to the courts and a new fines recovery procedure has been set up for the labour courts of the federal capital. The Government adds that the Directorate for Legal Affairs has launched a survey among judges on the possibility of more expeditious proceedings. In addition, various computer systems have been developed jointly by the Directorate of Legal Affairs and the Directorate of Computer Systems and Resources so as to speed up recovery procedures and make the treatment of cases easier to supervise countrywide. It is also planned to establish a computerized register of repeat offenders for the imposition of more severe penalties and the compilation of statistics. According to the Government, these measures are aimed at making magistrates aware of the rationale of inspection. In support, it provides a list of more than 8,000 cases of employers prosecuted for offences. ***The Committee would be grateful if the Government would indicate whether the measures to encourage cooperation between the Ministry of Labour and the judicial authorities are confined to breaches of social security legislation or whether they also target violations of the rules on general conditions of work and occupational safety and health. Please continue to provide information on all measures taken or envisaged to step up cooperation between the labour inspectorate and the judicial authorities.***

Article 6. Conditions of service of labour inspectors. Further to its observation of 2004 on the conditions of service of labour inspectors, which were criticized in 2002 by the Latin American Confederation of Labour Inspectors (CIIT), the Committee notes that under this provision of the Convention the Government refers to Framework Act No. 25.164 of 1999 on public employment at national level. ***It would be grateful if the Government would provide details of the remuneration and prospects for career advancement of labour inspectors as compared to those of other public servants with similar duties.***

Article 9. Collaboration of technical experts and specialists in some of the inspections falling within the remit of labour inspectors. According to the Government, inspectors receive appropriate training enabling them to deal adequately with the various technical issues that they will encounter during inspections. ***The Committee would be grateful if the Government would specify the composition of the inspection staff by area of expertise and by grade and would indicate how occupational safety and health inspections are undertaken which require specialization (medical, technical, chemical).***

Article 14. Information on industrial accidents and cases of occupational disease. The Committee notes that the Government refers in this respect to information supplied in the report on the application of the Safety and Health in Agriculture Convention, 2001 (No. 184), concerning Act No. 24.557 of 1995 on occupational hazards, and particularly to section 31(2)(c). It notes that, according to this provision, employers are required to notify to occupational hazard insurance companies (ART) and the Supervisory Authority for Occupational Risks (SRT) any accidents and cases of occupational disease occurring in their establishments. However, the CIIT reported in its comments of 2002 the failure to give effect to *Article 14* of the Convention. ***The Committee reminds the Government that according to this provision, the labour inspectorate shall be informed of such occurrences and asks the Government to provide details of the manner in which effect is given to this provision in practice.***

Articles 11 and 16. Frequency and scope of inspections. According to the Government, inspection visits are conducted either ex officio or as a result of a complaint, and their frequency depends on the number of workplaces liable to inspection and the number of labour inspectors reporting to the ministry or to provisional labour departments. Under *Article 11*, the Government states that in purchasing vehicles for the inspection services, account is taken of the characteristics of the terrain and that all travel and other related expenses are refunded to labour inspectors immediately. ***The Committee would be grateful if the Government would indicate whether all the provinces have a labour inspection service and to provide an assessment of the extent to which the effect given in practice to Article 16 is commensurate with the protection needs of the workers concerned.***

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1985)

The Committee notes the Government's report received in September 2008; its reply to the general observation in 2007 on this Convention and on Convention No. 81 on the necessary cooperation between the labour inspection system and the judicial bodies; the communication of several legal texts already available at the ILO, as well as Decrees Nos 817/04 and 272/06 issuing regulations under certain provisions of Act No. 25.877 of 2 March 2004 on the employment system; and a list of enterprises prosecuted and fined for violations of the labour legislation.

Lack of information on the functioning of the labour inspection services in agriculture. The Committee notes that the above list of enterprises contains no details as to the legal provisions violated by these enterprises, nor the branch of activity to which they belong. The Committee infers that these were proceedings brought against enterprises infringing social security legislation, but the Government has not provided details allowing it to know whether agricultural employers were on this list. The Government refers in its report to labour legislation applicable to the agricultural sector (in particular Act No. 22.248 of 1980, approving the national agricultural employment system), already submitted for examination to the Committee, as well as to other texts that do not specifically apply to labour inspection in agriculture; it also refers to the minimum conditions that must be fulfilled in the context of MERCOSUR for assuming the functions of

labour inspector, in relation to the principle of equality between men and women at the recruitment stage. The Government also mentions the National Committee of Agrarian Work (CNTA) and its responsibilities, as well as the existence of a national register of rural workers and employers (RENATRE). However, no information is provided on human resources on the facilities available to labour inspectors to discharge their duties (*Articles 14 and 15 of the Convention*), concerning the enforcement of legal provisions relating to conditions of work in agricultural undertakings (*Articles 6, paragraph 1(a), and 21*). There is nothing to indicate that labour inspectors in the agricultural sector receive any specific training in prevention and the enforcement of the legislation covered by the Convention (*Articles 9, paragraph 3, and 17*). With regard to *Article 11* concerning the association of duly qualified technical experts and specialists, the Government confines itself to stating that inspectors are qualified and that they have the necessary knowledge to solve problems of a technical nature that might arise. Furthermore, it would not seem that any provisions have been adopted to give effect to *Article 19* on the notification to the labour inspectorate of employment accidents and cases of occupational disease (*paragraph 1*), or to associate the labour inspection services in agriculture with any inquiry into the causes of the most serious accidents or diseases that have affected a number of workers or had fatal consequences (*paragraph 2*).

The documents provided on regional cooperation among inspection services in the context of MERCOSUR, examined by the Committee in its comments concerning Convention No. 81, do not contain any information on the extent of this cooperation in relation to labour inspection in agricultural undertakings.

With respect to *Article 27* of the Convention concerning the information that should be contained in the annual report on labour inspection in agriculture, the Government refers to a national census carried out in 2002 which identified 335,533 establishments liable to inspection. It states that 1,530 inspections were carried out in 2007, covering 18,848 workers, of which 38 per cent were not registered in the integrated retirement and pension scheme (SIJP), which would seem to infer that all these visits were focused on the situation of employers and workers in relation to their social security obligations. In terms of the statistics on employment accidents and occupational diseases, the Government refers to previous information without any further details. The Committee would like to draw the Government's attention to the specific characteristics of agricultural work, and particularly the occupational hazards linked to the use of machinery, equipment and the handling or spreading of toxic products and substances, which are faced by the workers concerned, as well as the members of their family living on the undertaking. It is bound to reaffirm the need to provide labour inspection services in agriculture with adequate human resources and means with a view to protecting the population covered by the Convention. ***It requests the Government to take the necessary measures for this purpose and, in its next report, to provide information that is as detailed as possible on the way in which effect is given in practice to all the above provisions of the Convention, as well as to the relevant national legal provisions to ensure the protection of agricultural workers and members of their family. It would be grateful if the Government would communicate information on these measures and on their results.***

Furthermore, the Committee requests the Government to provide details on the action undertaken in the context of MERCOSUR with respect to labour inspection in agriculture.

Austria

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

The Committee notes with interest the information supplied by the Government concerning the legislation adopted during the period covered by the report, the balanced distribution of labour inspectors by gender, specialization and grade, as well as the activities of inspectors and their results. The Committee also takes note of the annual report of the labour inspectorate for 2006 and the information furnished in response to its previous comments concerning developments in the area of the monitoring of illegal employment and measures to promote effective cooperation between the labour inspection services and the judicial authorities.

The Committee also notes the communication from the Federal Chamber of Labour (BAK), attached by the Government to its report.

Article 3, paragraphs 1(a) and 2, of the Convention. Monitoring of illegal employment. Following up on its observation made in 2006 welcoming the provisions exempting labour inspectors from the need to monitor illegal employment, the Committee notes that, as of 1 January 2007, this function has again been transferred to another authority. ***The Committee would be grateful if the Government would indicate the impact of this measure on the number and scope of inspections of working conditions in workplaces liable to inspection. The Committee would be grateful if the Government would provide details on any improvements noted.***

Article 5(a). Effective cooperation between labour inspection and the judicial authorities. The Committee notes with interest the detailed information concerning the operation of the two prosecution systems relating to violations of the law regarding working conditions and protection of workers. It appears in particular that one of the systems is under the jurisdiction of the administrative courts; as the labour inspectorate forms part of the proceedings, it can make its case before the judgement is rendered and appeal against it. In addition, the Federal Chamber of Labour specifies that information on complaints and administrative procedures is available on the web site of the Federal Ministry of Labour and Economic Affairs.

According to the Federal Chamber of Labour, violations falling under the Criminal Code and the Code of Criminal Procedure are referred by labour inspectors either to the Department of Criminal Investigation or to the Department of the Public Prosecution. The tribunals must inform the inspection services of the termination of a procedure, but not of the decision taken. The above organization declares that it will monitor developments in practice in the implementation of the law on responsibility of organizations (VbVg), in particular in the light of the Committee's recent comments. However, it is of the opinion that this system presents some shortcomings, in particular when it comes to the prosecution of violations in the area of occupational safety and health. In this connection, the organization refers to article 22 of the Federal Constitution, which provides that the Federal Ministry of Justice shall offer administrative support to other ministries. The organization also raises the problem of ensuring the mutual assistance needed for the enforcement of administrative penalties in a cross-border context.

In addition, the Federal Chamber of Labour provides details on the division of responsibilities concerning the enforcement of labour legislation and the problems that this can entail, in particular in the case of workers covered by collective agreements. It considers that only an increase in the resources allocated to labour inspection services will enable it to adapt to the new forms of work contracts deriving from the introduction of more flexible arrangements as a result of changes in the legislation on working hours.

The Committee would be grateful if the Government would provide in its next report any comments it considers relevant concerning the issues raised by the Federal Chamber of Labour.

Bangladesh

Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)

The Committee notes the Government's report received by the ILO on 29 September 2008 in reply to its comments of 2006. It also notes that the Bangladesh Free Trade Union Congress (BFTUC) issued a comment on 30 August 2008 concerning the application of this Convention, which the ILO sent to the Government on 17 September. The Committee will examine the Government's report together with the comment from the trade union organization, as well as any comment which the Government may wish to make on the matters raised by it, at its next session.

Barbados

Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

The Committee notes the Government's report and the indication that the new Safety and Health at Work Act, which was enacted in 2005 (hereinafter the SHAW Act), has still not been proclaimed. It also notes the comments communicated on 19 June 2008 by the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB). The union once again emphasizes the low number of labour inspectors, their lack of training, preventing them from enforcing the new Act, and the inadequacy of transport facilities. It also recommends the establishment of higher penalties for major violations of the labour legislation.

Articles 7, paragraph 3, 10 and 11 of the Convention. Staff and resources of the labour inspectorate. The Committee observes that the issue of the shortage of inspection staff has been raised for many years, also by an employers' organization in 2005. It notes with interest that four new safety and health officers have been appointed. *The Committee hopes that the appointment of more staff will reinforce inspection capacities, particularly with regard to the enforcement of the SHAW Act once it is proclaimed, and requests the Government to supply information regarding the training provided to health and safety officers on technical issues for that purpose.*

Also noting the information already supplied on transport facilities, the Committee would be grateful if the Government would provide particulars on the manner in which travelling costs are reimbursed to inspection officers (deadlines for payment, etc.).

Article 18. Adequacy and enforcement of penalties. For many years, the Government indicated that it would take the opportunity of the adoption of the new Act to raise the level of the penalties in force, which were considered too low to be dissuasive. In this respect, the Government refers to sections 109 to 121 of the SHAW Act. The Committee notes, however, that the general penalty established under such provisions (section 110(1)) is the same as that established by the Factories Act adopted in 1984. It wishes to emphasize that it is essential for the credibility and effectiveness of systems for the protection of workers that violations are identified in national legislation and that the proceedings instituted or recommended by labour inspectors against employers guilty of violations are sufficiently dissuasive to ensure that employers are aware of the need to comply with their obligations. It is also important that penalties are defined in proportion to the nature and gravity of the offence and that the amount of fines is regularly adjusted to take account of inflation. It would be regrettable if employers were in a position to opt for the payment of fines as a less costly alternative to the adoption of the measures necessary to ensure compliance with the labour legislation. *The Committee therefore requests the Government to take measures to ensure that penalties are dissuasive and effectively enforced. The Government is also requested to keep the ILO informed of any progress in this respect.*

Articles 20 and 21. Publication and communication of an annual report on the work of the labour inspection services. The Committee notes that the annual reports for 2000, 2001 and 2002, indicated in the Government's report as having been sent to the ILO, were not received by the Office and that, as a result, it is not possible to assess the application of the Convention in practice. It notes in this regard that, in the view of the CTUSAB, the resources and technical assistance necessary to ensure the publication of such an important document must be made available as soon as possible. **Recalling the importance of making the fullest possible information available on an annual basis on each of the subjects enumerated by Article 21 so that the social partners, the national authorities and the ILO supervisory bodies can assess the effectiveness of the labour inspection system and contribute to its improvement, the Committee requests the Government to ensure that the annual reports published since 2000 are communicated to the ILO in the near future.**

The Committee is also addressing a request on other matters directly to the Government.

Bolivia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)

The Committee once again notes with regret that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

Further to its previous comments, and referring in particular to the information available to the ILO, the Committee notes the launching of the multilateral technical cooperation project ILO/FORSAT, financed by the Ministry of Labour and Social Affairs of Spain and covering other countries in the region, with the objective of strengthening labour administrations. It notes that labour inspection is one of the important components of the project and that cooperation and assistance activities should be undertaken for the definition of a legal and structural framework and the determination of working methods and procedures with a view to the development of an effective inspection system. **The Government is requested to provide detailed information in its next report on any measure adopted in the context of this project and on the results achieved in relation to the objectives established, as well as in relation to the matters raised in the Committee's comments of 2003.**

Part V of the report form and article 23, paragraph 2, of the ILO Constitution. Recalling the obligation to communicate to the representative organizations of employers and workers, in accordance with this article of the Constitution, copies of the information and reports communicated, particularly under article 22 of the ILO Constitution, to the Director-General of the ILO, the Committee would be grateful if the Government would indicate the precise reasons which might provide an explanation for the failure to comply with these provisions in the case of the present Convention.

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

The Committee notes that the Government's report received on 2 August 2005 does not reply to its comments addressed in 2004. It must therefore repeat its observation of 2004, which read as follows:

Also referring to its observation under Convention No. 81, the Committee notes that, owing to the economic crisis, the Government is encountering economic and financial restrictions which affect in particular the implementation of monitoring functions relating to the application of labour legislation and occupational safety standards in the agricultural sector. The Committee notes, however, that despite these difficulties a pilot project has been implemented by the Ministry of Labour in the regions of Bermejo, Yacuiba, Villamontes and Riberalta and that the officials operating in these regions are doing their utmost to perform their duties in accordance with the provisions of the General Labour Act, its implementing decree and other connected standards.

The Committee also notes that the Government hopes that, when the labour inspection system is reorganized as a result of the ILO/FORSAT multilateral cooperation project, of regional scope, to strengthen the labour administrations, the functioning of this system will be able to be extended to the agricultural sector. The Committee recalls that the ratification of the present Convention implies de jure obligations whose aim is the coverage of needs specific to agricultural undertakings by the inspection services with respect to monitoring of the legislation concerning conditions of work and worker protection. **The Government is therefore requested to take measures promptly to ensure the implementation of such obligations, without prejudice to any improvement expected from the overall reorganization of the inspection system which is under way, and to communicate to the ILO all available information requested in the report form according to the provisions of the Convention.**

The Committee also requests the Government to provide further information on the activities undertaken and the results obtained by the inspection services involved in the implementation of the abovementioned pilot project.

Part V of the report form and article 23(2) of the ILO Constitution. Recalling the obligation to communicate to representative organizations of employers and workers, under the abovementioned article of the Constitution, copies of reports and information transmitted to the ILO Director-General, particularly under article 22 of the ILO Constitution, the Committee would be grateful if the Government would indicate the precise reasons which might explain the failure to implement these provisions in relation to the present Convention.

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

Brazil

Labour Inspection Convention, 1947 (No. 81) (ratification: 1989)

The Committee notes the Government's detailed report, the information replying in part to its previous comments and the documentation sent to the ILO on 31 October 2008. The Committee's previous comments addressed issues raised by the Workers' Union of the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of the State of Rio Grande do Sul (SINDILÍQUIDA/RS) in a communication accompanied by abundant documentation, received at the ILO on 29 August 2007 and forwarded to the Government on 11 September 2007.

The Committee also notes the comments from the Single Confederation of Workers (CUT) on the application of the Convention, received at the ILO on 16 September 2008 and forwarded to the Government on 22 September.

With regard to the comments by SINDILÍQUIDA/RS, the Committee noted previously that they echoed those submitted by the Gaucha Association of Labour Inspectors (AGITRA) in 2004 on the ineffectiveness of prosecutions and penalties. According to these comments, *Article 13, paragraph 1*, and *Articles 17 and 18 of the Convention* are not applied as situations involving imminent and serious danger to workers are not remedied and the persons found to be in breach of the law are not sanctioned. Furthermore, no annual inspection report is published. In the view of the above organization, for labour inspection to be credible and efficient those breaking or failing to apply the law should be prosecuted rapidly and the penalties effectively applied. It adds that orders issued by labour inspectors are challenged before the courts, which are so slow in handing down decisions that the supervisory function is completely undermined. The organization reports situations in which workers were exposed to serious risks in the supply terminals of multinational companies, for which no real remedies have been applied. However, it did not provide the evidence in support of this allegation that it said was appended to the observation. It denounces as an incentive not to comply with the legislation the shelving in many cases of violations reported by the labour inspectorate and the consequent impunity of the offenders.

The organization urges the effective application of *Article 21* of the Convention, the publication of statistics of the offences reported and the penalties applied, as well as transparent administrative and judicial procedures.

The Committee has already commented on the matters raised by the CUT, which concern various shortcomings in the labour inspection system (too many additional duties (*Article 3, paragraph 2*); lack of inspectors (*Article 10*); violence against inspectors; ineffectual system for the punishment of offences (*Articles 17 and 18*)).

Since the Government's report arrived late, the Committee will examine it at its next session (2009) along with any further comments the Government may wish to send to the Office on the points raised by SINDILÍQUIDA/RS in 2007 and the CUT in 2008.

Burkina Faso

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1974)

The Committee notes that the Government's report does not contain a reply to its previous comments. It notes that the report is confined to indicating that the agricultural sector is largely made up of family undertakings which are not covered by the labour legislation applicable to the sector and that it refers to the report on the application of Convention No. 81. Reminding the Government of the commitments deriving from the ratification of the present Convention and observing once again the absence of specific information on the operation in practice of the labour inspectorate in agriculture, the Committee is therefore bound to reiterate its previous observation on the following matters:

Further to its previous comments, in which it drew the Government's attention to the need to adapt the activities of the inspection services to the specific features of the agricultural sector, even if these services cover other economic sectors, the Committee notes that nothing appears to have been done in this respect. Moreover, the Government has not been able to provide information, as requested, on the geographical distribution of agricultural undertakings and the workers employed therein. In the absence of such data, no assessment of the extent to which the Convention is applied is possible, either by the national authorities with a view to improving its coverage, or by the ILO supervisory bodies with a view to fulfilling their function in this respect. As the Committee emphasized in its previous observation, an appreciation of the effectiveness of the labour inspection system in agriculture is necessarily based on knowledge of the needs in this area and on the periodical updating of the relevant information. The obligation for inspection units to provide periodical reports on their activities in agricultural undertakings (*Article 25 of the Convention*) is designed specifically to enable the central inspection authority to follow, supervise and adjust their activities, as well as to allow information on the items listed in *Article 27*, which are specific to the agricultural sector, to be included in the annual general report on inspection activities required by *Article 26*. For more than ten years, no report of this nature has been transmitted to the ILO and no data on the number of agricultural undertakings liable to inspection has ever been provided.

With reference to the Government's indication of the predominance of child labour in agriculture and stock-raising, and that projects to combat this phenomenon mean that labour inspectors are taking on an important role in this field, the Committee suggests that it should take advantage of the implementation of these projects to set in motion measures to revitalize the activities of the labour inspection services in agricultural undertakings. It notes that no information has been provided by the Government in this respect.

The Committee therefore once again requests the Government to ensure that the labour inspection services have access to data on the number and geographical distribution of agricultural undertakings and the workers employed therein, and to specify the geographical distribution of labour inspectors who in practice discharge their duties in agricultural undertakings.

Once again reminding the Government that, when the economic situation of a member State does not allow it to fulfil adequately the requirements of a ratified Convention, it may have recourse to international financial cooperation and the technical assistance of the Office, the Committee requests the Government to provide detailed information on the manner in which effect is given in law and practice to each of the provisions of the Convention and to keep the ILO informed of the difficulties encountered and the measures adopted to resolve them.

The Committee requests the Government to take the required measures rapidly and to provide relevant information and particulars of the difficulties encountered in the implementation of the Convention.

Burundi

Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)

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

The Committee takes note of the little information contained in the Government's report and further clarifications received in the ILO on 4 September 2006.

Primary duties of labour inspectorates. In its previous comments the Committee had observed that labour inspectorates' activities focused mainly on dispute resolution issues, instead of activities aiming at the enforcement function provided for by *Article 3, paragraph 1, of the Convention*. Its appreciation was based on the reports on 2000 and 2001 first-quarter labour inspection activities, showing also the performing of a huge amount of administrative tasks. The Committee notes that five out of the nine inspectors are entrusted with collective dispute resolution issues, only three others dealing with control of conditions of work, though all of them have participated in a seminar organized by the Programme for promoting social dialogue in African French-speaking countries (PRODIAF) on proceedings relating to labour dispute resolution, during the first quarter of 2006. This information confirms that labour inspection continues to be taken off its main role to be put on labour dispute resolution missions.

According to the Government, the absence of a special status, the lack of means of transport, of qualifications and of technical equipment seem to have led to a lack of confidence from the employers towards labour inspectors.

The Committee once again stresses that it is necessary for labour inspectors to focus on the enforcement of legal provisions on labour conditions and protection of workers while engaged in their work (*Article 3, paragraph 1*) and that any further duties entrusted to them should not interfere with the effective discharge of their primary duties or prejudice in any way the authority and impartiality which are necessary in their relations with employers and workers (*paragraph 2*). It also recalls the Government's obligation of the competent authority to take measures to make available to labour inspectors the necessary means, such as transport facilities where no appropriate public transport facilities exist and reimbursement of any travelling and incidental expenses which may be necessary for the performance of their duties (*Article 11*). It expresses the hope that appropriate financial support will soon be granted through international cooperation to this end. *The Committee would be grateful if the Government would indicate any steps taken and any progress achieved in this regard and communicate in the nearest future any available report on labour inspection activities in industrial and commercial workplaces, concerning the application of legal provisions on conditions of work and protection of workers.*

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

Cameroon

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

The Committee takes note of the Government's report received at the ILO on 1 September 2008 and the enclosed documentation. It also notes the observations on the application of the Convention by the General Union of Cameroon Workers, received on 20 October 2008. It proposes examining the report and the trade union's observations at its next session, as well as any other comments that the Government might wish to submit on the points raised in these observations.

Cape Verde

Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)

The Committee notes with regret that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

The Committee notes the Government's report for the period ending 1 September 2005 and the elements of information that it contains in reply to its previous comments, as well as the comments made by the Commercial, Industrial and Agricultural Association of Barlavento (ACIAB), the National Union of Workers of Cape Verde – Trade Union Confederation (UNTC–CS) and the Cape Verde Confederation of Free Trade Unions (CCSL), which were forwarded by the Government. *It requests the Government to provide detailed information in its next report on the following points.*

1. *Means of action of the labour inspectorate.* The Committee notes that, in the view of the CCSL, the labour inspectorate is not functional due to the lack of material and human resources. The low number of inspectors means that it is not possible to exercise effective supervision in all the islands of the country and travel by inspectors is infrequent due to the lack of transport facilities. In this respect, the UNTC–CS considers that the Government should allocate greater resources to ensure effective labour inspection. The Government indicates that it is planning to take measures to establish new inspection services in islands where employment has grown the most over recent years. The Committee also notes that the Government is proposing to organize the recruitment by competition of new labour inspectors and their training in the near future with the support of Brazilian cooperation. *The Committee requests the Government to continue providing detailed information on any further*

measures taken to ensure that inspectors are sufficient in number to secure the effective discharge of their duties (Article 10 of the Convention), that they have the necessary material resources and transport facilities (Article 11) and receive adequate initial and further training (Article 7).

2. *Functions and duties of inspectors.* The Committee notes the Government's indication in its report that new mediation and conciliation functions are to be attributed to labour inspectors by the draft Labour Code that is currently being adopted. It also notes that the Government plans to revise the general conditions of service of the labour inspectorate. *With reference to its previous comments, the Committee is confident that the Government will ensure that the new functions which may be entrusted to labour inspectors are not such as to interfere with the effective discharge of their primary duties (Article 3, paragraph 2).* Furthermore, the Committee notes the Government's assurances that the revision of the general conditions of service of the labour inspectorate will take into account the need for provisions prohibiting inspectors from revealing, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties, in accordance with *Article 15(b) of the Convention.*

3. *Notification of cases of occupational disease.* The Committee notes the view of the ACIAB that it is important for the labour inspectorate to be notified not only of industrial accidents, but also of cases of occupational disease so that it can compile statistics on occupational risks, take preventive action and ensure the appropriate coverage of the victims. The Committee notes that, in reply to its previous comments on this subject, the Government provides assurances that account will be taken, in the context of the adoption of the new Labour Code, of the need to supplement the legislation so that it establishes the obligation to notify the labour inspectorate of cases of occupational disease, in accordance with *Article 14 of the Convention.*

4. *Publication of an annual report.* The Committee notes the reports from the various inspection offices of the inspections carried out during the years 1999 to 2005, which were transmitted by the Government with its report. The Committee observes that these are reports submitted to the central inspection authority, in accordance with *Article 19 of the Convention*; they cannot replace the annual report which, under the terms of *Article 20 of the Convention*, has to be published by the central inspection authority and transmitted to the ILO within a reasonable period. *With reference to the comments that it has been making for many years on this subject, the Committee trusts that the Government will take the necessary measures in the near future to ensure that an annual report on the matters set out in Article 21 of the Convention is published within the required time limits.*

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

Central African Republic

Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)

Scope of the ILO/ADMIRA project for the modernization of the labour administration and inspectorate. With reference to its previous comments focusing on the inadequacy of labour inspectors' conditions of work, particularly the lack of reimbursement of their travelling expenses, the Committee notes that the Government has not supplied the information requested on the measures taken to seek, in the context of bilateral or international financial cooperation, the funds needed to improve the practical situation of the labour inspectorate. In response to this specific request from the Committee, the Government refers to the launching of the ILO/ADMIRA project. However, the Committee observes that the objective of this project, which covers seven French-speaking African countries, is not to assist in the search for the resources required for the functioning of labour administration structures, but to provide technical support for governments, mainly in the following three areas:

1. Initial and further training for managers and employees in the administration and the labour inspectorate.
2. Modernization of labour tools and organizational methods.
3. Strengthening cooperation between the structures comprising the labour administration system (labour, employment, social security, vocational training), on the one hand, and between the labour administration and other administrations operating in related areas (justice, finance, health, etc.), on the other.

With reference to its general observation of 2007 inviting member States which have ratified Conventions on labour inspection to take measures enabling effective cooperation between the labour inspection system and the judicial authorities, the Committee notes with interest that an official from the Directorate-General of Labour and a member of the labour tribunal participated in the subregional workshop on the relations between the labour administration and the labour courts, held in the context of the above project from 8 to 10 May 2008 in Dakar. *While noting that cooperation between the labour administration and the judicial system was already advocated in an ILO technical memorandum of 2004 to the Government concerning the reinforcement of labour administration, the Committee hopes that the information provided at this workshop and the fruitful exchanges it produced between participants representing the countries of the subregion will give rise to action and that information on the implementation of the recommended measures will soon be sent to the Office.*

Deficiencies in the labour inspection system. Need for urgent financial and organizational measures for improvements relating to the inspection of conditions of work. The Committee notes that, although the labour legislation referred to by the Government under each of the Articles of the Convention may appear to a large extent compatible with the requirements of the Convention, its first report to the ILO on the application of the Labour Administration Convention, 1978 (No. 150), shows that the operation of labour inspection suffers from serious deficiencies. The Government states that the Directorate of Labour and Social Security – which is responsible for the enforcement of labour legislation through its labour inspection structures – does not have its own budget line and the special status of officials and employees of the labour administration was repealed by Act No. 99/016 of 19 July 1999 issuing the general public service regulations.

Moreover, no labour administrator has been recruited since. This information is a cause for concern. It seems to imply that, for nearly ten years, labour inspectors have no longer enjoyed the guarantees provided for by *Article 6 of the Convention* with regard to conditions of service. Furthermore, information available to the ILO shows that successive measures have been adopted to reduce the salaries of all officials pursuant to the financial legislation in force in recent years. As regards the conditions for the performance of their duties, the Committee notes that there has been no improvement, as inspectors are still obliged to pay for their travelling expenses “out of their own pockets”, the expression used by the Government itself. Even though, in legal terms, no enterprise is exempt from inspection, inspection visits are rare and inspection reports non-existent, as indicated by the Government in its report on the application of Convention No. 150. Inspectors are therefore far removed from the establishments liable to inspection and their role remains restricted to the amicable resolution of disputes, which is however considered to be a subsidiary role by the Government.

The Committee reiterates that the technical memorandum of 2004, which recommended speeding up the process for the adoption for the new Labour Code and the decrees necessary for its implementation, also provided for thorough restructuring with technical support from the ILO for strengthening the capacities of all labour administration staff, particularly labour inspectors, in cooperation with the ILO and the African Regional Centre for Labour Administration (CRADAT). The memorandum also considered that it was necessary to draw up files on enterprises backed up by statistical documentation made available to the inspectorate so that inspection staff could enter the required information. It also recommended that inspection methods should be defined for labour inspectors using standardized documentation so as to facilitate and ensure uniformity of investigation techniques, and in particular to gather all information likely to be of interest to all labour administration bodies. The specialization of certain employees in a number of areas and the ongoing redeployment of other employees were considered necessary to cope with rapid change in the world of work and with the emergence of certain epidemics in workplaces. The establishment of a database referring in particular to industrial accidents and cases of occupational disease was also highly recommended.

Noting that the new Labour Code has not yet been adopted, but that it is planned to include provisions establishing heavier penalties for persons obstructing inspectors in the performance of their duties, the Committee can only encourage such an initiative and hope that the definitive text will soon be adopted.

The Committee also notes the Government’s announcement of the preparation of draft conditions of service for labour inspectors and hopes that information on progress made on this draft will soon be sent to the Office. However, it considers that such legislative measures can only have an impact in practice if inspectors can ensure the effective discharge of all the duties defined by *Article 3* of the Convention by inspecting the workplaces under their supervision as often as is necessary to ensure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. However, such coverage cannot be ensured if workplaces liable to inspection have not been identified by the inspection services. The allocation of resources to this end is essential, with funding being sought not only from national financial authorities, but also through international cooperation. The above memorandum, together with up to date information on the actual situation and the difficulties facing labour inspection, might constitute effective arguments in this respect.

The Committee therefore urges the Government to promote, in accordance with Article 5(a), effective cooperation between the labour inspectorate and other competent government bodies (including the tax authorities and social insurance funds) for drawing up a list of workplaces liable to inspection, with an entry in a register indicating at least their geographical location, the branch of activity, the number and categories of workers employed there, and also disaggregation of the latter information by gender.

The availability of a register of enterprises that is regularly updated should allow the central inspection authority to fix priorities for action to ensure, as a minimum, the protection of the most vulnerable workers or those most exposed to occupational hazards and to defend its requirements in human, material and logistical resources on the basis of relevant data from national and international financial authorities, so that an adequate budget can be allocated to them, in so far as national conditions permit. A programme of inspections could be drawn up according to the available resources for each labour inspection structure, and periodic reports on inspections, as provided for by *Article 19*, could be sent to the central authority for the production of the annual report required by *Articles 20 and 21*. Such a report would inform the social partners, the other government bodies concerned and the ILO supervisory bodies of the progress made and the shortcomings of the labour inspection system so they can provide their opinions for its improvements.

The Committee hopes that the Government will be able to provide information in its next report on specific measures taken to reinforce the resources, organization and working of the labour inspection system. It trusts that, in the first place, it will be able to provide information on targeted measures for promoting effective cooperation between the inspection services and other government services or public and private institutions for the purpose of the application of the Convention, particularly for the establishment of a register of workplaces liable to inspection under the present Convention (Article 2, paragraphs 1 and 10(a)(i) and (ii)), and on measures taken to increase the number of men and women labour inspectors and to reinforce their training during employment (Articles 7 and 10), particularly within the labour section of the National School of Administration and Magistracy, the establishment of which has been announced by the Government.

The Committee hopes that the Government will not fail to indicate the steps taken at the national level and in the framework of international financial cooperation to obtain resources for these purposes, and also the results thereof.

Chad

Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

The Committee notes with concern that the Government's reports received in March and in June 2006 are identical to the one received in April 2005 and contain no reply whatsoever to the Committee's comments in its observation of 2005. *The Committee therefore urges the Government to report in as much detail as possible on each of the following points of its previous observation:*

1. *Legislation.* Further to its previous requests, the Committee observes that the Government reports no progress in the enactment of enabling legislation for the provisions of Labour Code regarding the duties and prerogatives of labour inspectors, or the draft decree issuing the general conditions of service of labour inspectors to which the Committee has been referring for many years. *It hopes that the Government will shortly be in a position to indicate that progress has been achieved in the enactment of legislation to apply the Convention (Part I of the report form).*

2. *Inspection staff and material resources.* The Committee notes that, according to the Government, the labour inspection services comprise 15 inspectors distributed among three inspectorates and four offices. *It requests the Government to state whether it deems this number sufficient for the effective discharge of labour inspection duties in the light of the criteria set in Article 10 of the Convention.* The Committee also notes that the Government plans to make use of funding from international cooperation to provide labour inspectors with the material resources and transport facilities they need to carry out their duties, as required by Article 11 of the Convention. *It asks the Government to describe any measures it takes in this respect with a view to ensuring, inter alia, that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions (Article 16).*

3. *Publication of an annual report.* The Committee recalls the importance it attaches to the publication, within a reasonable time, of an annual report by the central inspection authority, to be transmitted to the International Labour Office, in accordance with Article 20 of the Convention. It points out that section 469 of the Labour Code provides for such a report. *It hopes that the Government will soon be in a position to ensure that a labour inspection report is published covering the subjects listed in Article 21 of the Convention.*

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

Colombia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

The Committee notes the Government's report, the comments of 31 August 2007 by the Single Confederation of Workers of Colombia (CUT), which largely address the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Government's replies sent to the Office under cover of a letter of 21 February 2008 in so far as they concern the application of the present Convention. The Committee also notes that on 28 January 2008 the CUT sent an evaluation report and proposals for implementation of a tripartite agreement "Labour rights and freedom of association in Colombia", also signed by the General Confederation of Democratic Workers (CGTD), the Confederation of Workers of Colombia (CTC) and the Confederation of Pensioners of Colombia (CPC). It also notes the information supplied by the Government on 9 June 2008 responding thereto. Lastly, the Committee notes the comments of 19 August 2008 by the General Confederation of Labour (CGT) making the same points as those raised in the above evaluation report and sent by the ILO to the Government on 19 September 2008.

According to the unions that signed the above report, workers' rights are violated not only by many employers in the private sector but also by a lot of state enterprises, particularly as regards the obligation to provide social security coverage for their workers. The unions consider that measures such as the merger of the Ministry of Labour with another ministry that also deals with health, and the heavy workload imposed on labour inspectors, already too few in number, have weakened the labour administration and prevented inspectors from carrying out their main duties including the inspection of workplaces, providing employers and workers with technical information and advice or the indication to the competent authorities of shortcomings in the legislation respecting conditions of work and the protection of workers. This situation also makes complaint procedures slow and favours continual and repeated violations by employers of the relevant laws and regulations. The unions assert that breaches of the legislation are particularly numerous in commercial establishments and would like to see such workplaces covered by the inspectorate's mandate pertaining to the application of the Convention.

The unions also object to the widespread practice of concluding employment contracts with associated work cooperatives (CTAs), which they see as a fraudulent strategy devised by enterprises to circumvent the obligations arising from a salaried employment relationship. The advantage – including for the State – of such cooperatives is that, like certain service contracts, in the form of civil or commercial contracts, is that they afford a source of cheap labour and entail none of the costs or obligations for the employer related to a salaried employment contract. In particular, they involve none of the obligations related to exercise of the right to organize, such as the requirement of collective bargaining or the exercise of the right to strike. Presented by the legislation as a free and voluntary form of association, such cooperatives are in fact a solution imposed by former employees who have been dismissed as a means of enabling them to continue receiving an income. The report cites specific instances of CTAs and outsourcing in various sectors, including

the textile and garment industry, which account for a substantial proportion of the country's exports and where the workforce consists largely of women, mainly in Bogotá and the metropolitan sector of the Department of Antioquia. Women set up small family businesses, which subcontract to large *maquilas* and produce items for export in micro-workshops or their own homes in extremely precarious conditions (no minimum wage, social security or statutory hours of work, and therefore no paid overtime).

The unions' claims are: (i) that the Ministry of Labour be re-established and the labour inspectorate reinforced; (ii) that the mechanisms to monitor circumvention of social security contributions be reinforced and workers' health insurance coverage be promoted; (iii) that the exclusion from ratification of Part II of the Convention (commercial establishments) be lifted; (iv) that the new model of labour inspection developed with support from USAID–Colombia be adopted in consultation with the union confederations; (v) that the Government ensure that the necessary legislative measures be taken to ensure that no state enterprise may have recourse to CTAs for labour relations; (vi) that a bill establishing a legal framework for the operation of cooperatives based on the guidelines in the Promotion of Cooperatives Recommendation, 2002 (No. 193), be discussed with the social partners; (vii) that labour legislation safeguarding rights and consistent with the Conventions of the ILO be drawn up in consultation with the social partners; and (viii) that the work contract be reinstated as the basis of the employment relationship to put an end to the intermediary role played by associated work cooperatives and other labour practices which exclude any employment relationship.

The CUT observes that, although article 125 of the National Constitution and Act No. 909 of 2004 specify that labour inspectors are public servants whose posts must be filled by competition and are members of the civil service, most inspectors currently in service were appointed on a provisional basis because no competition was organized. Indeed, in a direct request addressed to the Government in 2001, the Committee noted that for financial reasons, the recruitment of public employees had been frozen and that to make up for the lack of labour inspectors the Government had had to use the services of contract staff to carry out inspectors' duties. The Committee accordingly asked the Government to inform the Office of any developments in the situation, particularly regarding the status and number of serving inspectors, and the status and number of the contract staff performing inspectors' duties. The Government saw no reason to do so despite repeated requests from the Committee.

In its comments of 2007, the CUT also objected to the difficult conditions of work of labour inspectors, and particularly the lack of office equipment, both in the capital and in the main cities, and the widespread lack of transport facilities for professional travel.

According to information supplied by the Government in its report and provided on the web site of the Ministry of Social Protection, a number of measures should contribute to strengthening the labour inspection system with the implementation of the USAID–Midas (More Investment for Alternative Sustainable Development) programme and with assistance from the Office.

Articles 6, 9 and 10 of the Convention. More and better qualified inspection staff and the status of inspectors. With regard to the number of labour inspectors, the Committee notes that according to the Government, 2,000 members of the inspectorate are to be recruited between 2008 and 2010, including lawyers, economists and engineers, to supplement the existing staff of 746 serving inspectors. Furthermore, labour inspectors' skills are to be improved through specific training. ***The Committee takes due note of this information and asks the Government to provide details in its next report of the arrangements for recruiting new inspection staff, and their status and conditions of service, in the light of the requirements of Article 6 of the Convention. It would be grateful if the Government would indicate, in particular, whether competitions have been held for the new posts to be filled throughout the country and to provide any relevant documentation or legal texts.***

Articles 11 and 12, paragraph 1(c)(iv). Material working conditions and transport facilities for labour inspectors. The Committee notes the Government's acknowledgement that the transport facilities available to inspectors for duty travel are inadequate and need to be improved. ***It requests the Government to provide information on developments in the working conditions of labour inspectors (number, geographical distribution, occupation and state of offices; office equipment, communication media; equipment for technical investigations; transport facilities, arrangements for reimbursing travel expenses and other incidental expenses).***

Article 3, paragraph 2. Further duties entrusted to labour inspectors. With regard to the many duties entrusted to labour inspectors and their impact on the performance of their primary duties, the Committee notes that a study on the workload of the territorial directorates was undertaken as part of a project to improve the labour inspection system. The Committee notes with interest that the Government is envisaging the possibility, in the context of future legislative reforms, of reassigning some of the duties of labour inspectors to other public employees and of setting up a special conciliation mechanism. ***The Committee hopes that the Government will not fail to inform the ILO of the measures taken to ensure that labour inspectors in future devote most of their working time to discharging their primary duties, with priority being given to inspections, and that their results will be reflected in relevant statistical information.***

Article 5(b). New arrangements for inspecting conditions of work with the collaboration of the social partners. The Committee notes that 18 so-called "improvement" or "management" agreements were concluded in 2007 between employers and workers under the supervision and monitoring of inspectors in certain sectors, including construction, transport and security enterprises. ***As the Government indicates that such agreements aim to improve compliance with***

their respective obligations of employers and workers, the Committee requests it to provide information on their content and on the practical arrangements for implementing them, and to send copies of them to the ILO.

Article 18. Adequate and effectively enforced penalties. With regard to measures to curb the evasion of social security contributions, the Government states that the labour inspectorate is to have information tools such as the single form for the integrated recovery of all contributions due from enterprises, employers or self-independent workers to social security administrators and parafiscal bodies (PILA). **The Committee would be grateful if the Government would provide information on the impact of the introduction of this procedure in terms of fulfilment of social security-related obligations. It also asks the Government to provide figures showing contraventions reported and penalties imposed for failure to comply with social security obligations.**

Associated work cooperatives (CTAs), subcontracting and increasing precarity of work. According to the Government, the CTA concept has produced a proliferation of entities in which employment relations are concluded in breach of the labour legislation, as abusive and flexible working conditions have undermined the very concept and purpose of cooperatives. It cites instances of employers dismissing workers and setting up cooperatives that the latter are invited to join, and other instances of enterprises circumventing their obligations as employers by creating CTAs, both in the private and public sectors. However, the Government states that measures have been taken to remedy the situation, particularly as regards social coverage, by establishing proper supervision. It cites in this connection Decree No. 4588 of 2006 which regulates the organization, operation and inspection of CTAs. In the last quarter of 2007 and the first half of 2008, a total of 875 cooperatives and 22 pre-cooperatives were brought into conformity with the above Decree. In 2007, 113 penalties, amounting to 268,453,400 pesos, were imposed on cooperatives acting as intermediaries or temporary service enterprises, for evasion of social security contributions, and six penalties amounting to 291,821,800 pesos were imposed on pre-cooperatives. In the Government's view, the establishment of CTAs must be regarded as a legitimate and effective means of creating jobs and as being of particular benefit to the unemployed, displaced and marginal persons, and enterprises in difficulty or that are restructuring. It is planning to set up an information system on cooperatives, including data on all cooperatives and pre-cooperatives in the country, pursuant to the above Decree No. 4588, as amended and supplemented, so as to prevent the abuse of such associations.

The Committee draws the Government's attention to paragraph 133 of its General Survey of 2006 on labour inspection concerning the meaning and scope of *Article 3, paragraph 1(c)*, of the Convention, which provides that labour inspectors shall bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. In the Committee's view, the deterioration in the working conditions of a large number of workers, many of whom are women, would be ample reason for entrusting to inspectors the task of conducting an inquiry into the employment relationships that exist between those giving instructions or receiving goods and services produced by the CTAs and the workers of the CTAs. Any defects or abuse affecting these workers could thus be identified and improvements introduced in the legislation on conditions of work and the protection of workers in the performance of their work. **The Committee hopes that labour inspectors will shortly be entrusted with such an investigation to enable the law to keep pace with new situations in the world of work such as the relationship in which CTAs are subordinate to the enterprises for which they produce goods and services outside any form of work contract. The Government is asked to provide information, together with copies of any texts giving effect to Article 3, paragraph 1(c), of the Convention.**

The Committee also asks the Government to inform the ILO of its views on the unions' proposals on this matter.

Article 14. Notification to labour inspectors of industrial accidents and cases of occupational disease. The Committee has on several occasions asked the Government to take steps to ensure that effect is given to this Article of the Convention. **Since it has sent no relevant information on this matter, the Committee urges the Government to take steps to ensure that effect is given in law and practice to this important provision of the Convention as an essential requirement for the development of a policy for the prevention of occupational risks. It firmly hopes that relevant information on this matter will be sent with the Government's next report.**

Article 13. Preventive occupational safety and health measures in high-risk activities. Information available at the ILO shows that in recent years there have been serious accidents in the mining sector, including fatal accidents in February 2007 in the coal mines of San Roque and La Preciosa en Sardinata in the Department of Norte de Santander, and at Gámeza in the Department of Boyacá. **As the Government announced that priority will be given to preventing occupational risks by targeting activities and establishments in which workers face serious risks to their health and safety, the Committee requests it to indicate the measures taken to this end. Please indicate in particular whether measures have been taken to identify the risk factors responsible for the above accidents and the means to eliminate them, and to provide any relevant information. If such measures have not been taken, the Committee urges the Government to take measures rapidly to protect the workers concerned against the risk of serious accidents, and to keep the ILO duly informed.**

Article 15(c). Principle of the confidentiality of the source of complaints. The Committee notes once again that the Government has not sent the information requested on the existence of a legal basis ensuring that labour inspectors comply with the principle of the confidentiality of the source of complaints. **It once again urges the Government to take steps rapidly to supplement the legislation to ensure the confidentiality of complaints so as to protect workers from reprisals, to keep the ILO informed and to provide any relevant laws or bills.**

Articles 20 and 21. Annual inspection report. The Committee once again draws the Government's attention to the obligation on the central inspection authority to publish and communicate to the ILO, in accordance with *Article 20* of the Convention, an annual report on the work of the inspection services containing the information required by *clauses (a) to (g) of Article 21*. **The Committee firmly hopes that, with the international cooperation currently under way to reinforce the labour inspectorate, the Government will not fail to take the necessary steps to ensure that full effect is given to these Articles of the Convention. It would be grateful if the Government would in any event provide information on all developments in this area, including any problems encountered.**

The Committee is also addressing a request directly to the Government on other matters.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1976)

The Committee notes the Government's report for the period ending 30 June 2008. It also notes the observations submitted by the Single Confederation of Workers of Colombia (CUT) dated 31 August 2007, and the Government's reply to these comments dated 21 February 2008. The Committee points out that the CUT also sent, on 28 January 2008, comments in the form of a report entitled "Labour rights and freedom of association in Colombia: Evaluation and proposals for the implementation of the Tripartite Agreement", on its own behalf and on behalf of the General Confederation of Democratic Workers (CGTD), the Confederation of Workers of Colombia (CTC) and the Confederation of Pensioners in Colombia (CPC). The Committee notes that the Government sent replies to the questions raised in this report to the ILO on 9 June 2008, and that comments from the General Confederation of Labour (CGT), dealing mainly with the inadequacy of the staff in the labour inspection services, were forwarded to the Government on 19 September 2008.

Article 6, paragraph 3, of the Convention. Associated work cooperatives (CTA), subcontracting, increasingly precarious working conditions and legal void. Referring to its comments under Convention No. 81 on the widespread use of employment relationships in the context of associated work cooperatives (CTAs), the Committee observes that the trade unions draw particular attention to this practice in the sugar-cane and flower-growing sectors. They emphasize that sugar has become one of the country's most important agricultural export products and that Colombia is among the ten major sugar exporting countries in the world. About 16,000 workers in this sector are sugar-cane harvesters, which is the most physically demanding job in the sugar production process, and the worst paid. Some 90 per cent of these workers are recruited through the CTAs and do not even earn the minimum wage. According to the trade unions, the massive recourse to labour under the conditions imposed by the CTAs generate higher profits for the sugar refineries, but that the workers are denied the right to a decent salary and trade union representation. The flower-growing sector, mainly geared to the export of freshly cut flowers (of which Colombia is the major supplier to the United States), absorbs a considerable number of workers, mostly made up of women heads of households with a low educational level, whose opportunities of employment in other sectors are almost non-existent. According to the report of the trade union organizations, a high percentage of workers on sugar-cane plantations and in flower-growing enterprises are recruited through temporary employment agencies, CTAs or other forms of subcontracting.

According to information available to the ILO, a strike was called in September 2008 by some 18,000 sugar-cane harvesters from the department of Valle del Cauca, who had been recruited through the associated labour cooperatives. The strikers claimed the end of the "pseudo-associated labour cooperatives", direct recruitment, job stability, wage increases, social security coverage, entitlement to social benefits, education and housing allowances, effective control of the weight of sugar cane harvested, etc. They were protesting against a system which obliged them not only to bear the cost of their social security contributions, but also costs relating to occupational safety, the purchase of work tools (*machetes*), protective equipment such as gloves, protection for the ankles, leather shoes and work clothes. Due to a lack of efficient health services and programmes for the prevention of occupational hazards, cases of partial or total paralysis, injuries to limbs and the spine, as well as arthritis, herniated discs and infections caused by contaminated water and the use of pesticides, are widespread among this labour force; moreover, working time may be as high as 70 hours per week for a monthly wage equivalent to about US\$230.

Referring to its comments under Convention No. 81, the Committee particularly draws the Government's attention to paragraph 133 of its General Survey on labour inspection of 2006, in which it emphasizes the meaning and scope of *Article 6, paragraph 1(c)*, of the Convention, under the terms of which labour inspectors shall bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. The Committee considers that the deterioration in the working conditions of a large number of workers, many of whom are women, would largely justify entrusting labour inspectors with carrying out a survey on the actual working relations between those giving instructions or receiving goods and services produced by the CTAs, and the workers in the CTAs. Any defects or abuses harmful to these workers could therefore be identified, which could result in an improvement in the existing legislation on working conditions and the protection of workers while engaged in their work. **The Committee firmly encourages the Government to ensure that a mission of this nature is entrusted to labour inspectors in agriculture rapidly to help bring about a change in the law adapted to the new realities of the world of work which consist of the subordination of CTAs in relation to the enterprises for which they are producing goods and services without any labour contract. The**

Government is requested to submit relevant information, accompanied by a copy of any text giving effect to Article 6, paragraph 1(c).

Inadequacy of structures, means and logistics of the labour inspection service in agriculture. In its comments in 2007, the CUT pointed out that, although the inspection service was the same for all branches of the economy, on account of their geographical situation some offices deal mainly with agriculture and have to cover up to ten districts, including vast areas to which access is difficult. Labour inspection is ineffective in these vast areas, which are mainly devoted to agriculture and stock-breeding. According to the CUT, the lack of a specific inspection system in agriculture, exacerbated by a lack of resources, prevents the inspection of agricultural undertakings as often and as thoroughly as is required to ensure the effective application of the legal provisions covered by the Convention.

According to the information provided by the Government in its report and that published by the Ministry of Social Protection on its Internet site, a number of measures to strengthen the labour inspection system are planned, with the assistance of the Office, on the one hand, and in the context of the framework of the USAID–Midas (More Investment for Alternative Sustainable Development) programme on the other. ***The Committee invites the Government to refer to its comments under Convention No. 81 in relation to: increasing the number and reinforcing the qualifications of labour inspectors, and improving the status of labour inspectors (Articles 14 and 9, paragraph 3, of the present Convention); the material working conditions and transport facilities of labour inspectors (Articles 15 and 16, paragraph 1(c)(iii)); further duties entrusted to labour inspectors (Article 6, paragraph 3); adequate penalties that are effectively enforced (Article 24); principle of confidentiality as to the source of any complaint (Article 20(c)) and annual report of the inspection services (Articles 26 and 27).***

Article 9, paragraph 3. Specific training of labour inspectors in agriculture. With regard to the application of this Convention, the trade unions regret the lack of specialized labour inspectors in agriculture. ***Noting the Government's recognition of the need to strengthen the labour inspection system by providing specific training to inspectors, the Committee asks it to indicate the measures taken to ensure that labour inspectors in agriculture are provided with initial training, as well as further training during their work, which is adequate and takes account of developments in technology and working methods (risks of accidents and specific medical conditions inherent in the use of machinery and tools, and the handling of chemical products and substances).***

Article 17. Association of labour inspection in the preventive control of agricultural enterprises. In reply to the Committee's previous comments on measures taken to associate labour inspection in the preventive control of new plant, new substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety, the Government indicates that this matter lies within the joint competence of occupational health institutions, departmental and local committees, joint occupational health committees within the enterprise, monitors and insurance companies authorized to operate in the field of occupational hazards, as all these bodies are duly aware of the high risk of agricultural activities. ***The Committee points out that the labour inspection services do not appear to be associated in any way with this type of control. It would be grateful if the Government would indicate the legal provisions relating to this matter and to provide practical examples of their application in agricultural enterprises.***

The Committee is also addressing a request directly to the Government on other points.

Comoros

Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)

According to the information sent by the Government, a special appropriation for labour inspection will not be introduced in the budget until after the meetings to prepare the budget for the 2009 financial year. The Committee nonetheless notes with interest that the labour administration has embarked on a diagnosis of the labour inspection services with a view to determining their budget and its inclusions in the 2009 national budget. ***It asks the Government to provide information on the results of this evaluation as soon as they are available.***

The Committee notes that the Government has submitted a request for the inclusion in the Decent Work Country Programme (DWCP), currently under preparation, of an application for technical assistance to gradually train enough labour inspectors to cover the entire territory. ILO support has also been sought to train two labour inspectors at the National School of Administration (ENA) of Madagascar. ***The Committee requests the Government to keep the Office informed of results of these steps. It trusts that it will take all necessary steps to obtain, particularly in the context of the future DWCP, support and assistance from the ILO for the development of an efficient labour inspection service.***

Congo

Labour Inspection Convention, 1947 (No. 81) (ratification: 1999)

The Committee notes the information provided by the Government in its report for the period ending September 2007, which was received in the Office in January 2008.

Article 11 of the Convention. Working conditions of labour inspectors. The Committee notes with interest that the staff of the labour inspectorate has been strengthened during the period since the report sent by the Government in 2004.

However, it notes that no measures have been taken to improve the working conditions of inspectors and that they do not benefit from the transport facilities necessary for the discharge of their duties, nor the full reimbursement of their travelling and incidental expenses. ***The Government is requested to take the necessary measures to ensure that effect is given to the provisions of the above Article of the Convention and to provide information in its next report on any progress achieved in this respect, on the difficulties encountered and the solutions envisaged to overcome them.***

Articles 19, 20 and 21. Reporting obligations on the inspection activities. With reference to its previous comments concerning information relating to the application in practice of the legal provisions giving effect to the Convention, the Committee notes that, contrary to the Government's indication in its report received in 2004, no regional inspection report has been provided to the ILO. Furthermore, no annual report, as required by *Articles 20 and 21* of the Convention, has been transmitted to the ILO. The Committee does not therefore have available the information that is essential on the operation of the labour inspection system in practice to allow it to monitor developments and provide support to the Government for its improvement in relation to the requirements of the Convention. The material and logistical situation described by the Government gives grounds for fearing, despite legislation that is in conformity on many points with the provisions of the Convention, that there is a significant gap between the extent of the needs for the supervision of conditions of work and the level of coverage that the inspection services are able to ensure. ***The Committee hopes that, so that it can fulfil its responsibilities, the Government will provide in its next report all the information available allowing it to assess the level of application of the Convention more than a decade after its ratification. This information should cover, among other matters: (i) the geographical distribution of the public officials responsible for inspection functions as defined in Article 3, paragraph 1, of the Convention (the schedule announced by the Government in its report was not attached); (ii) the geographical distribution of workplaces liable to inspection or, at the least, those for which the Government considers that the conditions of work require specific protection from the labour inspection services and the judiciary on the basis of the violations reported by the labour inspectorate; (iii) the frequency, content and number of participants at the training courses provided for labour inspectors during their career; (iv) the level of remuneration and conditions for career progression in relation to other public officials with comparable responsibilities; (v) the proportion of the national budget allocated to the public labour inspection services; (vi) a description of the cases in which inspectors travel to enterprises, the procedure followed and the transport facilities that they use for this purpose, the activities that they carry out and their outcome; and (vii) the proportion of supervisory activities carried out by inspectors in relation to their conciliation duties.***

The Government is also requested to indicate the nature of the obstacles or difficulties (of a financial, structural, political or other nature) encountered in the implementation in practice of its legislation respecting labour inspection and to describe the measures adopted or envisaged to resolve them (for example, seeking international financial cooperation, inter-institutional cooperation within the country, collaboration with the social partners; the adoption of specific conditions of service for labour inspectors, rationalization of the way in which the resources of the labour administration are used).

Cyprus

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

Article 5(a) of the Convention. Effective cooperation between the labour inspection services and the judicial system and other public services or institutions. The Committee notes with interest that, with a view to assisting labour inspectors in the preparation of legal cases, the Ministry of Labour and Social Insurance employs a public prosecutor who examines and scrutinizes each case before it is registered at the court. It further notes that labour inspectors regularly attend training seminars at the police academy, during which police officers specialized in law explain the provisions of the Penal Code and provide guidance to labour inspectors on the methodology for taking statements and building a legal case. ***The Committee would be grateful if the Government would continue to supply information on such cooperation and on its impact on the enforcement of labour law, including information on judicial decisions in such cases and any sanctions imposed.***

Articles 14 and 21(g). Notification of cases of occupational disease and relevant statistics. In reply to the Committee's previous comments regarding the lack of statistics of cases of occupational diseases, the Government indicates that it is expected that such data will be collected following the enactment of the Safety and Health at Work (Occupational Diseases Notification) Regulations of 2007, which include the European schedule of occupational diseases as established in European Commission Recommendation No. 2003/670/EC of 19 September 2003. The Government adds that, in view of the insufficient number of occupational physicians in the country, it would however take some time before an accurate pool of such statistics is established.

The Committee notes with interest that, in order to remedy such shortcomings and initiate the collection of data on occupational diseases, the Department of Labour Inspection intends: (a) to launch an awareness-raising campaign to inform general practitioners of the handling and monitoring of suspected cases of occupational diseases; and (b) to organize, in cooperation with other private or public institutions, various seminars to increase the awareness of employers regarding the medical surveillance of their employees and their responsibility to notify occupational diseases. The Committee also notes with interest that, during 2006, the Occupational Diseases Prevention Service conducted surveys on

working conditions and environment at workplaces where workers are likely to be exposed to agents hazardous to their health. Such surveys, conducted by the occupational physician of the Ministry of Labour and Social Insurance, in close cooperation with other officers of the Department of Labour Inspection, were aimed at controlling the risk assessments and the application of preventive measures.

The Committee trusts that the implementation of the above measures will contribute to improving the notification rate of cases of occupational disease and enable the inclusion of the most accurate possible statistical data in future annual reports on the work of the labour inspection services. It would be grateful if the Government would continue to supply information on any measures taken or envisaged for that purpose. It also requests the Government to describe the functioning in practice of the notification and recording system established by the Safety and Health at Work (Occupational Diseases Notification) Regulations of 2007, and on any measures taken or envisaged to increase the number of occupational physicians.

With regard to industrial accidents, the Committee notes the adoption in 2007 of the Safety and Health at Work (Accidents and Dangerous Occurrences Notification) Regulations. According to the Government, these Regulations now include in the definition of “industrial accidents” accidents occurring on the way to or from work and contain, inter alia, requirements for keeping records of industrial accidents and dangerous occurrences. ***The Committee requests the Government to specify the types of industrial accidents that have to be notified to labour inspectors and to describe the notification procedure and its functioning in practice, as well as any difficulties encountered.***

Article 20. Publication and transmission of an annual report of the work of the labour inspection services. The Committee would be grateful if the Government would provide the ILO with the copy of the annual report of the Ministry of Labour and Social Insurance for 2006, which was indicated as being attached to its report, but was not received by the ILO.

Democratic Republic of the Congo

Labour Inspection Convention, 1947 (No. 81) (ratification: 1968)

The Committee notes with interest that notwithstanding the difficult times the country is going through, the General Labour Inspectorate has managed to produce a report for 2007 on the work of the services under its control containing detailed information and statistics on the subjects listed at *Article 21 of the Convention* for four of the country’s 11 provinces. ***It hopes that the central authority will pursue its efforts to gather and analyse data and information on the work of the inspectorate so that the annual report will gradually cover the entire country.***

Articles 4, 5, 7, 10, 11, 20 and 21. Decentralized administration and the labour inspectorate. In its previous comments, the Committee took note of the provisions of the Constitution in force since 18 February 2006 providing that with the decentralization of the administration, the central authority would still have sole responsibility for the national public service, the public finances of the Republic and the labour legislation. These provisions being general in nature, the Committee was unable to assess their scope as compared to that of the provisions determining the responsibilities of the provincial authorities. While emphasizing the importance of the social and economic role played by the labour inspectorate, it reminded the Government of the need to ensure that labour inspectors have a status and conditions of service that take due account of the importance and the specific nature of their duties, including remuneration scales based on criteria related to personal merit. To enable it to keep track of the situation, the Committee asked the Government to indicate how powers were distributed between the central authority and the provincial authorities in terms of the organization and functioning of the labour inspectorate and the appointment of labour inspection staff, and for budgetary decisions on the distribution of the resources needed to carry out this function of the public labour administration. In its report, the Government indicates that it has submitted a Bill on decentralization to Parliament, but states that it is unable to provide the information requested. The Committee notes, however, that Decree No. 08/06 of 26 March 2008 establishes a National Council (CNDM) to implement and monitor the decentralization process in the Democratic Republic of the Congo. It notes that section 12(4) of the Decree provides for a technical unit to assist with decentralization, with responsibility for monitoring the transfer of the financial and human resources allocated to the areas that are of the exclusive competence of the provinces and for the functions of the decentralized territorial entities. Pursuant to Act No. 07/009 of 31 December 2007 establishing the state budget for the 2008 financial year, the Government has undertaken to re-establish state authority over the entire national territory and to back it up with a stringent reform of the public administration with a view to improving the qualitative and quantitative performance of public officials. ***The Committee would be grateful if the Government would indicate precisely whether, by virtue of the Constitution, labour inspection is considered to be an integral part of the national public service, and asks it to provide a copy of any text or document that would enable the Committee to assess the manner in which effect is given throughout the national territory to the provisions of Articles 4, 5, 7, 10, 11, 20 and 21 of the Convention.***

Article 3, paragraph 2, and Articles 6 and 15(a). Integrity, independence and impartiality of labour inspectors. In its previous comments the Committee noted, in connection with allegations by the Confederation of Trade Unions of Congo (CSC) of corruption among labour inspectors, that the Government had provided no information on the fact that some inspectors have a second occupation and on the lack of transport facilities. However, it notes the Government’s commitment to restructuring the inspection services so as to make them operational and ensure that labour inspectors

enjoy a status and conditions of service commensurate with their responsibilities, thereby removing them from any improper external influence, such as might result from a subordinate position in parallel job. ***The Committee would be grateful if the Government would provide details as to the possibility for labour inspectors to have a second job and the conditions governing such a possibility. The Government is also asked to indicate how it applies in law and in practice its undertaking to improve the status and conditions of service of labour inspectors, and to provide copies of any relevant legislation or document.***

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

Denmark

Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)

The Committee duly notes the information supplied by the Government in its report for the period ending 31 May 2007 in reply to previous comments and the documentation attached, as well as the documentation received by the ILO in October 2008. It also notes the legislative developments which have occurred since 2005, particularly the consolidation of Act No. 268 of 18 March 2005 on the Working Environment, and Act No. 175 of 27 February 2007 amending the same Act with the texts adopted for their implementation.

Articles 10, 11, 12, 13 and 16 of the Convention. Good practice in monitoring occupational safety and health. Impact of publicity given to enterprises and rational management of labour inspection resources. The Committee notes ***with satisfaction*** the procedure established by the Government with a view to ensuring rational and effective management of the human resources and means of the labour inspection services for monitoring the situation of enterprises with regard to occupational safety and health. The implementation of this procedure enables, firstly, the rapid identification of enterprises requiring closer inspection by the Working Environment Authority and, secondly, the granting of a mark of recognition to enterprises which have distinguished themselves with a high level of occupational safety and health. The Committee hopes that dissemination of the details of the procedure in six languages on the Working Environment Authority's web site (www.at.dk) will set an example for the labour inspectorates of other countries.

In 2005, the Working Environment Authority focused its inspection activities on four priority areas: (1) enterprises performing activities entailing a high risk of fatal or serious accidents; (2) enterprises where the work involves heavy lifting; (3) enterprises performing activities involving repetitive or monotonous movements; and (4) enterprises performing activities entailing psychological risks. However, additional unannounced inspections may also be undertaken to prevent enterprises from considering that they are not subject to inspection and failing to take the necessary safety and health measures.

The procedure that has been established entails an initial evaluation of occupational safety and health conditions by means of screening based on investigations undertaken by the inspection services, individual evaluations carried out in writing by the enterprises themselves and compliance with legal obligations such as the establishment of a safety department in enterprises employing more than ten workers. All enterprises liable to inspection are screened periodically.

When the results of the screening are published on the Authority's web site, the date of screening and a symbol are displayed beside the name of each enterprise that has been screened. The symbols used are a series of "smileys" which clearly show the situation of the enterprise in terms of safety and health, as follows:

- a green "smiley" means that the enterprise is considered to have no issues or only minor issues in relation to safety and health and therefore does not require any specific inspection;
- a yellow frowning "smiley" means that the enterprise has some safety and health issues and requires advice from a health and safety consultant with a view to rectifying them;
- a red frowning "smiley" means that an enterprise has major issues, necessitating advice from the Working Environment Authority and has received an improvement notice with a fixed deadline.

The yellow or red symbol is removed from enterprises which have resolved the issues in question with the assistance of the Working Environment Authority.

- a green "smiley" with a crown indicates enterprises which, at their own request, have been inspected by the qualified bodies of the Working Environment Authority, have fulfilled the special conditions imposed for this purpose and obtained a safety and health certificate which is valid for up to three years. Barring exceptional cases, these enterprises are exempt from screening.

The publicity given to the results of screening and to the awards made for particular achievements by enterprises in terms of safety and health conditions clearly acts as an incentive for enterprises seeking to promote a positive public image.

Djibouti

Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)

The Committee notes the Government's report received at the ILO on 29 May 2008. It also notes Act No. 75/AN/00/4^e to organize the Ministry of Employment and National Solidarity, the organizational chart of the Ministry and the summary table of statistics on the work of the labour inspection services and social legislation in the period 2003–07 and the constitutional provisions providing that international standards and commitments prevail over national provisions.

In its previous comments, the Committee referred to comments made by the General Union of Djibouti Workers (UGTD) in 2007 calling for an urgent review of the labour inspection system and the strengthening of its resources. In the absence of any recent statistics on the working of the labour inspectorate, the Committee also asked the Government to report in as much detail as possible on the following matters: (i) the supervision of working conditions and the protection of workers in enterprises in export processing zones excluded from the scope of the new Labour Code by section 1 of the Code; (ii) the impact of the conciliation work carried out by labour inspectors on the volume and quality of their inspection duties (*Article 3, paragraph 2, of the Convention*); (iii) human resources and means of action of the labour inspectorate in relation to the requirement of *Article 16* that workplaces shall be visited as often and as thoroughly as necessary; and (iv) the need to give effect to *Articles 20 and 21* concerning the requirement that the central inspection authority shall publish and communicate to the ILO an annual general report on the work of the inspection services.

On the basis of the information sent by the Government, the Committee wishes to draw attention to the following points.

Articles 1 and 2 of the Convention. Supervision of working conditions and protection of workers in industrial and commercial establishments in export processing zones. The Committee noted in its previous comments that, under section 1 of the Labour Code, the Code applies throughout the national territory except in export processing zones (EPZs) which are governed by special legislation. According to the Government, not only are the EPZs beyond the competence of the labour inspectorate but the legislation applying to them, which has prompted objections in the country, grants excessive privileges to employers at the expense of the workers. The Government explains that supervision of the enterprises allowed to operate in EPZs is the responsibility of the ports and EPZs authorities, which also issue visas for foreign workers and deal with any disputes regarding the election of staff delegates in the zones. The Committee notes, however, that pursuant to section 31 of the EPZ Code issued by Act No. 53/AN/04 of 17 May 2004, “the Djibouti Labour Code governs labour relations in the export processing zones”, and that the legislation on EPZs available at the ILO contains no provisions on this subject. ***The Government is asked to indicate whether section 31 of the EPZ Code has been repealed and if so, to provide the relevant text, and in any event to provide copies of the texts governing the working conditions and protection of the workers occupied in establishments in the EPZs together with the legal provisions respecting their enforcement.***

Article 3, paragraphs 1(a) and (b), and Article 17. Need to ensure a balance between the enforcement and advisory functions of labour inspection. According to the Government, the work of inspection services pertaining to labour legislation focuses largely on persuasion and information. The Committee nonetheless notes that the national legislation contains, as the Convention requires, a whole set of legal provisions that also enable inspectors to prosecute those who are in breach of the law on working conditions. In paragraph 279 of its General Survey of 2006 on labour inspection, the Committee pointed out in this connection that although advice and information can only encourage compliance with legal provisions, it should nonetheless be accompanied by an enforcement mechanism enabling those guilty of violations reported by labour inspectors to be prosecuted. In keeping with its assertion that no labour legislation, however developed it may be, can exist for long without an effective labour inspection system, the Government should ensure that the inspection system is able to make use of all means of action available to it under the law to attain its objectives. A balance between the advisory and enforcement roles of the inspection services would, without doubt, contribute to reducing the number and scale of labour disputes. ***The Committee accordingly asks the Government to take the appropriate steps to ensure that, where necessary, inspectors exercise in practice the authority conferred by Article 17 of the Convention, to which section 196 of the Labour Code gives effect, themselves to initiate legal action before the competent jurisdiction against those who breach labour laws and regulations, on the basis of the provisions of Title IX of the Code which defines offences and establishes the penalties applying to them.***

Article 3, paragraph 2. Accumulation of tasks assigned to labour inspectors and its impact on the volume and quality of their inspection duties. In its observations of 2007, the UGTD expressed the view that in future the duties of the inspectorate should encompass conciliation and prevention. The Committee drew the Government's attention in this connection to *Article 3, paragraph 2*, which places restrictions on the additional duties that may be required of labour inspectors, and asked the Government to send the Office information on the manner in which observance of this provision is ensured. The Government acknowledges that workplace inspection has its shortcomings. Furthermore, the data the Government provided on the work of the inspectorate in the area of occupational safety and health are slight in comparison with those pertaining to the settlement of individual and collective labour disputes. The Government nonetheless hopes that in future, the labour inspection service will be able to conduct three visits a week. The Committee notes this information with concern, observing that it bears out the UGTD's assertion that the labour inspection system

needs to be reviewed and strengthened so that it can perform its duties fully. It furthermore regrets that it has not been informed of the number of workplaces subject to inspection and is therefore unable to assess the extent to which the needs for inspection are covered. Observing that the time and energy that labour inspectors spend in attempting to settle collective labour disputes interfere with the performance of their primary duties, the Committee suggests, in paragraph 74 of its General Survey mentioned above, that conciliation or mediation in collective labour disputes be entrusted to a specialized body or officials. It notes in this connection that section 181 of the new Labour Code in fact provides for the establishment of an arbitration council to hear collective labour disputes that conciliation has failed to settle. It notes, however, that the Council will hear the dispute only after the labour inspector or labour director has attempted conciliation and referred the matter to it within eight full days (section 180 of the Code). ***The Committee reminds the Government of the specific warning in Paragraph 8 of Recommendation No. 81 that “the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes” and it urges the Government to envisage taking steps to relieve inspectors of their role as preliminary conciliators in labour disputes. It would be grateful if the Government would also take measures to ensure, as required by Article 16 of the Convention, that the strength of the inspectorate is sufficient to cover the workplaces liable to inspection and send the Office information with as much supporting documentation as possible on all progress made in this matter and on any difficulties encountered.***

Articles 10, 11 and 16. Reinforcement of the labour inspection system. The Committee notes that in order to reinforce the labour inspection system, the Government plans to create four new sections of the inspectorate, two in the capital and two in the interior of the country, and to take advantage of technical support from the ILO Subregional Office in Addis Ababa to organize a training course for labour controllers and the single labour inspector at the ILO International Training Centre in Turin. It also notes that the Government is examining possibilities for cooperation between the labour inspectorate and the competent medical and technical institutions, and that a tripartite workshop on Convention No. 81 was to be organized by the ILO subregional office in 2008. ***The Committee hopes that the Government will not fail to keep the ILO informed of any developments relative to any of these matters.***

Further to its previous comments, the Committee once again asks the Government to provide the most recent data available on the number and geographical distribution of the workplaces liable to inspection (including mines and quarries), the number of workers employed therein and the transport facilities available to the labour inspector and labour controllers for duty travel.

Such information is essential to the central inspection authority in evaluating the human and material resources needed in order to attain the objectives of labour inspection and hence to estimating the funding of the inspectorate in the national budget.

Articles 20 and 21. Publication, communication and content of the annual inspection report. While taking note of the table of statistics attached to the Government's report on the work of the inspection services, the Committee observes that it covers a period of five years and that, in terms of activities and results, it is not sufficiently specific or relevant to be of use in evaluating the operation and efficiency of the labour inspection system. ***The Committee is therefore once again bound to ask the Government to take the necessary measures for the publication of an annual inspection report, as provided in section 192 of the Labour Code, within the time limits prescribed in Article 20 and containing the information required by Article 21. Emphasizing that such a report is an essential tool in evaluating the efficiency of the inspection system and in identifying the resources required for its improvement, in particular through appropriate budgetary estimates, the Committee requests the Government to pay due attention to the indications in Part IV of the Labour Inspection Recommendation, 1947 (No. 81) as to the level of detail that would be appropriate in the information required by clauses (a) to (g) of Article 21 of the Convention. It recalls that it may request ILO technical assistance for this purpose.***

Dominican Republic

Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)

The Committee notes that the Government's report does not reply to its previous comments. It is therefore bound to repeat its previous observation on the following points:

Article 11(b). Increase in transport facilities for labour inspectors. The Committee notes that four new vehicles have been made available to inspectors for duty travel. ***It would be grateful if the Government would inform the Office of the impact of this important measure on inspection activities and their results.***

Article 12, paragraph 1(a) and (b). Right of labour inspectors to enter any workplace freely. The Committee notes that, in response to its previous comments, it is planned to amend the national legislation so that, as provided by the Convention, inspectors will be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection. ***The Government is requested to provide information on any progress made in the amendment process envisaged to this effect or to communicate a copy of any text adopted.***

Article 12, paragraph 1(c)(iv). Testing of substances and materials used or handled. Further to its previous comments concerning the usefulness of giving a legal basis to the prerogatives of labour inspectors, the Committee hopes that measures will be taken to give effect to this provision of the Convention under which labour inspectors must be empowered to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his

representative being notified of any samples or substances taken or removed for such purpose. It asks the Government to keep the ILO informed of any progress made in this respect and to communicate a copy of the new occupational health and safety regulations which were due to be adopted in 2006.

Article 14. Notifying the labour inspectorate of industrial accidents and cases of occupational disease. The Committee once again asks the Government to take measures to determine the cases in which the labour inspectorate must be informed of industrial accidents and cases of occupational disease and to keep the Office informed in this respect. It would be grateful if the Government would also indicate progress in the drafting of a schedule determining and classifying occupational diseases.

Article 18. Effective enforcement of adequate penalties. The Committee notes the penalties provided for in sections 720 and 721 of the Labour Code for violations of labour legislation. It also notes the Government's intention to consult the social partners within the framework of the Labour Advisory Council with a view to establishing financial penalties for obstructing labour inspectors in the performance of their duties. Further to its previous comments, the Committee once again asks the Government to ensure that a method is devised to review the amount of the fines imposed so that they maintain their dissuasive purpose despite any monetary fluctuations and that these penalties are effectively enforced. It hopes that the Government will soon be able to provide information on measures taken to this effect.

Articles 20 and 21. Annual inspection report. The Committee once again notes that, despite repeated requests, no annual inspection report of the kind provided for by the Convention has been received by the Office. The Committee recalls that the Government may request the technical assistance of the Office to create the necessary conditions to enable the central inspection authority to publish and communicate to the Office a report on the work of the inspection services under its control. The Committee strongly encourages the Government to take the necessary steps to this effect and to provide information on any progress made in this regard.

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

The Committee is addressing a direct request to the Government concerning a number of other points.

Ecuador

Labour Inspection Convention, 1947 (No. 81) (ratification: 1975)

The Committee notes the Government's report for the period ending 1 September 2008 and the table containing labour statistics for the first six months and July 2008, which do not deal with the subject covered by the Convention.

Following its previous comments on the need to supplement the labour legislation to strengthen the labour inspection system, the Committee notes that minor amendments were made to the Labour Code in 2005, which brought about a change in the order of its provisions but made no difference with respect to the labour inspection services, apart from the suppression of the function of sub-labour inspector.

Limited effects of international cooperation on the functioning of the labour inspection system: Findings and prospects. The Committee notes that the Government has not provided the information requested on the follow-up to the recommendations of the ILO/FORSAT multilateral technical cooperation project for the strengthening of labour administrations in Bolivia, Ecuador and Peru, of which one of the most important components was to be labour inspection. Referring to the information available to the ILO, it notes that although the project ended in April 2007, it had come up against two major obstacles when it was being carried out: its objectives were disproportionate to the political commitment involved; and political instability. The Committee nevertheless notes that, according to the project evaluation report, there had been an improvement in the system of labour registers and computerization and that, once it became operational, this system would be one of the best labour statistical systems in the region. It would make available updated information that was both reliable and of a high quality, thereby facilitating the design of public policies.

The Committee notes, however, that the recommendations of the FORSAT project with a view to improving the labour inspection system, such as, for example, the creation of a labour inspection directorate at national level, were not followed up. In this respect, the Government stipulates in its report, under *Article 4 of the Convention*, that the inspection services are placed under the supervision and control of the Director and Undersecretary of Labour in their respective constituencies, which is contrary to this provision under which they should be placed under the supervision and control of a central authority. Furthermore, the conclusions of the 2005 evaluation report of the labour inspection services in the cities of Quito, Guayaquil and Cuenca, were to be applied to inspection services throughout the country. Among the shortcomings of the inspection service, the same report emphasized that there was no body of regulations governing the structure, organization and functions of the labour inspection system or the status, power and obligations of inspectors; nor were there any provisions defining breaches of the legislation, the application of which was supervised by the labour inspectors, and the penalties applicable. Furthermore, it highlighted the inadequate human resources and material working conditions, including transport facilities for inspectors. Consequently, there is a low level of coverage of needs in this regard (inspection visits are not planned; those carried out are rare and performed on a reactive basis; and there is a lack of enforcement of obligations in the area of social security and occupational safety and health). The Committee notes that, despite the improvement in the labour data registration system, the Government continues to attribute its inadequate application of the Convention to the lack of human resources, and of material and data processing means. Moreover, it has not provided any information on the follow up to the pilot inspection plan for Guayaquil, drawn up within the framework of the FORSTAT project, including models for forms for inspection orders, reports on visits to establishments (inspections carried out, violations reported, follow-up action, indication of the body to which violations will be notified) and a model of the form summarizing the monthly report on inspection activities.

The Committee reminds the Government that, in ratifying this Convention, it undertook to take the necessary measures to implement its provisions in law and practice. ***It urges it to do its utmost to fulfil this commitment as soon as possible including, if necessary, with ILO technical assistance, especially to bring the legislation into conformity with regard to: the determination of the establishments covered (Articles 2 and 23); the functions and organization of the system (Articles 3, 4, 5 and 9); the status and conditions of service of the inspection staff (Article 6), their training (Article 7), their gender composition (Article 8), their prerogatives and powers (Articles 12, 13 and 17), their obligations of an ethical (Article 15) and functional nature (Articles 16 and 19); and the publication of an annual report on inspection (Articles 20 and 21).***

The Committee urges the Government to ensure that the legislation is supplemented by the adoption of provisions classifying violations according to their nature and severity and establishing the type of penalties imposed on perpetrators; and that implementing regulations on financial penalties which allow for adjustment to monetary fluctuations should be adopted. The Committee hopes that the Government will submit information in its next report on any progress made in the application of the above provisions of the Convention and a copy of any legislation adopted to this effect.

The Committee would be grateful if the Government would communicate, in any event, the information available in its next report from the labour data registration system, such as the number, activities and geographical breakdown of the industrial and commercial establishments under the supervision of the labour inspection system; the number and categories of workers employed in these establishments (men, women, young workers), as well as any other information required by the competent authority to assess the needs of the labour inspection system in terms of human resources, material means, transport facilities and means of transport, and to determine priorities for action, taking into account the country's economic conditions.

The Committee is also addressing a request directly to the Government on other points.

[The Government is asked to reply in detail to the present comments in 2009.]

El Salvador

Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)

The Committee notes the information contained in the Government's report in reply to its previous comments. It draws the Government's attention to the following points.

International cooperation and ILO technical assistance. The Committee notes that an assessment of the labour inspection situation was conducted by the ILO as part of project RLA/07/04M/USA on the strengthening of civil service systems in the Ministries of Labour of Honduras and El Salvador. ***It would be grateful if the Government would provide information on any action contemplated or taken as a follow-up to the recommendations resulting from this assessment.***

Article 6 of the Convention. Status and conditions of service of labour inspectors. With reference to its previous comments on the need to take measures promptly to ensure that labour inspectors have stability of employment and are independent of changes of government and of improper external influences, the Committee notes with interest that a project to integrate the region's labour inspectors into the administrative career system will be implemented by the ILO regional office with international financial support. ***The Committee expresses the firm hope that the Government will ensure that steps are taken in practice in the context of this project so that labour inspectors are governed by specific conditions of service such that they are assured of the stability of employment and independence required by the Convention, and that their career prospects are such as to attract and retain qualified and motivated staff in the inspection services. It requests the Government to keep the ILO informed of all progress made in this regard and to send copies of any relevant legislative texts.***

Article 12, paragraph 1(a) and (b). Scope of inspectors' right of entry to workplaces. In the comments which it has been making for a number of years, the Committee requests the Government to take the necessary measures to give a legal basis to inspectors' right of access to workplaces, as prescribed by the Convention, namely to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection (*clause (a)*), and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection (*clause (b)*). The Government states once again in its report that inspectors' right of free entry to workplaces liable to inspection, established by section 38 of the Act concerning the structure and functions of the labour and social security sector, extends to night work according to the activities of the enterprise. The Committee cannot overemphasize the need to give legal authorization to inspectors to exercise their right of free entry to workplaces liable to inspection, regardless of the hours of work of those establishments. It draws the Government's attention to paragraph 270 of its General Survey of 2006 on labour inspection in which it emphasizes that the purpose of the above provisions of the Convention is to allow inspectors to carry out inspections, where necessary and possible, to enforce the application of legal provisions relating to conditions of work. The Committee is of the view that the protection of workers and the technical requirements for inspection should be the primordial criteria in determining the appropriate timing of visits, for example to check for violations such as abusive night work conditions in a workplace officially operating during the daytime, or to carry out technical inspections

requiring machinery or production processes to be stopped. ***It therefore requests the Government to take the necessary steps without delay to bring the legislation into conformity with the Convention and to send copies of any text drafted or adopted to this end. The Committee would be grateful if the Government would supply copies, as stated in its report, of reports of inspections undertaken at night.***

Article 12, paragraphs 1(c)(i) and 2. Scope of the powers of labour inspectors to investigate and notification of their presence at the workplace. With reference to the comments which it has been making since 2001, the Committee notes the Government's new explanations to the effect that section 47 of the Act on the structure and functions of the labour and social security sector, under which inspections are carried out with the participation of the employer, the workers or their representatives, aims to give transparency to inspections. The Committee is bound to repeat that the obligation thus placed on the inspector to carry out inspections with the employer, the workers or their representatives clearly constitutes an obstacle to the freedom of investigation prescribed by the Convention and also to the freedom of expression and spontaneity of the statements made by the persons questioned, particularly workers, and that it is therefore prejudicial to the effectiveness of the inspection. The Committee emphasizes in paragraph 275 of the above General Survey that to ensure that statements are as spontaneous and reliable as possible, it is essential for labour inspectors to exercise their own judgement as to whether to carry out confidential interviews where this is required by the subject of the interview. In this way, inspectors can avoid embarrassing the employer or his or her representative in front of the workers or, conversely, exposing workers to the risk of reprisals. It also reminds the Government that, in accordance with the terms of *Article 12, paragraph 2*, a labour inspector should be authorized not to notify the employer or his representative of his presence, if he considers this preferable in order to ensure the effectiveness of the inspection. ***The Committee therefore requests the Government once again to ensure that the legislation is rapidly brought into conformity with the letter and spirit of these provisions of the Convention. It hopes that the Government will provide the ILO with relevant information, together with any related legislative texts.***

Article 14. Notification of industrial accidents and cases of occupational disease to the labour inspectorate. With reference to its previous comments on this matter, the Committee notes that the draft general law on the prevention of occupational risks is still under discussion in the competent committee of the Legislative Assembly. It also notes that, in practice, the services responsible for the inspection of occupational safety and health require enterprises to notify and record industrial accidents and cases of occupational disease. Inviting the Government to refer to paragraph 118 of the above General Survey concerning the importance of the preventive function of labour inspection, the Committee draws its attention once again to its general observation of 1996 concerning the publication by the ILO of a code of practice on the recording and notification of occupational accidents and diseases in order to provide member States with guidance in this area. ***It hopes that the Government will not fail to ensure, in the discussions of the draft general law on the prevention of occupational risks, that the national legislation defines the cases and the manner in which the labour inspectorate must be informed of industrial accidents and cases of occupational disease, and that it will keep the ILO informed of all developments in this regard and of the adoption of any relevant texts.***

Article 18. Adequate penalties. While noting the information provided by the Government with regard to criteria for the imposition of fines, the Committee refers to paragraph 295 of the General Survey in which it emphasizes the importance of ensuring that fines retain a sufficiently deterrent character despite monetary fluctuations, so that employers do not prefer to pay fines as a less costly alternative to taking the necessary measures to ensure compliance with the legal provisions on working conditions and the protection of workers. ***It requests the Government to take the necessary steps rapidly to establish an appropriate method for the adjustment of the amounts of fines applicable for the violation of legal provisions enforced by labour inspectors or for obstructing inspectors in the discharge of their duties. The Committee would be grateful if the Government would provide information in its next report on the measures taken and copies of any related documents.***

Articles 20 and 21. Publication and communication to the ILO of an annual inspection report. The Committee notes that, despite its repeated requests, no annual inspection report as required by these provisions of the Convention has been sent to the ILO since the ratification of the Convention in 1995. ***The Committee trusts that the Government, in the context of international cooperation and the technical assistance which it receives from the ILO, will take the necessary steps to ensure that the central inspection authority publishes and communicates to the ILO, within the deadlines prescribed by Article 20, an annual report containing the information required by Article 21(a) to (g).***

Labour inspection and child labour. The Committee notes that the statistics supplied by the Government on inspections targeting child labour, and also in relation to prevention and awareness-raising activities in this field, in 2006 and 2007 relate in particular to the agricultural sector. ***The Committee requests the Government to take steps to ensure that information on enforcement by the labour inspectorate of the legal provisions relating to child labour in industrial and commercial establishments is sent to the Office and is included in a separate section in the annual inspection report.***

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1995)

With reference to its comments on the application of Convention No. 81, the Committee notes the information contained in the Government's report in reply to its previous comments, and the General Regulations on travel expenses.

International cooperation and ILO technical assistance. The Committee notes that an assessment of the situation of labour inspection has been undertaken during 2008 by the ILO in the context of the regional project RLA/07/04M/USA for the strengthening of public labour administration systems and that the plan of action for its implementation is currently being implemented.

Articles 9, paragraph 3, 10, 11, 14 and 15 of the Convention. Human and material resources of the labour inspectorate in agriculture. The Committee notes that, according to the Government, 26 labour inspectors, distributed between the central office in San Salvador (13), the regional offices of Santa Ana (1) and San Miguel (2), and the departmental offices of Sonsonate (1), Zacatecoluca (4), Unión (2) and Usulután (3) are engaged in inspection functions in agriculture. It notes that eight vehicles are available, two of which are at the central office and one each at the regional offices of Santa Ana and San Miguel, as well as at the departmental offices of Sonsonate, Zacatecoluca, San Miguel and Unión. The use of these vehicles is planned so as to reduce transport costs. According to the Government, the Regulations respecting travel expenses in the version published on 15 June 2000 are intended to regulate their use by employees recruited under the Act respecting wages, contracts and daily wages who travel on official missions or to places other than their workplace. They determine the basis and arrangements for the reimbursement of fuel costs, the repair of damages that are not attributable to the officials concerned, and tickets for public transport.

In reply to the Committee's request for information concerning any specific training provided for inspectors in agriculture, the Government has provided a report on training activities undertaken in 2006, 2007 and January 2008 for labour inspectors, safety and health inspectors, occupational safety technicians and inspectors responsible for gender issues. The Committee nevertheless notes that the table indicating the subjects of the training courses and their duration, and the number of participants, makes no mention of specific training targeting labour inspection in agricultural undertakings. Furthermore, according to the Government, the collaboration of experts has never been called upon to resolve problems requiring technical knowledge going beyond the competence of inspectors. ***The Committee would be gratified if the Government would provide its assessment of the adequacy of the resources and transport facilities of the labour inspectorate in relation to the specific needs arising out of the remoteness and geographical dispersion of agricultural undertakings, and to indicate the manner in which reimbursement is provided in practice for the travel expenses envisaged in the above Regulations respecting the use of travel allowances (monitoring of kilometres, average wait for reimbursement, etc.).***

The Government is requested to take measures to ensure that, in accordance with Article 9, paragraph 3, labour inspectors in agriculture receive adequate training, as well as further training in the course of their employment, and that they can avail themselves of the collaboration of duly qualified technical experts and specialists (physicians, chemists, security engineers) to solve problems requiring technical knowledge beyond their competence.

Articles 8 and 20(a). Conditions of service of labour inspectors in agriculture. Compliance with professional ethics and prohibition from having any interest in undertakings under their supervision. The Committee notes that, contrary to the indication in the Government's report, the text of the ethical standards for the public service has not been provided to the Office. It notes that, in reply to its request for information concerning the pay scale of inspection staff in comparison with other categories of public officials with comparable responsibilities, the monthly salary is 1,058.25 Salvadorean colones (SVC) for the Chief of the Inspection Department in Agriculture, SVC748.67 for the Chief of the Inspection Section in Agriculture, SVC665.91 for supervisors of the Inspection Department in Agriculture and SVC624.55 for labour inspectors in agriculture.

With regard to the remuneration of other public officials, the Head of Inspection in the El Salvador Social Security Institute (ISSS) receives a salary of SVC1,600, the inspection supervisor receives SVC1,250 and inspectors receive SVC777. This information shows a substantial inequality to the detriment of officials in the labour inspection structures responsible for agriculture. ***The Committee hopes that measures will be taken rapidly to improve the conditions of service of labour inspectors, and particularly their remuneration, so that they correspond to the high level of responsibilities with which they are entrusted at each level and to ensure that they are independent of improper external influences. It requests the Government to supply information on any development in this respect and to provide the text of the ethical standards to which it refers in its report.***

Physical security of labour inspectors during inspections in agricultural undertakings. The Committee notes that, in reply to its request for information on any measure that has been taken or is envisaged to ensure the security of labour inspectors in agriculture, the Government indicates that since 2004 members of the rural police have been deployed in agricultural areas with responsibility for ensuring the security of the population. It adds that the presence of the police in the various rural areas has contributed to restoring the confidence of the inhabitants and to ensuring the security of inspectors where they discharge their functions. ***The Committee would be grateful if the Government would provide further details on the manner in which labour inspectors can have recourse to these forces of order in the event of***

threats or aggression by employers opposing inspection. It also requests the Government to provide examples of cases in which labour inspectors have been exposed to violence in practice and the protection provided.

Article 16, paragraphs 1(c)(i) and 3, and Article 20(c). Powers of investigation and the confidentiality of the source of any complaint. The Committee notes the explanations provided by the Government on the extent of the right of entry of inspectors to workplaces liable to inspection, and the legal provisions intended to ensure confidentiality as to the source of complaints. The Committee is bound to emphasize once again that section 47 of the Act of 1996 respecting the organization and operation of the labour and social security sector, under which labour inspectors may only carry out inspection visits of workplaces in the presence of the employer, the workers or their representatives, is contrary to the Convention. Indeed, in accordance with *Article 16, paragraph 1(c)*, of the Convention, inspectors should be empowered to carry out interviews alone or in the presence of witnesses. Furthermore, under the terms of *paragraph 3* of this Article, labour inspectors should be able, on the occasion of an inspection visit, to refrain from notifying the employer or his representative of their presence where they consider that such notification may be prejudicial to the performance of their duties, with the objective of guaranteeing the effectiveness of the inspections and the confidentiality of the source of complaints (*Article 20(c)*). **The Committee therefore hopes that the Government will not fail to take the necessary measures finally to give full effect to these provisions of the Convention, particularly in the context of the legislative reform envisaged in the framework of the plan of action that is under way following the recent assessment of labour inspection, particularly through the removal of section 47 of the Act respecting the organization and operation of the labour and social security sector. It would be grateful if the Government would keep the ILO informed.**

Article 6, paragraph 1(b), and Article 13. Collaboration between officials of the labour inspectorate in agriculture and employers and workers or their organizations. The Committee noted in a previous report from the Government (2002) the existence in the Higher Labour Council of collaboration between officials of the labour inspectorate in agriculture and employers and workers or their organizations and it requested further information in this respect on: (i) the composition and the responsibilities of the Council; (ii) the frequency of its meetings; and (iii) the subjects related to labour inspection in agriculture dealt with by the Council. It also requested the provision of any relevant text, activity report or other document. The Government indicates that the Higher Labour Council is an advisory body entrusted with examining, at the request of its constituents, social matters and regulations issued under the Labour Code. It is composed of eight representatives of employers, workers and the Government, respectively, and it provides an institutional framework for dialogue and the promotion of concerted economic and social action between the public authorities and the social partners. It is also consulted on issues relating to the participation of the country in international forums concerning matters that lie within its competence and with regard to the application of the international standards adopted by the ILO. Meeting twice a month at the level of its steering committee, at the request of any of its members, and in plenary session twice a year at times deemed appropriate, the Council has not yet dealt with issues relating to labour inspection in agriculture. **The Committee requests the Government to indicate whether measures have been taken or are envisaged to extend the fields covered by this body so that it can provide views for the improvement of conditions of work and living conditions in agricultural undertakings, particularly in plantations and other intensive agricultural undertakings, such as an opinion on the General Bill for the prevention of risks in workplaces, which is in the process of being adopted. If such measures have been taken, the Committee would be grateful to be provided with information on the subjects dealt with and the outcome of the Council's work.**

France

Labour Inspection Convention, 1947 (No. 81) (ratification: 1950)

Further to its previous comments, the Committee notes the Government's reports received by the Office on 23 November 2007 and 8 September 2008, and the additional information received in January 2008 concerning the matters raised by the General Confederation of Labour – Force Ouvrière (CGT-FO) in 2002 and the Single National Union-Work, Employment, Training (SNU-TEF (FSU)) between 2005 and 2006.

It also notes the annual report of the labour inspectorate for 2006.

Structural developments. The Committee notes with interest the designation in 2006 of the General Directorate of Labour (DGT) of the Ministry of Employment, Social Cohesion and Housing as the central labour inspection authority and the establishment by Decree No. 2007-279 of 2 March 2007 of a National Labour Inspection Council (CNIT) entrusted with contributing to ensuring “the discharge of the functions and guarantees of labour inspection as set out in ILO Conventions Nos 81 and 129”.

Articles 20 and 21 of the Convention. Annual report on the work of the labour inspectorate. The Committee notes **with satisfaction** the quality of the annual report covered by these provisions. In addition to detailed descriptions and numerous statistical tables on each of the subjects covered by *Article 21*, the report also contains forward-looking comments.

The Committee notes with particular interest, in relation to a concern expressed by the CGT-FO, the inclusion in the annual inspection report of very detailed data, based on numerous criteria, on the causes of employment accidents and cases of occupational disease and the measures taken in a number of fields to achieve a significant reduction in their

incidence (with particular reference to commuting accidents, accidents caused by cranes, diseases related to asbestos, substances that are carcinogenic, mutagenic and toxic in respect of reproduction, as well as aircraft paints).

Article 10. Numbers and composition of the labour inspection personnel in relation to development functions and the complexity of the legislation. The Committee notes with interest the plan for the modernization of the labour inspectorate, which envisages a substantial increase in numbers and a reinforcement of the qualifications of inspection officials between 2006 and 2010 (an additional 240 inspectors, 420 controllers and 40 engineers and physicians). ***The Committee would be grateful if the Government would indicate the distribution of the inspection personnel trained and recruited under this plan, by grade and by function, in light of the duties defined in Article 3, paragraphs 1 and 2, of the Convention.***

Articles 6 and 18. Support from the public authorities and the judicial system for inspection officials exposed to physical aggression and threats. The Committee notes with interest the positive message sent out by the ruling of 9 March 2007 convicting a farmer to a sentence of 30 years of imprisonment for the murder in 2004 of two inspection officials engaged in the discharge of their duties. According to the Government, support by the authorities for inspection officials is now a major part of the plan for the development and modernization of the inspectorate (in its legal, judicial and psychological aspects), and the central inspection authority is moreover closely involved in the work undertaken on this subject by the Senior Labour Inspectors' Committee (SLIC).

Articles 3, paragraphs 1 and 2, 5(a), 6, 12, 15(c) and 17. Additional duties entrusted to labour inspectors. Mobilization of resources and incompatibility in light of control methods and the objectives pursued. With regard to the association of the labour inspectorate, under the terms of the Decree of 12 May 2005 and various subsequent circulars, with operations to combat the employment of illegal foreign residents, which the SNU-TEF (FSU) considers to be a violation of the Convention, the Government criticizes the union for a restrictive interpretation of the Convention. The Government refers to Article 31 of the Vienna Convention on the Law of Treaties of 1973, under the terms of which a treaty shall be interpreted "... in light of its object and purpose", and accordingly considers that there is no discrepancy, but indeed synergy between the logic of protecting workers when engaged in their work and that of combating the employment of foreign nationals without a work permit. The Government also refers to the points of view expressed by the Committee in its 2006 General Survey on labour inspection, according to which it is the labour inspectorate that is responsible for verifying whether the conditions in which the contract of employment is concluded and fulfilled comply with the applicable provisions, in particular in the case of vulnerable workers, such as young persons or people with certain disabilities (paragraph 76). The Committee is bound to specify in this respect that the basic idea behind this position was that it is because of a vulnerability related to physical, mental or psychological criteria that the employment of such persons is considered by *Article 3, paragraph 1(a)*, of the Convention as forming part of conditions of work and therefore comes within the legal competence of the labour inspectorate. With regard to the supervision of provisions relating to clandestine or illegal employment, paragraph 77 of the General Survey indicates that neither Convention No. 81 nor Convention No. 129 contain any provisions suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status. With the exception of the employment of vulnerable workers, as indicated above, the functions of the labour inspectorate, as defined by the two Conventions, are intended to secure conditions of work that are in accordance with the relevant legal requirements and the protection of workers while engaged in their work, and not the lawful nature of their employment. From the same viewpoint, the annual report of the labour inspectorate for 2005 describes activities in the field of employment as not coming within the competence of the labour inspectorate, within the meaning of Convention No. 81 (second part, III, page 31), while the report for 2006 specifies that the issues covered by the concept of "conditions of work" concern the conditions and environment in which work is performed (page 61). Recalling that the principal function of labour inspection is not to enforce immigration law and emphasizing that the human and other resources available to inspection services are not unlimited, the Committee has observed that the volume of inspection activities devoted to conditions of work appears to be diminished in relation to those concerning the legal status of workers under immigration law (General Survey, paragraph 78). According to the Government's report, in the sole year of 2007, the labour inspectorate participated in 31,000 controls in the context of the plan to combat illegal work. The SNU-TEF (FSU) criticizes the Government for associating labour inspectors with joint operations intended to identify and apprehend illegal foreign residents at their place of work. Under the terms of the relevant circulars, whether they are employers or employees, the principal administrative measure imposed is to accompany them to the border, which has the consequence for employees of denying their rights arising out of their capacity as wage earners, in contradiction with the objective of labour inspection of affording protection and contrary to national legislation, under which the offence of illegal employment can only be levelled against the employer, as the workers concerned are in principle considered to be victims (section L.314-6-1 of the Labour Code). The Committee considered in the above paragraph of its General Survey that, to be compatible with the objective of labour inspection, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all workers, and it advocated caution in any collaboration between the labour inspectorate and the immigration authorities (paragraph 161). The Committee notes in this respect that Interministerial Circular No. 21 of 20 December 2006 limits the scope of cooperation by the labour inspectorate to the extent necessary for the effective implementation of the rights of unlawfully employed workers, and that it refers explicitly to *Article 17* of the Convention respecting the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings. The Circular adds that the notion of "competence" in relation to labour inspection relates principally to the effective implementation of the rights

of illegally employed workers. It also refers to the “complimentary and concordant clarifications in this respect” contained in the above General Survey. However, the Committee wishes to observe that the fact that inspectors are incorporated into the ranks of and directed by officials from public bodies other than their own central authority, as defined in *Article 4* of the Convention, to undertake joint operations the purpose of which is incompatible with the objective of labour inspection constitutes a transgression of the principle of independence set out in the Convention (*Article 6*) and undermines the right of decision referred to above, as well as the principle of confidentiality as to the source of complaints (*Article 15(c)*). It also results in an important limitation on the powers of inspectors to initiate and carry out inspections in workplaces (*Article 12, paragraph 2(c)(i) and (ii)*) and subordinates action related to the priorities of the central labour inspection authority to those of the authorities combating illegal immigration.

Interministerial Circular No. 10 of 7 July 2008, provided by the Government with its report, orders the renewal in 2008 of joint operations to combat the employment of illegal foreigners and hidden work. While referring to the principles recalled in the Circular of 20 December 2006, it nevertheless indicates that the organization of these joint operations forms part of the activities of the labour inspection services under the aegis of the operational committees to combat illegal work and it recommends that the involvement of labour inspection services in interministerial action to combat the illegal employment of foreigners should be strong, “visible and identified”. The Committee notes the indignation of the SNU-TEF (FSU) at the role imposed upon the labour inspectorate and its officials in the implementation of operations carried out on the basis of “personal appearance” according to “a purely police logic”. The SNU-TEF (FSU) provides abundant documentation in support of its allegations, including articles from the press and statements by associations of inspectors and controllers giving the reasons for their rejection of what they describe as activities which very seriously undermine the objective of labour inspection. The SNU-TEF (FSU) refers as an example of good practice in this respect to a European country in which the function of controlling illegal employment has been transferred from the labour inspectorate to another public authority, as a result of which inspectors have been reinstated in their principle duties, as defined by the Convention. ***The Committee would be grateful if the Government would provide information so that it can assess the manner in which it is ensured, in accordance with section L.341-6-1 of the Labour Code, that illegal foreign workers benefit from the same protection by the labour inspectorate as other workers, and if it would provide in so far as possible relevant statistics (number of complaints, of employers ordered to bring their situation into compliance with their obligations and the status of procedures for the implementation of such orders).***

The Committee urges the Government to take measures to ensure that the powers of inspectors to enter workplaces liable to inspection are not misused for the implementation of joint operations to combat illegal immigration. It requests the Government to take measures, in accordance with Article 5(a) of the Convention, to promote collaboration by the services responsible for combating illegal immigration with labour inspection. These services could notify the labour inspectorate of cases of illegal immigrants apprehended outside a workplace but who are engaged in a labour relationship covered by the Convention. Labour inspectors would accordingly be in a position to ensure their protection in accordance with the powers conferred to them under the terms of the Convention and the Labour Code.

The Committee is also addressing a request directly to the Government concerning other matters.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)

The Committee notes the Government’s detailed report received on 8 September 2008, accompanied by information in reply to its previous comments, as well as the annual report on the organization, operation and work of the labour inspectorate in agriculture for 2007. It notes with interest the quality of the information provided.

The Committee also notes the observations made by the General Union of Labour, Employment and Vocational Training Personnel (FO-ITEPSA) on 14 January and 29 July 2008, which were forwarded to the Government on 4 April and 4 September 2008, respectively, and the Government’s comments on the matters raised by the union.

Article 7, paragraph 3, of the Convention. Integration of the labour inspection system in agriculture into a common labour inspection system. The FO-ITEPSA, in its communication of 14 January 2008, challenges the decision to merge the labour inspectorates, considering that this measure represents a severe threat to the survival of the labour inspectorate in agriculture. It indicates that, as a sign of protest, it decided as the principal organization of the labour inspection services in agriculture, and with the support of the federations of agricultural employees of Force Ouvrière and the General Confederation of Labour (CGT), on a collective action to boycott the transmission of the annual activity reports for 2007 to the Ministry of Agriculture and Fisheries. Furthermore, the Secretary-General of the FO-ITEPSA, in his personal capacity, sought an opinion on the matter from the National Labour Inspection Council (CNIT). He provided the Office with a copy of the notification from the CNIT dated 4 July 2008 of the opinion finding his request irreceivable.

In communications dated 28 April and 14 July 2008, the Government provided the Office with information on the reasons for the decision to merge the labour inspection systems beginning in 2009 with a view to their operational merger as of 1 January 2011. It indicated that this decision had been preceded by a trial, under the terms of a circular of the Prime Minister dated 2 January 2006, consisting of bringing together the labour inspection services in agriculture and the Departmental Directorates of Labour, Employment and Vocational Training in 2006 and 2007 in two departments (Dordogne and Pas-de-Calais). According to the Government, the trial was positive and resulted in the development of

synergies and complementary action between the inspection services and to improving the transparency and quality of the service provided to users. One of the recommendations made following this trial was to establish an agricultural section in each department. This section would have to be recognized as such by the social partners in the agricultural sector, who would thereby maintain their natural and customary counterpart. It would also allow the central administration to maintain an easily identifiable structure. It is also planned to maintain the general nature of the labour inspectorate in agriculture (with overall competence for action in the fields of individual and collective labour relations, conditions of work, occupational safety and health, and the various types of employment) in compliance with the Convention. The Government gives the assurance that the number of inspections and related measures each year will be at least equal, if not greater than those undertaken in 2006 and 2007. The Government adds that the call for a boycott announced by the union has been raised and that all the services provided their annual activity report to the central labour inspection authority in agriculture. It notes that the arrangements for the merger of the labour inspectorates will require close dialogue with all the trade union organizations.

The Committee notes these clarifications and recalls that the Convention does not impose a single form of organization of the labour inspection system in agriculture. Indeed, *Article 7, paragraph 3*, provides that labour inspection in agriculture might be carried out for example: (a) by a single labour inspection department responsible for all sectors of economic activity; (b) by a single labour inspection department, which would arrange for internal functional specialization through the appropriate training of inspectors called upon to exercise their functions in agriculture; (c) by a single labour inspection department, which would arrange for internal institutional specialization by creating a technically qualified service, the officers of which would perform their functions in agriculture; or (d) by a specialized agricultural inspection service, the activity of which would be supervised by a central body vested with the same prerogatives in respect of labour inspection in other fields, such as industry, transport and commerce. ***Remaining attentive to the changes in the organization and functioning of the labour inspectorate as a whole, the Committee would be grateful if the Government would keep the ILO duly informed of the developments occurring in this respect during the period covered by the next report, while at the same time continuing to provide separate information on labour inspection in agriculture, as required by the Convention.***

Article 6, paragraph 3. Further duties in addition to those relating to the inspection of conditions of work and the protection of workers. With reference to its comment on the application of Convention No. 81 in relation to the matters raised by other trade union organizations concerning the additional duties entrusted to labour inspectors, the Committee urges the Government to take measures to ensure that labour inspectors in agriculture are not involved in the joint operations undertaken in the workplace under the control of other public authorities in the framework of the policy to combat illegal immigration. It would be grateful if the Government would provide information on these measures and their impact on the volume and quality of enforcement activities in relation to conditions of work in agricultural undertakings.

Support measures by the Government for labour inspectors. The Committee also refers in this regard to its comments under Convention No. 81 concerning the action taken by the Government following the murder in September 2004 of two labour controllers with a view to providing inspection officials with constant logistical and psychological support.

French Guiana

Labour Inspection Convention, 1947 (No. 81)

The Committee takes note of the Government's report received on 21 April 2008. It also refers to the additional information appended to the national report of July 2008 on the application of the Convention.

Article 3, paragraphs 1 and 2, and Articles 9, 10 and 16 of the Convention. Primary and additional functions of the labour inspectorate in view of its staff numbers and objectives. The Committee notes that in recent years the work of the inspectorate has focused mainly on combating illegal labour, a concept that covers a great variety of offences against the laws on employment, as well as abuses of the right of residence of foreign nationals. Not only are inspectors called on to cooperate with the other state bodies responsible for combating illegal labour, such as the police, the social security institute (URSAFF) and customs, but the inspector responsible for one of the two sections forming the labour inspectorate acts as the secretary of the Committee to Combat Illegal Work (COLTI). According to the Government, the operations carried out in this context clearly aim to put a stop to unlawful immigration. The Government states that combating illegal labour is inevitably the concern of labour inspectors and constitutes a regional priority for the State. It announces that a labour inspector specializing in this field is to be appointed by 1 January 2009 and that a special criminal policy has been implemented to allow inspectors to include reports of violations (95 in 2007) in police procedures so as to obtain a more expeditious and satisfactory penal response. The Government welcomes the fact that magistrates are particularly sensitive to the cases referred to them, as reflected in the two-year prison sentence imposed on an employer in 2007 for the "employment of undocumented foreigners" and "hidden employment".

The Committee is bound to deplore the excessive workload imposed on labour inspectors in pursuit of an objective unrelated to their functions, which consist of the enforcement of legal provisions governing conditions of work and the protection of workers while engaged in their work. The Committee's concern is particularly justified as it has been

established that there are serious failings in the performance of the inspectorate's primary duties, as acknowledged by the Government. According to the Government, although employment accidents, which, like occupational diseases, it acknowledges are under-reported (431 accidents, 54 per cent of them serious, and 12 cases of occupational diseases in 2005), mainly affected the building and public works sector, the inspectorate's work on safety and working conditions in this sector, as in most others, has been completely "engulfed by illegal work problems". The Government reports the absence of safety and health consultants, indicates that the prevention specialist appointed for French Guiana and the Antilles in February 2005 has been transferred and that the regional occupational health inspector, who had been in service in French Guiana and Martinique since January 2005, has resigned and has not been replaced.

The Committee notes that, as well as participating in COLTI, the labour inspectorate has been entrusted with heavy responsibilities in the settlement of labour disputes, a further duty in addition to the primary duties defined in *Article 3, paragraph 1*, of the Convention. Labour inspectors are systematically called on to intervene in labour disputes or to forestall potential disputes, particularly in certain key sectors, that threaten to paralyse economic activity in French Guiana for example, by blocking the port, the airport, or access to the Space Centre or the main highways.

These additional duties undermine in more ways than one the performance of the primary duties of inspectors and the related tasks (inspecting workplaces, providing employers and workers with information and technical advice and proposing improvements in the legislation to the competent authority) in the specific areas of working conditions and the protection of workers while engaged in their work. Not only do these additional functions seriously hamper the performance of inspection duties by mobilizing the already limited human and material sources of the labour inspectorate, but the objectives pursued are also clearly at odds with the objective of labour inspection. ***The Government is urged to refer to paragraphs 71 to 78 and paragraph 161 of its General Survey of 2006 on labour inspection, and the provisions of paragraph 2 of Article 3 of the Convention, and to take steps rapidly to re-establish inspectors in their primary duties, as defined in paragraph 1 of the same Article. The Committee also asks the Government to take steps to increase the strength of the sections of the inspectorate, particularly by replacing the prevention specialist and the occupational health inspector. It hopes that the Government will provide information on such measures in its next report, supplemented by statistics of inspection activities of the labour inspection services in French Guiana in relation to general conditions of work and occupational safety and health (supervision, advice and technical assistance and contribution to improving the legislation).***

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

1. *Articles 6, 14 and 21 of the Convention. Duties, staff, work of the labour inspection services in agriculture.* The Committee notes that, according to the information sent by the Government in 2005, the staff of the two sections of the labour inspectorate responsible for all economic sectors in Guiana, including agriculture, consisted of two inspectors and five controllers in 2003, and two inspectors and four controllers in 2004 and 2005. In 2006, each section had only two controllers, which does not appear to be in line with the previously announced strengthening of the inspectorate to improve its efficiency. The Government further indicates that, in view of the vast areas to be covered, it would be a good idea to envisage establishing, as from 2007, a new section of the labour inspectorate which might specialize in agriculture and which would have one inspector and three controllers. ***The Committee requests the Government to provide information in its next report on all developments in this area.***

The Committee points out that the number of labour inspectors in agriculture must be sufficient to secure the effective discharge of the duties of the inspectorate, in other words, not only enforcement of the legislation on conditions of work and the protection of workers by on-the-spot visits, but also providing employers and workers in agricultural undertakings with information on the applicable provisions and technical advice, in particular with a view to implementing a policy for the prevention of occupational accidents and diseases, especially where phytosanitary products are used in farming. According to the Government, the supervision programme for 2005 focused in particular on identifying illicit labour. In view of the small size of the inspectorate and the material difficulties encountered by inspectors, the Committee draws the Government's attention to the fact that any focus on duties other than those set forth in *Article 6, paragraphs 1 and 2*, should not interfere with the effective discharge of inspectors' primary duties or prejudice in any way the authority and impartiality which inspectors need in their relations with employers and workers (*Article 6, paragraph 3*). ***It accordingly asks the Government to take all suitable measures to ensure that the primary duties of labour inspectors and controllers in agricultural undertakings focus on supervising the working and living conditions of agricultural workers and on information and technical advice for employers and workers with a view to better application of the relevant legislation.***

2. *Articles 12, 26 and 27. Annual report on the work of the inspection services in agriculture.* The Committee notes from the figures sent in 2005 by the Government that 14 inspections were carried out in the agricultural sector in Guiana in 2004 by the two sections of the inspectorate. It points out that in order to determine the number of inspectors and controllers needed (*Article 14*) and ensure that agricultural undertakings are inspected as often and as thoroughly as necessary (*Article 21*), there must be reliable data on the number and nature of the undertakings and the number and categories of persons employed therein. According to information published on the Internet by the Chamber of Industry and Commerce (Key figures 2005 – Guiana, 2006 edition), there are 5,300 agricultural undertakings and an agricultural population of 20,000. In the report sent in 2006, the Government indicates that, despite several requests, it has still not obtained the list of agricultural undertakings from the Chamber of Agriculture. ***The Committee requests the Government to ensure that, in accordance with Article 12 of the Convention, appropriate steps are taken to promote effective cooperation between the inspection services in agriculture and government services and public institutions so that the labour inspectorate has access to all the data necessary to rational and pertinent use of its resources and assessment of its needs. The Government is likewise asked to take measures to ensure that the central inspection authority receives data on offences committed and sanctions imposed (specifying the relevant laws and regulations), occupational accidents and diseases (specifying their causes), so that an annual report on the work on the labour***

inspectorate in agriculture as required by the Convention is published and sent to the ILO within the prescribed time limits, either as a separate report or as a part of the general annual report.

While aware of the difficulties encountered by labour inspectors and controllers in carrying out inspections in agricultural undertakings (location of undertakings, difficult access, size of territory, lack of infrastructure, unfilled posts, etc.), the Committee notes with regret that little progress has been made in the last few years as regards labour inspection in agriculture. It trusts that the Government will take appropriate measures in the very near future to provide the means necessary to operate an efficient inspection system and to give effect to the provisions of the Convention in Guiana.

The Committee is addressing a request on other matters directly to the Government.

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

Guadeloupe

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

The Committee notes the Government's report and the persistent difficulties in making the necessary distinction between the activities carried out by labour inspectors in the agricultural sector and those carried out in other sectors of activity. The Committee hopes that this distinction will soon be made, particularly in order to determine the fields in which special efforts are required to improve the working conditions and the protection of workers who are employed in agricultural undertakings and who face specific difficulties.

Articles 11 and 19 of the Convention. Collaboration of experts in the work of labour inspection in agriculture. The Committee notes that the use of pesticides is the subject of in-depth investigations and research, particularly in the banana industry. *It asks the Government to provide details on the reasons for such investigations and research, together with information on the steps taken to reduce, and eliminate, risks to the health and safety of workers on banana plantations.*

The Committee is addressing a request directly to the Government on a number of other points.

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

Réunion

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

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

Reporting obligations under the Convention

(a) *Government's report on the application of the Convention.* (article 22 of the ILO Constitution). The Committee notes the Government's repeated statement that for all reports concerning the application of this Convention, labour inspectors in the overseas departments have the same duties as those in metropolitan France and that they are also responsible for the enforcement of all labour law in agriculture. It therefore refers the Committee, to its report on Convention No. 81 concerning labour inspection in industry and commerce. *The Committee reminds the Government of its obligations under Article 22 of the ILO Constitution and would be grateful, if in its next report, it would provide the information required by parts II, III, IV and V of the report form for the Convention.*

(b) *Articles 26 and 27 of the Convention. Annual inspection report concerning agricultural undertakings.* Further to its previous comments in which it drew the Government's attention to the need for measures leading to the publication and communication to the ILO, pursuant to *Article 26* of the Convention of an annual report on inspections carried out in agricultural undertakings responding to each of the items listed in *Article 27*, the Committee notes that these provisions have still not been put into effect. The Committee is therefore unable to make any evaluation at all of the extent to which the Convention is applied. *The Government is therefore asked to take the requisite step as soon as possible and to notify them at once to the ILO.*

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

Gabon

Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its observation on the following points:

Further to its previous observation, the Committee notes the report for the period ending 1 September 2006, in which the Government refers to Decree No. 000741 of 22 September 2005, which was adopted pursuant to the provisions of section 215 of the Labour Code and establishes the penalties for offences in the fields of labour, occupational safety and health and social security. It also notes the Government's report for the period ending 1 September 2007, which contains detailed information on the organization of the labour inspection system and the legislative provisions giving effect to the Convention. While noting this information, the Committee also notes the absence of information on how the labour inspection services function in practice and on the results they obtain. It would be grateful if the Government would provide further information on the following points.

1. *Articles 7 and 10 of the Convention. Training for labour inspectors during employment. Number of inspectors.* The Government states that further training is organized for labour inspectors currently in service so as to ensure that their skills are updated in accordance with developments in the world of work. Such training is mainly organized within the African Regional Centre for Labour Administration (CRADAT). **The Committee notes that at the time when the Government sent its report, a number of inspectors were receiving training at the CRADAT, and asks the Government to provide information on the further training provided during the period covered by its next report and to indicate the duration of this training and the number of inspectors who have benefited from it. The Government is also requested to indicate the number of labour inspectors in service, their geographical distribution, retirement forecasts and plans for the filling of vacant posts.**

2. *Article 11. Conditions of work and transport facilities for labour inspectors.* According to the Government, the conditions of work of inspectors are improving slowly due to the unfavourable economic climate. Administration officials have been on strike for months. The Government has listened carefully to the problems highlighted by these officials. Certain inspection services have been provided with transport within the framework of the 2006 budget and certain offices have undergone renovation work. The Government states that there is still much to do, but that these efforts will continue over the coming years. The Committee notes that, although the inadequacy of the material means (notably transport) available to the labour inspectorate makes it difficult to apply the Convention, the Government intends to do its utmost to attenuate these difficulties. **The Committee asks the Government to provide detailed information on the geographical location of the renovated offices, the improvements carried out, the geographical distribution of the vehicles made available to labour inspectors and other transport facilities which they can use for the performance of their duties, and the amounts and arrangements in respect of the reimbursement of their travel expenses, if any. The Government is also requested to describe the office equipment available to inspectors (telephones, typewriters, photocopiers, computers, measuring apparatus, etc.) and the consumables used (fuel, registers, paper, etc.), and the arrangements for replacing such items, and to indicate any measures taken or envisaged with a view to ensuring the progressive improvement of the application of the Convention in practice.**

3. *Article 13. Exercise of powers of injunction of labour inspectors in respect of occupational health and safety.* **The Committee asks the Government to provide concrete examples, with supporting documentation, of cases in which a formal notice has been issued to the employer following the reporting of a risk or a danger to the safety or health of workers and where such formal notices have led to further action, or where the matter has been referred to the courts. It would be grateful if the Government would indicate the proportion of cases referred to the courts which have given rise to a court decision (conviction or discharge) and to provide copies of the decisions or extracts from such decisions indicating the legal grounds for the judgement.**

4. *Article 18. Proceedings in respect of violations of the legal provisions enforceable by labour inspectors and the obstruction of labour inspectors in the performance of their duties.* **The Committee would be grateful if the Government would provide a copy of any court decisions given against employers guilty of violations of legal provisions enforceable by labour inspectors or, in pursuance of sections 227, 228, 229 and 249 of the Labour Code, acts involving the obstruction of the performance of inspection duties.**

5. *Article 19. Periodical reports by the inspection services.* **Noting that, according to the Government, each year, at the request of the General Labour Directorate, quarterly and annual activity reports are prepared by the inspection services, the Committee would be grateful if the Government would provide copies of these reports.**

6. *Articles 20 and 21. Annual report on the work of the inspection services.* In reference to the Government's commitment to do its utmost to attenuate the difficulties in applying the Convention, the Committee once again emphasizes that in order to do this, measures must be taken to centralize the information required under *Article 21* with a view to preparing an annual labour inspection report, the main purpose of which is to serve as a basis for the periodical assessment by the central inspection authority of the adequacy of the available resources in relation to needs and, consequently, to determine priority areas of action. The Committee once again reminds the Government of the possibility of requesting technical assistance from the ILO, as well as international financial aid, with a view to establishing the material and institutional conditions necessary for the publication of such a report. In its 2004 direct request, the Committee urged the Government to make the necessary efforts to implement measures designed to enable the central inspection authority to discharge its obligation in this respect and pointed out that the annual inspection report should be as detailed as possible and contain precise information on human, logistical, practical or other difficulties explaining deficiencies in the services. **Since the Government has not reported any progress in this area, the Committee requests that it quickly takes the necessary measures and keeps the Office duly informed in this respect.**

7. *Monitoring of child labour and publication of an annual inspection report.* The Government's report does not provide any information in reply to the Committee's previous comments on the delicate aspects of procedures for removing children from the workplace under Decree No. 000031 of 8 January 2002. **The Committee would be grateful if the Government would provide information on the measures taken, on the one hand, to adopt the texts necessary for the implementation of Decree No. 000031 such as are referred to in its section 6, and, on the other hand, to provide the labour inspectors who participate in operations to remove children from the workplace with appropriate and specific technical and psychological training. It would be grateful if the Government would supplement this information with copies of any relevant texts.**

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

Guinea

Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)

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

The Committee notes the Government's report received in June 2006 and observes that, despite the Office's reminder of 20 June 2006, the annual inspection report which was due to be sent has not been received by the ILO. While noting the information on the legal provisions giving effect in law to the Convention, the Committee would point out that the Government has not supplied the information called for in its previous observation regarding the practical functioning of the labour inspection system. It is therefore bound to repeat the same observation:

1. *Resources of the labour inspectorate.* The Committee notes with concern that the information provided by the Government in its report for the period ending June 2005 reveals that the labour inspectorate suffers from a persistent shortage of resources. It notes, in particular, that retired labour inspectors are no longer being replaced and that the inspection services as a whole suffer from a lack of computer equipment and transport facilities. It notes, moreover, that labour inspectors have not received any training since 2000. **The Committee hopes that the Government will soon be in a position to furnish the labour inspectorate with the resources it needs to operate effectively, in particular in order to ensure that the number of labour inspectors is sufficient (Article 10 of the Convention), that they are furnished with the material means and transport facilities necessary for the performance of their duties (Article 11) and that they receive adequate training for the performance of their duties (Article 7, paragraph 3). The Government is requested to transmit information on any progress made in this regard in its next report.**

2. *Publication of an annual report.* The Committee notes that no annual inspection report has been transmitted since that covering the period of 15 October 1994 to 15 October 1995. **Referring to its previous requests, it once again requests the Government to take any appropriate measures with a view to the fulfilment by the central inspection authority of its obligation to publish and transmit to the International Labour Office an annual report in accordance with Articles 20 and 21 of the Convention.**

The Committee is also sending a direct request to the Government on a particular point.

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

Guyana

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

1. *Obligation to report pursuant to article 22 of the ILO Constitution.* The Committee notes the communication by the Government, in reply to its previous request, of the circulars (notices) of 18 March 2005 designating the authorities which must be notified of occupational accidents and cases of occupational disease, in relation to *Article 19 of the Convention*. It also notes the communication of the annual report for 2004 from the Industrial Relations Department of the Ministry of Labour, containing brief information on labour inspection activities in the agricultural sector. However, the Committee notes that no detailed report on the application of the Convention has been sent for more than ten years. **The Committee therefore requests the Government to supply, in its next report under article 22 of the ILO Constitution, all the information required by each part of the Convention report form.**

2. *Articles 26 and 27 of the Convention. Objectives and content of the annual report on the work of the labour inspectorate.* The Committee notes that, despite the high number of strikes in sugar plantations and agriculture in 2004 and their socio-economic impact (227 strikes resulting in the loss of 82,880 workdays and wages amounting to 129,061,000 dollars) the labour inspectorate only performed six inspections for the whole sector. The Committee considers that these figures testify both to poor conditions of work and lack of vigilance on the part of the inspection authorities responsible for monitoring conditions of work in agricultural undertakings. In any event, they call for the adoption of measures to curb the deterioration of the social climate, particularly by means of inspection activities and initiatives to provide employers and workers with information. However, the Committee notes that the Government has not supplied any information indicating that such measures have been taken or are envisaged. It also notes that the content of the report does not allow any assessment to be made of the level of coverage of the labour inspection system in relation to worker protection requirements in the sector, these needs not being defined, particularly with regard to occupational safety and health. The significant lack of statistics relating to inspection visits (*Article 27(d)*) and violations (*clause (e)*) and the total lack of information regarding the laws and regulations giving effect to the provisions of the Convention (*clause (a)*), the number of staff of the labour inspection service (*clause (b)*), the number of agricultural undertakings liable to inspection and the number of persons working therein (*clause (c)*), and also the lack of statistics with respect to penalties imposed (*clause (e)*), occupational accidents, including their causes (*clause (f)*) and occupational diseases, including their causes (*clause (g)*), make it impossible for the Committee to perform its role of monitoring the practical application of the Convention. The Committee reminds the Government that the requirement to publish an annual report on inspection activities and send it to the ILO serves an important purpose at both the national and international level. It is an essential tool for evaluating the operation of the labour inspection system and for making improvements to it, with the participation of employers and workers and their respective organizations (*Articles 26 and 27*). **The Committee invites the Government to refer to paragraphs 320–328 of its 2006 General Survey on labour inspection and requests it to take the necessary measures, if need be with technical assistance from the Office, to enable the central labour inspection authority to include all the information required by each of clauses (a) to (g) of Article 27 in the annual report on its work.**

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

Haiti

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

In earlier comments the Committee referred to an observation of 2002 by the Trade Union Federation of Haiti (CSH) asserting that the national legislation was satisfactory in terms of conformity with the Convention, but that the political will to apply it was lacking. In 2005, the Committee noted that the Government had announced a series of measures to re-establish inspection services throughout the country and had undertaken to send a detailed report of the application of the Convention. The Committee notes, however, that the Government's report received in August 2008 contains only very general information on the work of the labour inspectorate showing that, although measures have been taken since

September 2004 to reinforce the inspection services, in particular by appointing labour inspectors in the departments (with no indication of their number, much remains to be done to make the inspection services fully operational. The Government refers to a lack of resources indicating that it is virtually impossible for labour inspectors to carry out regular and routine visits and that they intervene in the workplace on a stopgap basis at the request of workers or employers to deal with specific problems and provide legal advice on the labour legislation. The Committee further notes that, according to the Government, the inspection system suffers from a lack of training and support in the field for technical management staff.

Measures needed for the establishment and operation of a labour inspection system. The Committee is aware of the difficulties facing the Government and the efforts that are needed to create the necessary conditions for applying the Convention and enabling the labour inspection system to perform effectively its primary duty, as set out in *Article 3, paragraph 1, of the Convention*, namely enforcing the legal provisions relating to conditions of work and the protection of workers while engaged in their work. It nonetheless reminds the Government that for this task to be fulfilled, it must be possible for workplaces to be visited as often and as thoroughly as necessary, in accordance with *Article 16* and for inspectors to make visits with or without notice and not only at the request of the workers or employers. ***In this connection, the Committee draws the Government's attention to the need to take steps to change the wording of section 411 of the Labour Code by deleting the expression "as necessary" in the first indent.*** *Article 3, paragraph 1(b), of the Convention* provides that supplying technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions is an ongoing function of the labour inspection system. The Committee also recalls that Paragraphs 6 and 7 of Recommendation No. 81 provide guidance on the methods that labour inspection staff might adopt to ensure that this duty is performed regularly and systematically.

With regard to the training needs of inspection staff, the Committee would like to point out that training should address not only methods and procedures for performing duties (inspections, advice on labour legislation, etc.), but also inspectors' prerogatives (right to enter workplaces, authority to make or have made orders, establishing reports, etc.) and their obligations (probity, observance of confidentiality, etc.), as laid down in *Articles 3, 12, 13 and 15 of the Convention*. The credibility of inspectors in relation to employers and workers and, hence, the effectiveness of the inspection system as a whole, are contingent on the exercise of these powers and the observance of these obligations.

So that it can assess as accurately as possible the extent to which the Convention is applied, the Committee again asks the Government to provide in its next report detailed information on the application of the Convention in practice and on difficulties encountered. In particular, it would be grateful for details of any collaboration that exists with other government services and employers' and workers' organizations and the arrangements for such collaboration (Article 5), the status and conditions of service of inspectors (Article 6), measures taken for the training of inspectors at the time of recruitment and in the course of their employment (Article 7), inspection staff and the material and logistical resources at their disposal (Articles 8, 10 and 11), the exercise in practice by inspectors of the prerogatives set in Articles 12 and 13, the procedure for notifying work accidents and occupational diseases (Article 14), the coverage of inspection visits (Article 16) and the penalties imposed and enforced (Article 18). The Government is also asked to provide available statistics on the subjects set out in Article 21. So that it can assess the needs of the inspection services and set priorities taking into account the available human and material resources, the Committee encourages the Government to compile and maintain a record of industrial and commercial workplaces liable to inspection (number, activity, size and geographical location) and the workers employed therein (numbers and categories).

All the above information should enable the central inspection authority to identify the system's strengths and weaknesses, assess its needs and submit a budget estimate for consideration by the competent authorities. ***Noting the request for technical assistance made by the Government, the Committee hopes that on the basis of this information it will be able to specify the purpose of its request and seek international financial aid as well in order to obtain the funds it needs to build the capacity of the labour inspection system.***

Honduras

Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)

The Committee notes the Government's report, as well as the statistical tables on the activities carried out by the labour inspection services in the capital and regions in 2007 (number of inspection visits, number of workers disaggregated by gender, number of proceedings, including conciliations, calculations of workers' social benefits, consultations held, etc).

Noting that the Government has only replied very partially to the questions raised in its previous observation and direct request, the Committee draws its attention to the following points.

International cooperation. The Committee had previously requested the Government to provide information on any progress made in the implementation of the project for reinforcing workers' rights in Central America (*Centroamérica cumple y gana*), and to send a copy of any relevant texts. It observes that the Government has failed to do this.

According to information available to the ILO and posted on the Internet, new resources have been allocated to the project, which was due to be completed in 2007, but was therefore extended until September 2008. These resources were

aimed at broadening the distribution of information on the rights and obligations deriving from employment, and incorporating a “component” on discrimination against working women. Under this programme, it was planned to undertake training activities and actions to support staff responsible for gender matters in the ministries of labour of the countries concerned, as well as to carry out awareness-raising and training sessions for labour inspectors and mediators in this area. These resources were also earmarked for institution building, by providing equipment to labour inspection services and the Bureau for Working Women. It was also intended to allocate funds to improve planning, the computer system and public relations.

According to information available to the ILO, an assessment of labour inspection services was carried out this year by the ILO Subregional Office for Central America, in the context of the project RLA/07/04M/USA, with a view to strengthening the public administration in the Ministries of Labour in Honduras and El Salvador. The Committee notes that recommendations were made which included: setting up an integrated labour inspection service that is both specialized and multipurpose; overhauling labour inspection procedures; assessing and reviewing posts in the inspection services; exchanging information on enterprises with the Honduran Institute of Social Security; and setting up a national information network. ***The Committee hopes that the Government will not fail to inform the ILO of any progress achieved with the project “Centroamérica cumple y gana”, as well as of any follow up action to the recommendations made in the context of this survey.***

Legislation. The Committee requests the Government once again to provide information on the progress made in adopting the Organic Act on the Secretariat of Labour and Occupational Safety, and in revising the Labour Code as announced by the Government in 2002.

Articles 6 and 15(a) of the Convention. Conditions of service of labour inspectors and prohibition on having any direct or indirect interest in undertakings under their supervision. According to the Government, labour inspectors come under the Public Service Act. They have no specific status and their contracts are not affected by changes of government. ***The Committee requests the Government once again to adopt, as soon as possible, legal provisions which ensure that the conditions of service of inspection staff are such as to guarantee that they are independent of all improper external influences (Article 6) and to prohibit labour inspectors from having any direct or indirect interest in the undertakings under their supervision (Article 15(a)). It also asks the Government to keep it informed of any developments or any difficulties encountered in this respect.***

Article 11. Financial resources and transport facilities for inspection services. In its observation of 2006, the Committee had expressed the hope that the Government would do its utmost to ensure that, in determining the budget allocated to the working of the labour inspectorate, account would be taken of the obvious needs of the inspectorate and the requirements of the Convention. The Committee requested the Government to take tangible measures to this end and to provide information on them and on their results.

According to the Government, the regional offices of Choluteca, San Pedro Sula, Danlí, El Progreso and Santa Rosa de Copán have been renovated and equipped so that the inspectors can carry out their functions more easily; in addition, the Central Labour Inspectorate and a number of regional offices have been provided with means of transport (bus and minibus). The Government nevertheless pointed out once again that the Central Labour Inspectorate does not have a budget to cover travel expenses for labour inspectors. ***The Committee hopes that measures will rapidly be taken to this end to encourage labour inspectors to travel further afield to cover establishments covered by the Convention, that appropriate resources will be allocated in the next budget of the labour inspection services and that the Government will inform the Office of any measures taken in this respect.***

The Government is also asked to describe the procedures determining how the inspectors may use the bus and minibus provided to the labour inspection services for their professional visits.

Articles 19 and 21. Periodical reports and publication of an annual inspection report. According to the Government, the regional labour inspectors submit monthly reports on the activities carried out in the various offices to the central labour inspection authorities. The Committee notes that the statistics provided indicate the proportion of planned activities carried out. ***It would be grateful if the Government would inform the Office of any progress made in collecting the data required by the central labour inspection authority to publish an annual report on the labour inspection services under its supervision, containing the information required in clauses (a) to (g) of Article 21.***

It would be grateful if the Government would specify the manner in which the programmed objectives of the labour inspection services are determined.

Labour inspection and child labour. ***The Committee requests the Government once again to explain why it was decided to appoint inspectors specializing in child labour in Tegucigalpa et San Pedro Sula and to provide information on the results of their activities in terms of inspections, penalties imposed and the provision of advice and information to employers and workers. It would be grateful if the Government would indicate whether it is planned to appoint specialized labour inspectors in other areas and, in any event, to take immediate measures to ensure that inspections targeting breaches of the legislation on child labour are also carried out by non-specialized labour inspectors.***

Furthermore, noting that the Government has not made any progress in the application of certain provisions under the Convention, the Committee is bound to reiterate the previous requests that it made directly in this respect:

Articles 12, paragraphs 1(a) and 18. Free access for labour inspectors to workplaces subject to inspection. According to the Government, the Ministry of Labour and Social Security has taken firm measures to ensure that labour inspectors are in general allowed to enter workplaces. Several joint inspections have been carried out by the Ministry of Labour and Social Security, the Minister for Security and the Procurator General, and further joint visits are to take place with assistance from a special procurator. **The Committee would be grateful if the Government would specify the purpose of each of the above authorities in participating in these inspections, indicating the extent of the inspections and describing the measures implemented to give safety and health inspectors greater freedom to enter workplaces covered by the Convention, as requested by the Committee in its previous comments.**

Article 14. Notification of occupational diseases to the inspectorate. **With reference to comments it has made many times, the Committee again requests the Government to take steps to give full effect to this provision of the Convention and to provide copies of any relevant text governing the instances in which the inspectorate must be informed of cases of occupational disease and the manner of such notification.**

Article 18. Appropriate penalties. With reference to its previous comments, the Committee notes that the draft revision of the Labour Code is being discussed by the Government and the social partners. **It draws the Government's attention to the relevance of this draft legislation to the establishment of a system for setting penalties that remain dissuasive regardless of any monetary fluctuations, and would be grateful if the Government would send the ILO information on any progress in this respect together with copies of any relevant texts.**

The Committee is also addressing a request directly to the Government concerning other matters.

India

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

The Committee notes the information supplied by the Government in its report. It further notes the comments made by the Centre of Indian Trade Unions (CITU) in a communication dated 25 August 2008, and the comments of the Bharatiya Mazdoor Sangh (BMS) which were transmitted with the Government's report.

Articles 2, 3, 10, 11, 12, paragraph 1(a), and 16 of the Convention. (a) *Coverage and functioning of the labour inspection system.* The Committee notes that one of the priorities with regard to labour set by the National Common Minimum Programme (NCMP), adopted in 2004 by the Government, is the re-examination of labour laws to reduce "Inspector Raj". In its communication, the CITU alleges that, in the name of "ending Inspector Raj", internal directives have been issued in most states that no labour inspection is to be carried out. The organization adds that the lack of labour inspection and monitoring by the Labour Department, even in many factories in the national capital territory of Delhi and industrial areas, such as Mayapuri and Patparganj, is resulting in frequent violations of minimum wage legislation and a lack of safety measures leading to frequent accidents.

It would appear to the Committee that the Government's aim in relation to the NCMP with regard to reducing "Inspector Raj" is to avoid a proliferation of inspections in the same enterprise, including labour inspections. The Committee, however, wishes to emphasize that it considers any measure taken to limit the number of labour inspections as a restriction that is incompatible with the main objective of labour inspection, which is the protection of workers. **Recalling, in accordance with Article 16 of the Convention, that workplaces or enterprises liable to labour inspection should be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, the Committee requests the Government to take the necessary measures to ensure that full effect is given to this provision of the Convention and to keep the ILO informed of the measures adopted.**

In its previous comments, the Committee observed that the scope of labour inspection, in terms of the workers covered and workplaces visited, varied considerably from one state to another. It requested the Government to take the necessary measures to ensure a better coverage of workplaces and workers liable to inspection throughout the country in the light of the needs of each state (by increasing staff numbers, the number of inspections, etc.). **While noting the Government's reply that the information is being collected and will be supplied once it has been received, the Committee hopes that the necessary measures will be taken in the near future and that the relevant information will be sent to the ILO.**

The Committee requests the Government to provide information in reply to the CITU's allegations of the lack of monitoring of the application of labour laws and the existence of internal instructions in most states preventing inspections. The Government is also requested to provide detailed information on the measures taken or envisaged with a view to reducing "Inspector Raj" and to specify their impact on the labour inspection system, and particularly on the number of inspections carried out by labour inspectors throughout the country.

(b) *Labour inspections in special economic zones (SEZs) and in enterprises in the information technology (IT) and IT-enabled service sectors (ITES).* In its previous comments, the Committee observed that very few inspections had been carried out in enterprises in SEZs, and particularly in the IT and ITES sectors. It requested the Government to indicate the legal provisions applicable to these enterprises and sectors and to supply statistical data on the number of enterprises and workers in the above sectors, the number of labour inspectors, offences reported, penalties imposed and also the number of industrial accidents and cases of occupational disease reported. In its communication, the BMS alleges that in newly emerging sectors, such as IT, and in SEZs, the labour administration is denied a role and that legal measures need to be taken by the Government to remedy this situation. Furthermore, the CITU states that the practice of issuing internal directives to prevent workplace inspections is most rampant in SEZs and in the IT and ITES sectors.

The Committee notes that, according to the Government, there are no separate labour laws for SEZs and that labour laws, as amended from time to time by the respective state government, apply in SEZs. The Government adds that the implementation of labour laws in SEZs is ensured through the respective machineries of the central or state governments, as appropriate. *Noting the Government's indication that it is seeking to obtain from the agencies concerned statistics on the number of enterprises and workers in SEZs, the Committee trusts that the Government will not fail to send information on the functioning of the labour inspection system in SEZs, including the data requested previously, which are indispensable to assess the situation with regard to the enforcement of labour laws and, accordingly, the protection of workers. It also asks the Government to supply information on the points raised by the CITU and the BMS with regard to the lack of inspections in these sectors.*

(c) Free access of labour inspectors to workplaces. Labour inspections in the state of Haryana. Self-certification system. In its communication, the CITU adds that the situation with regard to labour inspections has not improved in the state of Haryana. It further alleges that no labour inspection can be carried out without the prior authorization of the Secretary of Labour and that such authorization is never given. According to the organization, no inspections are conducted in many factories and this situation leads to the failure to implement basic labour laws on minimum wages and to violations of freedom of association. *Recalling that, in accordance with Article 12, paragraph 1(a), of the Convention, labour inspectors shall be empowered to enter freely workplaces liable to inspection, the Committee requests the Government to supply its comments on the CITU's allegations.*

Noting the Government's commitment to amend section 9 of the Factories Act (Powers of Inspectors) and section 4 of the Dock Workers (Safety, Health and Welfare) Act to establish explicitly the right of inspectors to enter workplaces freely, the Committee requests it to take the necessary measures to re-establish this right wherever it may have been removed. It hopes that the Government will soon be in a position to inform the ILO of the measures taken for that purpose and of the adoption of legal provisions giving full effect to the above provisions of the Convention. The Government is requested to supply a copy of the amended texts once they are adopted.

With regard to the self-certification scheme implemented recently, the CITU observes that there is no provision for the verification of information supplied through this procedure, and the BMS alleges that, within the context of globalization and labour reforms, there is an attempt to do away with the system of legal inspection to the detriment of the workers' interests. According to the Government, the information requested by the Committee on the functioning of this system is being collected and will be provided when it has been received. *The Committee therefore requests the Government to supply this information. Furthermore, referring again to Article 16, which provides that workplaces shall be inspected as often and as thoroughly as is necessary, it requests the Government to describe the measures adopted to ensure that the self-certification system does not lead to a restriction of the frequency and thoroughness of inspection visits. If the necessary measures have not yet been taken, the Committee urges the Government to adopt them and to keep the ILO duly informed. It also asks the Government to supply information on the arrangements made for the verification of information supplied by employers, the handling of any disputes and the action taken with regard to violations that are identified in the state of Haryana and throughout the country.*

Article 18. Adequacy of penalties. The Committee notes the Government's indication that an amendment enhancing the penalties under various provisions of the Factories Act, 1948, is at an advanced stage of enactment and that a proposed amendment is being prepared under the Dock Workers (Safety, Health and Welfare) Act, 1986. *With reference to its previous comments, the Committee hopes that these amendments will be adopted in the near future and will establish penalties that are sufficiently dissuasive to ensure the effective application of the legal provisions relating to conditions of work and the protection of workers, and that copies of the final texts will be sent to the ILO in the near future.*

The Committee is also addressing a request directly to the Government on certain other points.

Jamaica

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

Articles 3, paragraphs 1 and 2, and 14. Preventive activities in the field of occupational safety and health and notification of cases of occupational disease. In response to the Committee's previous comments, the Government indicates that, despite the legal obligation of employers under section 21(1) and (2) to notify the Occupational Safety and Health (OSH) inspectorate of industrial accidents and cases of occupational disease, the number of cases of occupational diseases reported remains very small. According to the Government, this under-reporting may be due to the difficulty of establishing a causal relationship between the disease and the worker's occupation and the lack of qualified specialists in occupational medicine.

The Committee notes with interest that the Government has taken measures to overcome this situation and facilitate the notification of occupational diseases through: (a) the inclusion of a reminder to notify accidents and diseases in letters sent to employers outlining the measures necessary to remedy deficiencies observed during OSH inspections; (b) the proposed amendment to the Workmen's Compensation Act with a view to addressing the issue of the notification of occupational diseases; and (c) the proposed amendment to the Factories Act to increase the amount of fines in case of failure to notify accidents and diseases. The Committee further notes with interest that awareness-raising activities on

ergonomics, noise and the use of chemicals in the workplace are carried out by the OSH department through television programmes.

The Committee wishes to draw the Government's attention to the ILO code of practice on the recording and notification of occupational accidents and diseases which offers guidance on the collection, recording and notification of reliable data and the effective use of such data for preventive action. ***The Committee requests the Government to supply information on the proposed amendment to the Workmen's Compensation Act and to indicate the measures envisaged to improve the system for the notification of occupational diseases. It further requests the Government to keep the Office informed of any other amendments to the legislation adopted for this purpose and of their impact on the notification of occupational diseases. The Government is requested to supply copies of the amended laws.***

The Committee is also addressing a request directly to the Government on certain other points.

Jordan

Labour Inspection Convention, 1947 (No. 81) (ratification: 1969)

The Committee notes the Government's report replying both to the comments addressed to it individually and to the general observation of 2007. It also notes with interest the detailed information on the work of the Directorate of Labour and Occupational Safety and Health Inspection for the years 2006 and 2007 and the Order of 2002 on compulsory employers' records adopted under section 8 of Act No. 8 of 1996 issuing the Labour Code, as amended, and Regulation No. 56 of 1996 on labour inspectors, as amended.

Increasing the resources of the labour inspectorate in order to improve its functioning. Noting from a report of March 2007 by the Ministry of Labour that its financial resources have been on the increase since 2006, with a rise of 40 per cent anticipated for 2008, the Committee notes ***with satisfaction*** that the resources allocated to labour inspection were increased by 13 per cent in 2006 and 23 per cent in 2007.

It notes with interest from the same report that the ILO pilot project "Forced Labour and Trafficking" targeting the qualified industrial zones was to be carried out between March 2007 and March 2008 and that its aim was to raise awareness among all stakeholders (inspectors, police officials, magistrates, employers, workers, non-governmental organizations, etc.) of these problems and develop instruction handbooks to help resolve them.

The Committee also notes with interest the significant progress made in applying the Convention, as reflected in the above reports on the work of the Directorate of Labour and Occupational Safety and Health Inspection with regard to the following points.

Article 5(a) of the Convention. Cooperation between the labour inspection services and other public institutions. The Committee notes that in 2006 and 2007, the Directorate of Labour and Occupational Safety and Health Inspection engaged in effective cooperation with other departments at the national level: in the Quadripartite Technical Committee with the Ministry of Health, the Institute for Occupational Safety and Health Training and the National Social Security Institute; and in the Committee on the Prevention of Industrial Risks with the Ministry of Industry and Trade and other parties responsible, inter alia, for environmental issues.

The Committee also notes that pursuant to Regulation No. 7 of 1998 on the establishment of occupational safety and health committees and the designation of supervisors, qualified technical experts have been appointed in private sector enterprises and occupational safety and health committees have been set up in 34 enterprises.

In 2005, the third edition of Occupational Safety and Health Week was held with support from various enterprises and public and private institutions, including the Jordan Press Foundation. In the course of this event, 12 workshops were organized at various sites, attended by about 1,000 participants, and a brochure, a prospectus and other types of information materials were published. Furthermore, inspection forms were devised and distributed for use by inspectors in large and small enterprises and in the qualified industrial zones, where the workforce is largely composed of women. The Committee notes with particular interest that a special programme to computerize inspection reports has been prepared in cooperation with the Ministry's information service and hopes that this will lead rapidly to the production of periodic reports and an annual report by the central inspection authority. The Committee also notes that foreign workers wishing to return to their countries of origin have received the necessary assistance to recover their entitlements upon their return. After 2006, earmarked by the Ministry as a year of priority for labour inspection, in cooperation with other public and private bodies and institutions, an Occupational Safety and Health Week was organized from 3 to 7 July 2007, with support from the Corporation for Reconstruction and other public and private institutions and, once again, the Press Foundation. Three other campaigns targeting violations of the legislation on the employment of immigrant workers were launched with cooperation from the Ministry of the Interior as a result of which provisional residence papers were issued to 5,000 illegal foreign workers and fines for breaches of residence laws that had been imposed on illegal foreign workers occupied in the qualified industrial zones were cancelled. Furthermore, workers employed in offending enterprises or enterprises ordered to close benefited from transfers to other enterprises that were in compliance with the law. The Government indicates in this connection that a new central inspection team has been established specializing in the supervision of workplaces and that it will be responsible for placing enterprises on a gold list or a blacklist based on their observance of the law.

Specific cooperation with judicial bodies. The Committee is grateful to the Government for having taken account of its invitation in the general observation of 2007 to take steps to encourage effective cooperation between the labour inspectorate and the judicial system aimed at attaining the objectives of the Convention. It notes in this connection that the Government is contemplating sending a letter to the courts asking them to send to the labour inspection department excerpts from decisions and judgements in cases of the breach of labour legislation so that the labour inspectorate can verify that the measures it has taken are effective and lawful, and that it envisages establishing an electronic system for communication with the judiciary.

Articles 13, 16, 17, 18, 19, 20 and 21. Work of the labour inspectorate and results. Content and publication of an annual inspection report. The Committee notes that a number of inspection campaigns were organized in 2007 in the qualified industrial zones, covering not only occupational safety and health but also general conditions of work. Numerous instances of abuses against workers were accordingly remedied and proceedings brought against the offending employers.

The year 2006, designated the Year of Labour Inspection, saw a significant increase in the volume and quality of inspection visits: 101,190 workplaces were inspected, the inspectorate was called on to provide advice and guidance in 25,630 instances, to issue 1,544 enforcement notices and to impose 10,639 fines. In 2007, labour inspectors carried out 69,869 inspections of workplaces, provided advice and opinions in 20,693 cases, issued 917 enforcement notices and imposed 6,216 fines.

Articles 6, 7, 9 and 10. Increasing the numbers and improving the qualifications of labour inspection staff. Pursuant to Regulation No. 42 of 1998 on prevention and medical care for workers, 26 doctors and 60 nurses specializing in occupational health were appointed to enterprises. The report on activities for 2006 indicates that a number of inspectors participated in inspection tours carried out by a team from the United States responsible for reporting on the situation prevailing in the industrial zones, and that occupational safety and health inspectors received specialized training at the ILO International Training Centre in Turin. The Committee notes with interest in this connection that a national occupational safety and health profile containing exhaustive information on all the aspects, laws, obstacles and objectives of occupational health in Jordan has been compiled in cooperation with the Turin Centre. According to the Government, this is the first national profile ever compiled and it will be the cornerstone for the development and investment of efforts deployed to this end in the country. In the course of 2007, some 20 inspectors received specialized training at the Turin Centre in several workshops were organized in cooperation with public and private institutions and with civil society bodies, and the Human Rights Centre cooperated in organizing three regional workshops (north, centre and south) for all inspectors in the country. Furthermore, measures were undertaken to improve the quality of inspection work pertaining to working conditions, including training courses for all inspectors on the principles of inspection and international labour standards and an evaluation of the qualifications of all inspectors enabling them to be classified into three categories. Furthermore, three training sessions were organized for 61 specialists and technical experts to provide them with further training in occupational safety and health.

Article 15(c). Confidentiality of the source of complaints. Action directed to foreign workers. The Committee notes **with satisfaction** that the Ministry has set up a free call-in telephone service for foreign workers, who may submit complaints – in various languages such as Hindi, Bengali, Sri Lankan, Filipino, Chinese and Indonesian – about improper living and working conditions (accommodation, overtime pay, minimum wages, wage arrears, ill treatment and passport confiscation). In the course of 2006, 141 individual and collective complaints were received involving over 2,000 workers, many of whom were employed in the industrial zones. According to the information provided, 75 of these complaints were resolved through the joint efforts of the Ministry of Labour and other relevant ministries. According to the 2007 report, 755 individual complaints and 56 collective complaints concerned workers in the qualified industrial zones in particular and 90 per cent of these were settled in cooperation with other competent ministries.

The Committee remains attentive to the substantial progress – either achieved or under way – in reinforcing the strength of the inspection system through a quantitative and qualitative increase in human resources and also through the cooperation efforts of the various public and private actors involved in the operation of the system, and the results achieved. It would be grateful if the Government would provide information on all developments occurring during the period covered by the next report on the application of the Convention, and particularly on the work of the inspectorate, including its volume and results, and measures to encourage cooperation between the labour inspectorate and the judicial system.

The Committee also asks the Government to provide details of the results of the measures undertaken by the inspectorate to target breaches of the legal provisions on conditions of work and the protection of foreign workers while engaged in their work.

Lastly, the Committee expresses the firm hope that as a result of the many projects for international or bilateral cooperation now under way, an annual inspection report containing information on each of the subjects listed in Article 21 of the Convention and presented as far as possible in accordance with the guidance given in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), will be published shortly and that a copy will be sent to the ILO.

Kenya

Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)

The Committee notes with interest the adoption in October 2007 of the Labour Institutions Act (Act No. 12 of 2007) containing provisions for labour administration and inspection (Part V); the Occupational Safety and Health Act (Act No. 15 of 2007, hereinafter the OSH Act) containing provisions on enforcement by occupational safety and health officers (Part IV); the Work Injury Benefits Act (Act No. 13 of 2007); the Employment Act (Act No. 11 of 2007); and the Labour Relations Act (Act No. 14 of 2007). ***The Committee would be grateful if the Government would provide detailed information in its next report on the application of the Convention in practice following this in-depth revision of Kenyan labour law.*** It wishes to draw the Government's attention in particular to the following points.

Articles 2, paragraph 1, and 23 and Article 3, paragraph 1, of the Convention. Labour inspection and supervision of conditions of work. Scope of labour inspection. Referring to its previous comments on the supervision of occupational safety and health in establishments located in export processing zones (EPZs), the Committee notes the Government's indication that it is envisaged that Legal Notice No. 227/1990, which exempts these establishments in EPZs from the application of the Factories and Other Places of Work Act (Cap. 514), will be rendered null and void following the entry into force of the new OSH Act. While noting that, following the entry into force of the OSH Act in 2008, the Factories and Other Places of Work Act has now been repealed (section 129(1) of the OSH Act), the Committee observes that, under section 129(2)(b) of the OSH Act, any subsidiary legislation issued before its commencement shall, as long as it is not inconsistent with it, remain in force until repealed or revoked by subsidiary legislation under the provisions of the OSH Act and shall, for all purposes, be deemed to have been made under this Act. ***The Committee therefore requests the Government to confirm that Legal Notice No. 227/1990 is now null and void and that, as a consequence, the provisions of the OSH Act apply to all workplaces, including establishments located in EPZs. If the Legal Notice is still in force, it requests the Government to take the necessary measures in the near future to repeal or revoke it.***

The Government is also requested to provide detailed information and statistics in its next report on the inspections carried out by occupational safety and health officers, in accordance with section 32 of the new OSH Act, as well as on the safety and health committees established under section 9 of the Act in industrial and commercial establishments in EPZs.

With regard to the supervision of general conditions of work, the Committee notes that the 2007 Labour Institutions Act, which contains provisions on labour administration and inspection, applies to all workplaces, with the exception of the armed forces and the national youth service (section 4(1)). However, the Minister may, under certain conditions, exclude from its application "limited categories of employed persons in respect of whom special problems of a substantial nature arise" (section 4(2)) or "categories of employed persons whose terms and conditions of employment are governed by special arrangements" (section 4(3)). ***The Committee requests the Government to indicate whether any categories of workers have been excluded from the scope of the Labour Institutions Act under the above provisions and, if so, to specify the categories concerned.***

Articles 6, 10, 11 and 16. Adequate means of action and the status and conditions of service of labour inspection staff. In its previous comments, the Committee emphasized the need to make budgetary resources available to the labour inspectorate on a sustainable basis to enable it to discharge its functions efficiently and to take appropriate measures to improve the status and conditions of service of labour officers. Referring to the freeze in public employment in the early 1990s, the Government indicates that the Ministry of Labour has requested an increase in its budgetary allocation for the recruitment of staff. In this regard, the Committee observes that, according to the annual report of the Labour Department for 2005 (the most recent report available), 82 posts of labour inspectors (category I) out of 106 were vacant in 2005. These vacancies not only entail fewer inspection activities, but also imply additional work for the labour officers in post, which inevitably affects the discharge of their regular duties.

Expressing concern at the persistent lack of labour inspection staff, the Committee urges the Government to take appropriate measures to recruit qualified staff and accordingly to strengthen the capacity of the labour inspection services. Referring to its previous comments on the office equipment and means of transport available to labour inspection staff, the Committee once again requests the Government to take measures to ensure that these resources are sustainable and to keep the ILO informed of any measures taken or envisaged to collaborate with political and financial decision-makers to that end.

Article 14. Reporting and investigation of occupational accidents and cases of occupational disease. The Committee notes that the notification of occupational accidents is provided for by section 21 of the OSH Act, under which the employer shall notify, in writing, the area occupational safety and health officer of an accident within seven days and inform him/her within 24 hours of the occurrence of a fatal accident. In addition, section 22 of the Work Injury Benefits Act provides that the employer shall report an accident to the Director of Occupational Safety and Health Services within seven days after having received notice of the accident or learned that an employee has been injured in an accident. The Director must also be informed in writing within 24 hours in case of a fatal accident (section 21).

With regard to the investigation of accidents, in response to the Committee's previous request concerning the reasons for the disparity between the number of occupational accidents and the number of investigations conducted, the

Government explains that this is due to the delay between the occurrence of accidents and their notification, which takes place through regional offices, with the result that it becomes impossible to investigate them. In order to enable its officers to investigate accidents without delay, the Labour Department has come up with its own accident reporting form (DOSH 1) to be completed by the employer and sent directly to the Department. The Government adds that the data on occupational accidents in the new forms are entered into an accident database and the compilation of statistics on occupational accidents by the Department, undertaken by its Information Centre, will enable it to identify high risk occupations and enterprises and therefore to prioritize its inspection activities. The Committee notes this information with interest.

It further notes that the Work Injury Benefits Act requires the Director of the OSH Services, once notified, to make such inquiries “as are necessary” to decide upon any claim or liability (section 23). According to the OSH Act, the Minister may appoint a tribunal of competent persons to carry out a formal investigation of occupational accidents and diseases (section 128). *The Committee would be grateful if the Government would describe in detail the investigation procedure with a view to identifying and eliminating occupational hazards that have caused accidents, and if it would indicate, inter alia, the “competent persons” responsible for such investigations, the action taken following investigations and their results.*

With regard to occupational diseases, the Committee notes that, in accordance with section 22 of the OSH Act, such cases must be notified by medical practitioners to the Director of OSH Services. *It would be grateful if the Government would supply practical information on the functioning of this notification system, as well as on the action taken thereon. It also asks it to indicate whether medical practitioners have at their disposal a list of occupational diseases and, if so, to send a copy to the ILO.*

The Committee would also be grateful if the Government would ensure that the data compiled by the reporting system on occupational accidents and cases of occupational disease and their impact on the number of investigations conducted are reflected in the next annual report of the Labour Department, in accordance with Article 21(f) and (g) of the Convention.

Articles 20 and 21. Annual report on labour inspection activities. The Committee notes with interest that, under section 42(1) of the Labour Institutions Act, the Commissioner for Labour shall, no later than 30 April of each year, prepare and publish an annual report of the activities undertaken in his/her department. Furthermore, it also notes with interest that this report shall contain at the least information on developments with regard to relevant laws and regulations, staff under his/her jurisdiction, statistics of places of work to be inspected and number of persons employed therein, findings in the course of inspection, statistics of industrial accidents and occupational diseases, statistics of persons with disabilities in workplaces and any aids being provided by the employer, statistics of proceedings brought before the industrial court or other courts, and statistics of stoppages of work in the various sectors of industry (section 42(2)).

Noting also with interest that section 25 of the OSH Act provides for the development and maintenance of an effective programme of collection, compilation and analysis of occupational safety and health statistics covering occupational accidents and diseases, the Committee requests the Government to keep the ILO informed of the progress made in establishing this system in practice and any difficulties that have been encountered. The Committee trusts that the next annual report of the Labour Department will contain all the above information and statistics on labour inspection activities as envisaged by the law and required by Article 21 of the Convention, including separate data on the inspections carried out in industrial and commercial establishments located in EPZs, if any.

Labour inspection and child labour. The Committee notes that the Government is currently implementing the Time-bound Programme for the elimination of child labour with ILO-IPEC and that, as of March 2007, a total of 7,000 children had been prevented from being engaged in or withdrawn from child labour in ten districts and five towns. The Committee further notes that the elimination of the worst forms of child labour is one of the priorities set by the Decent Work Country Programme (DWCP) approved in August 2007. However, it observes the Government’s indication that it has not made any budgetary allocation to the Child Labour Division to maintain it beyond the Time-bound Programme. *The Committee trusts that the Government will ensure the allocation of adequate resources for this purpose. It also trusts that ILO technical assistance within the framework of the DWCP will enable the Government to strengthen the capacity of labour inspectors to deal with this issue and combat effectively the worst forms of child labour. Emphasizing the role that labour inspectors can play in the protection of the health, safety and welfare of children, the Committee requests the Government to provide information on the training of labour inspectors on child labour issues, and particularly its worst forms, the activities undertaken and the results achieved. It would be grateful if the Government would also indicate the measures taken or envisaged to ensure effective collaboration between the labour inspection services and the Child Labour Division so as to enable a more rational use of the human and material resources available.*

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1979)

The Committee notes that the report received in August 2007 contains general information which replies in part to its previous observation. *It asks the Government to provide in its next report the specific information requested on labour inspection activities in the agricultural sector, as well as information on the application of the Convention in practice following the adoption in 2007 of five new labour laws (the Labour Institutions Act, the Occupational Safety*

and Health Act, the Work Injury Benefits Act, the Employment Act and the Labour Relations Act), in particular on the following points.

Articles 1 and 6, paragraph 1, of the Convention. Scope of labour inspection: Supervision of conditions of work in agricultural undertakings. The Committee requests the Government to indicate whether the 2007 Labour Institutions Act and the 2007 Occupational Safety and Health Act apply to agricultural workers.

With reference to its previous comments, it also once again requests the Government to provide information that is as detailed as possible on labour inspection activities in agricultural undertakings located in export processing zones (EPZs), specifying the measures taken to ensure the enforcement of occupational safety and health provisions, including the prevention of occupational risks linked, inter alia, to the use of agricultural equipment, pesticides and other chemical substances.

Articles 14 and 15. Lack of adequate personnel and appropriate means of transport. In its previous comments, the Committee emphasized the importance of ensuring appropriate means of action, in particular transport facilities, to labour inspectors, as the mobility of supervisory staff is a prerequisite for labour inspection, especially in agricultural undertakings which are by their nature far from urban centres and, in addition, often spread over large areas lacking public transport facilities. It urged the Government to take steps to identify needs and bring them to the attention of the financial authorities. In response, the Government states that there is no specific budgetary allocation for labour inspection in agriculture and the lack of personnel and means of transport is still an obstacle to labour inspectors in discharging their duties. However, the Government hopes that the necessary measures will be taken to remedy the situation as the relevant authorities have been informed of the needs in this respect.

Noting that there is no specific data available on agricultural undertakings and workers, the Committee invites the Government to take measures to carry out an objective assessment of the situation by identifying the agricultural undertakings liable to inspection (number, activity, size and location) and the workers engaged therein (number and categories), with a view to enabling an adequate allocation of financial resources and the setting of priorities for action in order to gradually meet needs, taking into account the national budget. It trusts that the Government will adopt measures to this end in the near future and will be in a position to report on them in its next report.

Articles 25, 26 and 27. Periodical and annual reports. The Committee notes with concern the persistent lack of specific data on labour inspection activities in the agricultural sector. The Government indicates in its report for 2007 that it is envisaged that a formal request for technical assistance will be prepared once the new laws have been enacted and additional personnel recruited. *Further to the adoption in 2007 of the new labour laws, the Committee strongly encourages the Government to take steps to request ILO technical assistance with a view to improving data collection and management. The Committee once again hopes that the Government will soon be in a position to establish the conditions in which the Department of Labour can collect data on the activities of the inspection services under its control with a view to the publication of an annual report on the work of the inspection system in agriculture, either as a separate report or as part of its general annual report.*

Labour inspection and child labour in agriculture. In response to the Committee's previous comment concerning the measures taken to reduce child labour and the results of these measures, the Government mentions several measures, such as the establishment of a Child Labour Division, the provision of free primary education and school fee waivers for two years in secondary education, awareness-raising campaigns, international and national cooperation with development partners (ILO, UNICEF, UNDP, etc.) and the social partners, the implementation of the National Plan of Action through the Time-bound Programme, as well as enforcement through labour inspection.

With reference to its general observation of 1999, the Committee recalls that labour inspectors can play an important role in identifying and registering the child workforce in agricultural undertakings and therefore in establishing an educational framework for this population. Moreover, it emphasizes the need to develop labour inspection activities in the agricultural sector so as to highlight specific problems of children and young persons who are exposed to a high risk of accidents and occupational diseases due to the use of complex machines and chemical products. The Committee also emphasizes the important role of the labour inspection services in finding appropriate solutions. *The Committee hopes that the implementation of the Time-bound Programme and the Decent Work Country Programme approved in 2007, which identifies the elimination of the worst forms of child labour as a national priority, will enable the labour inspection services to develop preventive and enforcement activities in agricultural undertakings. It requests the Government to provide detailed information on these activities, as well as examples of enforcement activities, and the progress achieved.*

Latvia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)

The Committee notes the detailed information contained in the Government's report for the period ending June 2007 and the numerous legislative texts attached. In its previous observation, it noted the report of the tripartite mission which had undertaken an audit of the labour inspection system in October 2005 and it requested information on the measures taken to give effect to the recommendations of the mission as they related to the present Convention. The Government

reports in this respect the formulation of strategies and the implementation of programmes intended to develop a preventive culture in the field of occupational safety and health at the national level and involving the labour inspection services to a large extent.

Article 6 of the Convention. Conditions of service of labour inspectors. With regard to the staff of the labour inspectorate, the Committee emphasized in its previous comment the recommendations concerning the improvement in the conditions of service of inspectors, and particularly the need to increase their remuneration. It notes *with satisfaction* that, according to the information provided by the Government in its report, the salaries of personnel in the labour inspectorate were increased by an average of 69 per cent in 2006, and then by 78 per cent in 2007, and that the salaries of junior state labour inspectors more than doubled in 2007, rising from 123 Latvian Lati (LVL) to LVL250 (or around US\$525).

Article 3, paragraph 1, and Article 10. Principal functions of the labour inspectorate and the strengthening of inspection staff. The Committee notes the creation in 2006 of seven positions in the labour inspectorate which, according to the Government, have been assigned to combating illegal employment, one of the fields of priority action determined by the Ministry of Social Protection for that year. However, it notes that, taking into account the positions vacant (43 on 31 December 2006, or one-fifth of the inspection staff), the total number of positions filled in 2006 is slightly lower than that of 2005. **The Committee would be grateful if the Government would specify whether the vacant positions are for inspectors and it hopes that the Government will be in a position to take the necessary measures to fill the positions in the near future. It requests the Government to provide information on any development in this respect and also to indicate the manner in which it will be ensured that inspections relating to conditions of work and the protection of workers while engaged in their work continue to be carried out by all labour inspectors.**

Article 15. Professional ethical principles. The Committee takes due note of the adoption, in the context of the 2005 and 2006 amendments to the Law on the prevention of conflicts of interest in the operations of State officials, that an Ethics Code has been developed for labour inspectors. **The Committee requests the Government to provide detailed information on the content of this Code, and particularly on the principles that it advocates in relation to each clause of Article 15 of the Convention, namely relating to the absence of direct or indirect interest, professional secrecy and confidentiality as to the source of complaints.**

Articles 20 and 21. Annual report on the work of the labour inspection services. The Committee notes the annual reports on the work of the labour inspectorate for 2004, 2005 and 2006, which were attached to the Government's report. It notes in particular *with satisfaction* the detailed nature and quality of the information, and particularly the statistics that they contain. These data enable the Committee to gain an overview of the labour inspection system and to fully assess its operation. **With regard to information relating to the violations reported, the Committee would be grateful if the annual report on the work of the inspection services continued to include information of an analytical nature on the type of violations (for example, technical violations relating to occupational safety and health or the organization of work, or violations concerning employment contracts or the payment of wages), as was done in the reports for 2004 and 2005.**

The Committee is also addressing a request directly to the Government on other points.

Malawi

Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)

The Committee notes with regret that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

The Committee notes the information supplied by the Government in its report received in November 2005, and the copy of the TEVET Act, No. 6 of 1999. It also notes the Government's comments replying to the observations of the Malawi Congress of Trade Unions (MCTU) received by the ILO on 5 April 2005.

Situation of the labour inspection system. The MCTU alleges, contrary to the Government's statement in its last report that the Labour Inspectorate has been reinforced, that the Inspectorate has done nothing whatsoever about the many breaches of the law by employers. One enterprise allegedly dismissed 280 employees without any consultation of workers' representatives, and another got rid of a worker two years before he was due to retire. In 2000, more than 50 employees were dismissed after a union was formed in the enterprise where they were employed, and in another enterprise two workers who had received MCTU training were laid off.

The Committee notes that in reply to the MCTU's allegations, the Government states that it knows nothing of the instances of violation cited, but that if any worker feels that his/her rights have been violated, he or she is free to lodge a complaint at the district labour office, the industrial relations court or any other court.

As to the human resources of the Inspectorate and their qualifications, the Government indicates that six new inspectors have been hired to strengthen the Occupational Safety and Health Directorate. It also states that a five-day workshop was organized in the context of the Improving Labour Systems in Southern Africa (ILSSA) project, with financial assistance from the ILO, and was attended by 23 labour officers, four union members and two employers' representatives.

As regards material resources, the Committee notes that UNICEF has given the Ministry of Labour and Vocational Training 22 motorcycles, which has greatly strengthened the inspections in 11 districts, and that two motor vehicles have been deployed in the southern region and central region. The Committee further notes that seven motorcycles were to be distributed to districts that have none.

With regard to the increase in the number of occupational accidents in recent years, the Government expresses the need for technical assistance from the ILO through capacity-building programmes on occupational safety and health matters.

With reference to the MCTU's observations and a report on a mission carried out by the Harare Regional Office from 1 to 4 May 2006 as part of the project to strengthen administration systems in the countries of southern Africa, the Committee notes that the MCTU's views coincide with those of the Employers' Consultative Association of Malawi (ECAM) regarding the weaknesses of the inspection system and their causes: a lack of financial resources, transport facilities and equipment; low morale and high staff turnover of labour officers and inspectors. Both organizations note that the functioning of the system is affected by a lack of dialogue and of consultation between the social partners and regret that the Government has sent them neither a copy of the ILO's report on the Convention nor the annual inspection report, and that the Labour Advisory Council does not meet regularly enough given the subjects that it could discuss. The Committee further notes that 50 labour inspection posts remain vacant although the Government indicated that 18 of them would shortly be filled by candidates with a university education.

Having examined labour inspection and particularly the coordination mechanisms and system of reporting between central and district offices, the Committee has come to the view that there are no structural obstacles to the setting up of a labour inspection system but that the latter falls short of the Convention in a number of ways:

- the lack of a labour inspection policy setting relevant guidelines and rules of conduct for inspectors;
- insufficient coordination between inspection services and between the latter and the central authority, and the lack of contact between the services responsible for occupational safety and health and other inspection services;
- difficulty of setting up cooperation between social partners because of the current lack of dialogue;
- the planning of inspections is not systematic and the inspection services fail to react when notified of violations;
- there is no register of establishments which can guide inspectors as to the inspection needs and the establishments to be targeted;
- there are no individual files for establishments inspected to facilitate easy follow-up.

The mission concluded that the strengthening of the inspection system should be stepped up with a view to attaining decent work objectives and promoting sound and fair labour market governance, particularly now that there is an opening up to foreign investment. It made the following recommendations:

- (1) the Ministry should involve the social partners in developing the labour inspection system in order to secure their cooperation;
- (2) the Ministry should formulate a labour inspection policy that will provide guidance for inspections;
- (3) there should be more planning of inspections so that the Inspectorate can play its preventive role, particularly in certain branches of activity;
- (4) the office of the chief labour officer needs further strengthening to enable it to play more of a role in the setting of annual targets and monitoring the performance of inspections in the field, both qualitatively and quantitatively;
- (5) there should be closer collaboration between the chief labour officer and the director of safety and health, inter alia, through joint planning, in order to move towards a more integrated inspection system.

The Committee firmly hopes that the Government will take steps to follow up the mission's recommendations, and will keep the Office informed of any developments in this respect and report to it any difficulties encountered.

The Committee is also addressing a request on a number of points directly to the Government.

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

The Committee notes with regret that the Government's report has not been received. It is therefore bound to repeat its previous observation on the following points:

The Committee notes the information provided by the Government in its report received in November 2005, and its comments in reply to the observations made by the Malawi Congress of Trade Unions (MCTU) on the application of the Convention, received by the ILO on 5 April 2005. *With reference to its observation under Convention No. 81, the Committee requests the Government to provide information in its report under the present Convention on any measure adopted to give effect to the recommendations of the mission undertaken by the ILO's Regional Office from 1 to 4 May 2006, in the context of the project to reinforce labour administration systems in the countries of southern Africa, in so far as such information relates specifically to labour inspection in agricultural undertakings.*

1. *Ineffectiveness of labour inspection.* The Committee notes that, according to the MCTU, labour inspectors lack commitment in the area of enforcement, particularly in cases relating to the non-payment of wages in tobacco plantations and disparities in wages between men, women and young persons working in tea and tobacco estates.

The Committee notes that, according to the Government, differences in wages should be explained by the fact that men, women and young persons are not given work of equal value. *The Committee requests the Government to indicate whether labour inspectors have had cause to examine complaints in this respect and, if so, to provide any relevant document, such as copies of inspection reports or correspondence addressed to the impugned employer or the workers who have made complaints. If not, the Government is requested to take measures to ensure that inspections targeting compliance with wage provisions in the undertakings indicated by the organization are carried out not only on the basis of complaints, but also in a regular manner, so as to encourage employers to comply with the relevant legislation.*

2. *Article 15(b) of the Convention. Transport facilities.* According to the MCTU, the Government is not capable of providing inspectors with adequate transport facilities for the discharge of their duties in agriculture because of budgetary constraints. The Government indicates in this respect that, with the donation of 22 motorcycles by UNICEF and seven others in the context of the ILO project for the strengthening of labour inspections systems in Southern African countries (ILSSA), labour inspectors are now able to cover more areas and have since intensified labour inspections in the agricultural sector. *The Committee takes due note of this information and requests the Government to indicate the measures adopted for the adequate*

and regular provision of the fuel required for travel by inspectors and the maintenance of motorcycles in view of the remoteness and dispersion of agricultural undertakings and the state of access roads, and also to provide data on trends in the scope of inspection activities as a result of the improvement of transport facilities.

3. *Article 8, paragraph 2, and Article 18, paragraph 4. Collaboration between trade unions and the labour inspectorate.* According to the MCTU, the Government is unwilling for trade union leaders to undertake inspections or accompany inspectors during inspections. The Government indicates that labour officers themselves are unwilling to be accompanied by union leaders as experience has shown that where the Government is running projects on child labour, union leaders have gone to such workplaces and demanded to inspect the workplace. As union leaders, in contrast with labour inspectors, have no legal mandate and are not trained for that purpose, they cannot conduct inspections effectively.

The Government adds that, when labour inspectors visit establishments where union leaders are employed, consultations take place before the inspection and labour inspectors are accompanied by shop stewards. Furthermore, before leaving the establishment, the labour inspector also briefs the management and the union leaders on the findings of the inspection.

With reference to *Article 8, paragraph 2*, of the Convention, the Committee draws the Government's attention to the possibility of including in the system of labour inspection in agriculture, officials or representatives of occupational organizations, whose activities would supplement those of the public inspection staff, and who should be assured of stability of tenure and be independent of improper external influences. ***As this is an optional provision, the Committee would be grateful if the Government would examine whether, and to what extent, it could envisage making use of this possibility for the needs of the application of the Convention in relation to national conditions.***

The Committee is also addressing a request directly to the Government on certain points.

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

Malaysia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)

Articles 20 and 21 of the Convention. Functioning of the inspection system. Annual report on the work of the inspection services. Noting the statistics provided by the Government in its report for the years 2004, 2005 and 2006, the Committee observes that the data relating to Peninsula Malaysia only indicate the number of inspections carried out, the number of employers reprimanded and the number of employees involved, and that the figures for 2005 and 2006 relating to Sarawak indicate the number of men and women inspectors, the number of workplaces liable to inspection, the number of inspection visits, the number of persons employed in the workplaces visited, the number of prosecutions and the number of industrial accidents reported. No data are provided for Sabah. Such fragmentary data, covering different elements for each of the regions covered, do not offer a global view of the functioning of the inspection system nor, as a consequence, a basis for determining the measures for its improvement.

In reply to the comments that the Committee has been making for many years concerning the failure to publish and communicate to the ILO an annual report on the work of the inspection service, the Government indicates once again that each year a report is prepared by each department of the ministry and that the report of the Department of Occupational Safety and Health has already been published on the Internet. The Committee observes that this report briefly indicates the total number of inspections carried out in factories, installations involving machinery and construction sites for the years 1999–2003, with the exclusion of any data allowing the identification of the categories of workplaces inspected, the legislative fields addressed or the results of inspections, such as the number of violations reported, the action taken on these violations in terms of issuing warnings, the imposition of administrative penalties or prosecutions. The Committee is therefore bound to regret once again that no annual report on the work of the labour inspection services, as required by the Convention, has been communicated to the ILO, despite its reiterated requests. It invites the Government to refer to paragraphs 331 to 333 of its General Survey of 2006 on labour inspection, which emphasize the importance of the availability of such a report so as to be able to assess the operation of the labour inspection system, identify priorities for its improvement and determine the resources that need to be allocated in the context of the national budget. ***The Government is requested to ensure that the central inspection authority is very soon in a position to collect, based on uniform instructions to the services placed under its authority, information that is as detailed as possible on each of the items covered by clauses (a) to (g) of Article 21 of the Convention, and to include this information in the annual report to be published and communicated to the ILO within the time limits set out in Article 20.***

The Committee is also addressing a request directly to the Government on certain points.

Nigeria

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

The Committee notes the brief information provided by the Government in February 2008 in reply to its previous observation.

Staff of the labour inspectorate and effectiveness of the inspection system. In its previous observation, the Committee requested the Government to describe the manner in which the status and conditions of service of the inspection staff assure them of stability of employment and make them independent of changes of government and of improper external influences, in accordance with *Article 6 of the Convention*. It also asked the Government to indicate the

conditions applying to their recruitment and the arrangements for their initial and subsequent training (*Article 7*), and their numbers and geographical distribution. Out of a concern to be provided with useful information for the evaluation of the level of application of the Convention, the Committee also requested the Government to indicate the extent to which the numbers of inspectors allowed them to discharge their functions effectively (*Article 10*). It notes that, according to the Government, during the period ending 1 September 2007, the inspection staff consisted of 384 labour and factory inspectors distributed throughout the country (in the Federal Capital Territory and the 36 States of the Federation). With regard to their training, the Government merely indicates that they are recruited by the Federal Civil Service Commission, like other senior officers, that new recruits are given induction courses and that their training during employment depends on the availability of funds. The Government nevertheless affirms that inspections have been effective as the level of compliance by employers with the provisions of the labour legislation has improved.

No details on the content of the training provided to labour inspectors has been provided for many years and the most recent inspection report to have reached the ILO was dated 13 years ago, despite the repeated requests by the Committee in this respect. Furthermore, no information has been provided by the Government on the measures requested on many occasions by the Committee for the publication and communication of an annual report, as envisaged in *Articles 20 and 21* of the Convention. In its 2003 direct request, the Committee drew the Government's attention to the need for certain essential information to be available to be able to assess the level of coverage of the labour inspection services and, accordingly, the level of application of the Convention. It therefore once again emphasized the need for an annual report to finally be published and communicated to the ILO.

The Committee therefore once again requests the Government to provide detailed information on: (i) the composition and geographical distribution by grade and by sector of activity of the staff of the labour inspectorate, with an indication of the number of women; (ii) the content of the initial training and the qualifications of the personnel of the inspection services; (iii) the measures adopted by the central inspection authority to seek the resources necessary for the training of men and women inspectors during their employment; and (iv) the measures adopted to give effect to Articles 20 and 21 of the Convention respecting the publication and communication to the Office of an annual report on the work of the inspection services.

The Committee would be grateful if the Government would also indicate the information available to it which enables it to affirm, on the one hand, that labour inspection activities are effective and, on the other, that there has been an improvement in the level of compliance with the labour legislation.

With reference to its 2007 comment on the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee would be grateful if the Government would provide all available information, including statistical data, on the activities of the labour inspection services in this field in the industrial and commercial workplaces covered by labour inspectors in accordance with the present Convention and the relevant national legislation, as well as on the impact of these activities.

Paraguay

Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

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

The Committee notes the Government's report and the attached documentation. Although the report was received too late to be examined by the Committee at its present session, the Committee nevertheless reminds the Government that the observations of the Ibero-American Confederation of Labour Inspectors (CIIT), received by the ILO on 4 December 2006, were forwarded to it on 1 March 2007. It notes that the Government's report does not refer to the CIIT's observations and does not therefore provide comments on the matters raised therein. The Committee observes that most of the concerns expressed by the CIIT relate to the following points, on which it has been commenting since 1999.

1. *Article 6 of the Convention. Precarious status and conditions of service of labour inspectors.* According to the CIIT, labour inspectors are not assured of stability of employment as required by the Convention so as to ensure their independence of changes of government and of improper external influences. Any change of government involves the risk that they may lose their job and therefore the independence which guarantees the impartiality and authority necessary for the discharge of their duties. Furthermore, in the view of the CIIT, the level of their remuneration is very low and does not correspond to their individual qualifications. For example, the head of the Occupational Safety and Health Department, who also carries out inspections, receives a lower salary than that of many other inspectors.

2. *Article 7, paragraph 3. Absence of adequate training for labour inspectors for the performance of their duties.* The CIIT deplores the fact that no appropriate training is provided to inspectors and that they do not even have a guide or manual so that they can perform the duties entrusted to them.

3. *Article 11. Precarious and inadequate nature of working conditions.* In its observations, the CIIT indicates that the premises and working conditions of the labour inspectorate are far from complying with the minimum conditions required by the Convention. For example, the offices of inspectors are not separated by partitions and there is a lack of equipment and materials.

4. *Article 3, paragraphs 1(a) and 2, and Article 18. Low level of supervision; impunity of those committing offences, and the burden of conciliation functions.* The CIIT deplores the fact that the violations that are detected do not give rise to the imposition of the penalties established by the law and that inspectors are principally engaged in conciliation functions. As a result, the authority and impartiality which are necessary in their relations with employers and workers are seriously prejudiced.

The Committee would be grateful if the Government would provide the ILO with any comment that it deems appropriate in relation to the observations made by the CIIT. It will examine such comments together with the Government's report at its next session.

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

Slovenia

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1992)

The Committee notes the detailed information on the specific activities of the labour inspectorate in agriculture contained in the Government's report and also in the annual inspection reports sent to the Office.

Article 6, paragraphs 1(a) and (b), of the Convention. Prevention and enforcement activities of the labour inspectorate. The Committee notes with interest the developments which have occurred in the working of the labour inspection system in agriculture and forestry. It notes in particular with *satisfaction* the implementation of a number of measures which have contributed towards improving the level of protection of workers in recent years. These measures include the expansion of information and advisory activities by inspectors, the adoption of instructions relating to the formulation of occupational safety policies, the definition of procedures for the assessment of occupational risks and also training activities organized by agricultural advisers from the Chamber of Agriculture and Forestry. Moreover, two specific campaigns have been undertaken: in 2005, on the use of agricultural machinery and equipment and the protection of young workers; and in 2006 on monitoring the application of legal provisions relating to occupational safety and health in agricultural undertakings. The Committee also welcomes the fact that agricultural subsidies are dependent on observance of a number of safety and health conditions. *The Committee requests the Government to continue supplying information on the labour inspection activities specifically targeting occupational safety and health in agricultural and forestry undertakings and to indicate whether inspection campaigns have taken place or are planned to ensure the enforcement of the legal provisions relating to the general conditions of work of agricultural workers (wages, hours of work, holidays, etc.).*

The Committee is also addressing a request directly to the Government with regard to another point.

Sri Lanka

Labour Inspection Convention, 1947 (No. 81) (ratification: 1956)

The Committee notes the information provided by the Government, which was received on 23 October 2008, in reply to its previous comments. The Committee recalls that its comments concerned the points raised by the Lanka Jathika Estate Workers' Union (LJEWU) in a communication dated 31 May 2007, and also in a joint communication from the Confederation of Public Service Independent Trade Unions (COPSITU), the Government Service Labour Officers' Association (GSLOA), the United Federation of Labour (UFL), the Progress Union (PU), the Free Trade Zone Workers Union (FTZWU) and the Health and Safety Trade Union Alliance (HSTUA), dated 4 October 2007.

The Committee also notes a brief communication sent to the ILO on 8 July 2008 by the Ceylon Workers' Congress (CWC) on certain aspects of its 2007 general observation calling on member States to promote effective cooperation between the labour inspection services and the judicial system, and a further observation sent on 11 July 2008 by the LJEWU on recent developments relating to the application of the Convention. These communications were forwarded to the Government on 16 and 17 September 2008, respectively.

The LJEWU's communication dated 31st May 2007 contained comments on the application in law and practice of each of the provisions of the Convention. The Committee notes in particular, under *Article 5 of the Convention*, the indication that certain departments and statutory boards are informed of inspections to facilitate matters where necessary (for example, the police, the Board of Investment (BOI) in respect of export processing zones (EPZs), etc.).

With regard to the question of the status and independence of labour inspection staff (*Article 6*), while indicating that all officers recruited to the labour inspectorate are instructed to abide by the principles enshrined in *Article 15* at their induction and in follow-up training courses and that general compliance is satisfactory in this regard, the LJEWU nevertheless indicates that, at times, politicians and other influential persons do interfere. It also considers that the training of labour inspectors should be strengthened on a regular basis (*Article 7*) to help them handle current disputes and issues and that labour inspection staff, including specialists (around 24 electrical, mechanical and civil engineers, but only two doctors and three research assistants in the Occupational Hygiene Division) should be increased at both the central and local levels (*Articles 9 and 10*). It adds that transport facilities are inadequate and that the limitation on the mileage that is reimbursed serves to limit the number of inspections (*Article 11*).

Moreover, the LJEWU deplores that EPZs are highly secured areas where prior approval is needed for entry and it suggests that the Department of Labour (DOL) should negotiate with the BOI to allow labour inspectors to enter

workplaces in EPZs, on production of the identity card issued by the Department, without insisting on prior permission (*Article 12, paragraph 1(a)*).

With regard to the preventive role of labour inspection and the powers entrusted to inspectors to order measures necessary to eliminate threats to the safety and health of workers, the LJEWU recommends that when legal remedies are adopted, they should be published to inform other employers. It adds that a mechanism for the regular notification of industrial accidents and cases of occupational disease to labour inspection should be established (*Articles 13 and 14*).

With regard to the application of *Articles 17 and 18* on enforcement actions against employers regarding any other matter covered by the Convention, the LJEWU reports that due to delays in legal action, there have been instances where some employers that were at fault could not be punished or fines be recovered. Moreover, it points out that, apart from a few updated fines applicable to violations under the Factory Ordinance and the Women, Young Persons and Children Act, the penal provisions are outdated and it calls for penalties, and especially fines, to be reinforced.

According to the LJEWU, measures have been taken to identify all workplaces in order to ensure that not a single workplace is left out and that a new inspection system is now in force under which compliance with all important laws is checked during a single inspection. The LJEWU is of the view that such measures along with the introduction of a new reporting form will ensure the adequate frequency and thoroughness of inspections (*Article 16*).

While indicating that the annual report published by the Commissioner General of Labour contains most of the information called for by *Articles 20 and 21*, the LJEWU hopes that an annual labour inspection report will be published separately.

The joint communication dated 4 October 2007 received by the ILO from the COPSITU, GSLOA, United Federation of Labour, Progress Union, Free Trade Zone Workers Union and Health and Safety Trade Union Alliance focuses on the conclusions adopted following the discussion in June 2007 by the Conference Committee on the Application of Standards (96th Session). These unions, representing workers in the public and private sectors, allege what they call glaring discrepancies in the reports submitted by the Government to the ILO and wish to reveal the true labour inspection situation prevailing in the country.

They affirm that, in practice, the DOL does not undertake inspection in public sector workplaces that come under the central Government and Provincial Councils and they consider that the Public Administrative Circulars and the provisions of the Establishment Code that govern the conduct of public servants, including their industrial relations, are rather confusing. According to these unions, the labour inspection staff is inadequate vis-à-vis the size of the labour force (which they estimate at around 7 million workers), as well as the number of the workplaces liable to inspection (*Article 10(a)(i) and (ii)*). They also allege that, despite the approval by the Public Service Commission of a cadre of 429 labour officers for the labour inspectorate in 2001, only 258 are currently in post, of whom 164 are engaged in administrative work on a full-time basis, which leaves 194 labour officers to perform labour inspection activities. Emphasizing that the majority of workers in the garment and plantation industries are women, they express the need for an increased number of women labour inspectors (*Article 8*). They also emphasize the insufficiency of occupational health and safety specialists (*Article 9*). They add that 175 field officers were recruited in 1997, bypassing the standard recruitment procedure applicable to labour officers, exclusively for the purpose of the enforcement of the Employees' Provident Fund Act. Moreover, although 42,000 graduates have recently been recruited to the public sector under a Graduate Employment Scheme, there was not a single labour inspector among them.

The joint communication explains that the EPZs come under the purview of the BOI, which has a separate Industrial Relations Department under a Director of Industrial Relations and its own set of inspectors who are not paid out of the Government Consolidated Fund and do not belong to the public service. It emphasizes that the labour inspectors of the DOL cannot make surprise inspections of workplaces inside EPZs (*Article 12, paragraph 1 (a)*), as entry thereto is restricted. The unions consider that this militates against the very purpose of labour inspection to the detriment of the interests of workers. They also refer to the adoption by the BOI of the procedure for entry into EPZs under which labour inspectors are obliged to request authorization from the BOI security, which is subordinated to the consent of the management in the establishment to be inspected. Consequently, if a labour-related incident occurs in such an establishment, the moment the BOI security informs the employer that a labour inspector is seeking permission to enter, the management knows that there has been a complaint and can take measures against the worker or workers concerned. Referring to *Article 4* of the Convention, the unions consider that an independent central labour inspection authority is an absolute necessity. They call for its establishment by an act of Parliament and for the abolition of the BOI labour inspectorate in EPZs. In their view, the political will of the Government will only be credible if sufficient funds are allocated from the national budget to provide labour inspectors with means of transport or the adequate reimbursement of travel expenses (*Article 11*).

The unions call for tripartite collaboration in EPZs, as well as in the industrial and public sectors (*Article 5*) and for continuous training for labour officers. With regard to the necessary frequency and thoroughness of labour inspections (*Article 16*), they regret that due to the shortage of qualified and well-trained personnel, the incidence of the non-payment of mandatory contributions to the Employees' Provident Fund by employers is very high. Consequently, registers of workplaces liable to inspection and the numbers of employees therein are not updated. This means that employers that are

not in compliance with labour law benefit from impunity. They add that the annual report published by the DOL is not complete, as it does not contain the up to date information requested by *Article 21(c), (d), (e), (f) and (g)*.

As the Government's report was received too late for examination at its present session and further observations from trade unions have been received in the meantime, the Committee will examine the matters raised, as well as any additional comments that the Government may wish to make on these issues, at its next session (2009). ***The Committee also draws the Government's attention to its obligation under article 22 of the ILO Constitution to send a report on the application of the Convention in 2009.***

Sudan

Labour Inspection Convention, 1947 (No. 81) (ratification: 1970)

Context and developments relating to labour inspection. Further to its previous observation, the Committee notes the general information provided by the Government in its report received on 29 October 2008 concerning the current transitional state of labour inspection. The Committee notes that the legislative amendments which have been announced for a number of years have still not been adopted and that most inspection activities have been transferred to the labour offices in the provinces (*wilaya*), while inspection work at the federal level is limited to a few areas of an exclusively national character.

The Government refers to the signature of the Comprehensive Peace Agreement, which resulted in the adoption of a transitional Constitution, the setting up of a government of national unity and the revision of all Sudanese laws to ensure that they are constitutional. The Labour Code is also being revised by a tripartite committee and, according to the Government, the final procedures for its approval are under way.

With regard to the central structures of the Ministry of Labour, their functioning has been suspended until the finalization of all job descriptions. The Government points out that the decentralized structures have been assigned mandates which have been extended by the Constitution and by the Comprehensive Peace Agreement.

Labour inspection and child labour. The Committee notes with interest that requests for technical assistance in this area have been successful. The Government indicates that a mission went to the country in July 2008, and information available to the ILO also refers to the recent signature of the cooperation agreement announced by the Government. This document concerns the launching of a project covering law and practice, and aiming in particular to promote the rights of the child with respect to education and work. The department responsible for women and children at the Ministry of Labour will also receive support in the context of this project to enable it to reach the different *wilaya*.

Article 5(a) of the Convention. Cooperation between the inspection services and the judicial system. The Committee notes that the Government has examined and welcomed the guidance on this subject which it provided in its general observation of 2007 and declares that it will take it into account in practice.

In view of the scope of the reforms announced by the Government, the Committee hopes that it will supply detailed information in its report in 2009 on all developments during the reporting period with regard to the organization, functioning, human and material resources, and activities of the labour inspectorate and their results. It hopes that this information will be supported by any relevant documents, including on the role of labour inspectors in combating child labour. The Government is also requested to send a copy of the new Labour Code once it has been adopted.

Syrian Arab Republic

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)

The Committee notes the Government's report for the period ending on 2 September 2007 containing information in response to its previous comments, and the attached documentation, including the following Orders recently issued by the Ministry of Social Affairs and Labour:

- Order No. 460 of 2007 issuing implementing regulations for Act No. 56 of 2004 on labour inspection;
- instructions of the Minister of Social Affairs and Labour on the settlement of labour disputes in agriculture contained in Circular No. PG/2/2093 of 26 February 2007;
- Order No. 365 of 25 February 2007 establishing rules on prevention in agricultural processes, including the handling of hazardous substances;
- Order No. 972 of 7 May 2006 defining light work which may be entrusted to minors over 15 years of age;
- Order No. 973 of 7 May 2006 defining agricultural activities;
- Order No. 974 of 7 May 2006 respecting accommodation requirements for agricultural workers;
- Order No. 975 of 7 May 2006 specifying the cases in which agricultural workers may work temporarily for another agricultural employer;

- Order No. 977 of 7 May 2006 specifying the cases in which the employer is required to provide accommodation for agricultural employees;
- Order No. 978 of 7 May 2006 defining types of work that cause occupational diseases and requiring agricultural employers to ensure that workers performing these types of work undergo quarterly medical examinations (in particular, work related to the preparation and handling of pesticides and work that involves standing for more than five hours; exposure to ionizing radiations in modern agricultural technologies; exposure to diseased animals; allergy to straw, alfalfa and soil; exposure to chemicals and noise; the transport of heavy loads; and tasks involving exposure to repetitive strain injury);
- Order No. 979 of 7 May 2006 on the requirement for agricultural employers employing more than 50 workers to make available to them a nurse, to be under the supervision of a doctor, and responsible for a first-aid kit;
- Order No. 980 on the prohibition of night work for women; and
- Order No. 981 on the period of day work in agricultural work.

Article 6, paragraph 1, and Articles 2, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24 and 25 of the Convention. Enforcement of the legal provisions covered by the Convention and the prevention of violations. The Committee notes with interest the special regulations on working and living conditions in agricultural undertakings issued under Act No. 56 of 2004 on labour relations in the agricultural sector. It also notes with interest that many of these texts were adopted after consultation with the social partners concerned. Nevertheless, according to the Government, the budget for labour inspection in agriculture is still insufficient given the recent development of this area of inspection, and should be increased yearly. The circular of 26 April 2001, which the Committee welcomed in its previous observation, called upon the directors of social and labour affairs in the governorates to attach greater importance to labour inspection in agriculture to protect the rights of workers and employers, and promote occupational safety and health. However, the Government provides no information on its impact in practice. ***The Committee would be grateful if the Government would indicate whether additional human, material and logistical resources (such as transport facilities) have been allocated for the work of the inspectorate in the agricultural sector for the period covered by its next report. It would be grateful for details on inspection activities relating to the recently adopted legal provisions (preventive measures, such as information, advice, observations, warnings, injunctions, and default notices, and enforcement measures, including administrative penalties, fines and custodial sentences). It would be grateful if the Government would provide copies or extracts of periodical inspection reports, as prescribed in Article 25, and any documents of proceedings brought against agricultural employers for breaches of the law.***

Further to its general observation of 2007, the Committee would be grateful if the Government would provide information on the measures taken to ensure support from judicial bodies for the work and objectives of the labour inspectorate and on the results achieved.

Protection of migrant workers. According to information available at the ILO on the conclusions of a mission to the country carried out from 14 to 17 December 2007 by the Bureau for Workers' Activities (ACTRAV), with the participation of the ILO Regional Office, an agreement has been concluded to develop cooperation between the ILO and the International Confederation of Arab Trade Unions (ICATU) to address the challenges confronting Arab and Palestinian workers and promote decent work for all throughout the region. ***The Committee would be grateful if the Government would provide information on all developments in this area and to specify whether and how the recently adopted regulations referred to above on the living and working conditions of agricultural workers are applied to migrant workers in agriculture.***

Articles 26 and 27. Annual inspection report. The Committee notes that, according to the Government, the report on the work of the labour inspectorate is forwarded to all concerned bodies in the country, international organizations and agricultural employers and their organizations. However, it observes that workers do not appear to be included among the recipients of the report, and that no report has been sent to the ILO since the report for 2003, which was received by the Office in 2005. ***The Committee accordingly reminds the Government of the requirement for the central inspection authority to publish an annual report within the time limits prescribed by Article 26, with the aim of making it available to all interested parties, including workers and their representatives. It also emphasizes the requirement set out in the same provision to communicate the report to the ILO and hopes that the next annual report will contain information on each of the subjects listed at Article 27, presented as far as possible in the manner indicated in Paragraph 9 of Recommendation No. 81.***

With reference to its direct request of 2007 on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee hopes that the Government will ensure that the annual report on labour inspection in agriculture contains information on the child labour situation, the offences reported and the penalties applied to offenders.

Implementation of the Decent Work Country Programme (DWCP). ***Noting that the DWCP for the period 2008–10 gives priority to the implementation of strong labour inspection systems, in which the social partners are involved in developing the concept of an integrated labour inspectorate and defining appropriate cooperation mechanisms, the Committee requests the Government to keep the Office informed of progress in implementing this programme and of any difficulties encountered.***

Turkey

Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)

The Committee notes the Government's report received by the Office on 31 October 2007 in reply to its previous comments. It also notes the observations of the Turkish Confederation of Employers' Associations (TISK) provided subsequently by the Government.

Articles 2 and 23 of the Convention. Developments in the scope of labour inspection. In its 2006 observation, the Committee requested the Government to continue providing information on: (i) the progress achieved in extending the coverage of the labour inspection system so as to also protect workers engaged in establishments in the informal sector; and (ii) the practice of inspection by geographical area and by sector. It observes that the Government has not provided the information requested, but that the TISK continues to deplore the absence of records of labour inspections and updated statistics. The employers' organization considers that it is not possible to target labour inspection on unregistered enterprises, as they have not been identified. ***The Government is requested once again to provide information on the measures adopted to extend the scope of the labour inspection system to include establishments in the informal economy, with an indication of the manner in which the identification of these establishments is ensured or envisaged. It is requested to keep the Office informed of any difficulties encountered and, where appropriate, the measures envisaged or adopted to overcome them.***

Articles 4 and 5(a). Placement of labour inspection under the supervision and control of a central authority and effective cooperation between the various services entrusted with labour inspection. According to the TISK, the transfer of duties from the Ministry of Labour and Social Security to other ministries (Ministry of Health, Ministry of Defence, Ministry of Energy and Natural Resources) and to municipalities constitutes an obstacle to the necessary coordination of labour inspection activities. In the view of the TISK, the dispersion of responsibilities jeopardizes the integrity of inspection and does not allow the necessary coordination under the authority of a central body, as envisaged in the project for intervention against illegal employment prepared by the Ministry of Labour and Social Security. The TISK adds that, although section 95(2) of the Labour Law establishes the requirement to inform the responsible regional authorities of the results of inspections, this requirement is not often met, with the result that neither inspection records nor the relevant statistics are up to date. The TISK calls for the Government to publish the results of the remedial measures adopted for this purpose.

The Committee observes that neither the Government's report received in 2007, nor the general report of the labour inspection for 2005 refers to any restructuring of the labour inspection system. ***The Committee would be grateful in this respect if the Government would provide clarifications, describe the measures referred to by the TISK to improve the exchange of information between inspection services and supply detailed information on their implementation in practice and on their impact on the compilation of statistics.***

With reference to its 2007 general observation, the Committee requests the Government to provide information on any measure implemented to promote effective cooperation between the labour inspection services and the judiciary with a view to the achievement of the economic and social objectives of the labour inspection services.

Article 5(b). Collaboration between the labour inspection services and employers and workers. The Committee notes that, according to the Government the Labour Inspection Council of the Ministry of Labour and Social Security has undertaken 17 tripartite projects since 2004 covering both occupational safety and health, and the application of general labour legislation. The Government indicates that, during the implementation of an inspection project, the social partners are informed and consulted concerning professional developments. Furthermore, reports on the results of inspection projects are published and made available to the social partners concerned. The Committee however notes that the Government does not provide sufficient details in this respect. ***It would be grateful if the Government would indicate the purpose, frequency and arrangements for this tripartite collaboration and provide information on its impact in terms of the objectives of labour inspection.***

Article 3, paragraph 1(a) and (b), and Articles 10, 11 and 16. Human and logistical resources of the labour inspectorate necessary for the discharge of its duties. In its previous comment, the Committee referred to the comments of the Confederation of Turkish Trade Unions (TÜRK-İS) and requested the Government to indicate the manner in which it envisaged strengthening the staff, transport facilities and equipment necessary for the effective discharge of inspection functions. The Government announces the allocation of financial resources for the recruitment of inspectors. It adds that labour inspectors have access at all times to all existing transport facilities for their professional travel, and that a budget is envisaged and reserved for the purchase of portable computers. ***The Committee requests the Government to indicate developments in staff numbers and prospects in this respect, as well as changes in equipment, resources and transport facilities made available to labour inspectors during the period covered by the next report.***

Article 3, paragraph 1(a) and (b), and Articles 17 and 18. Labour inspection activities. Balance between the function of inspection, on the one hand, and technical advice and information, on the other. The Committee notes that labour inspectors through inspections at the workplace raised 29,245,439.43 Turkish New Lira (TRY) in 2005 and TRY30,438,285.53 in 2007 in fines. Furthermore, they referred 7,843 cases of violations to the Public Prosecutor in 2005 and 5,327 cases in 2006. The TISK considers that the inspection system is principally repressive, with labour inspectors

hardly discharging their preventive functions, namely the provision of information and technical advice. It also regrets that inspectors do not always have the necessary technical equipment for their investigations and that their reports of violations are drawn up rapidly and without a scientific basis, which can have serious consequences for employers. It observes that appeals against the decisions of labour inspectors are most frequently set aside by the courts, which are overworked, even though section 17 of Labour Law No. 4857 provides for the possibility to produce proof to the contrary. The TISK considers that labour inspectors should therefore only use their powers of punishment with care and attention. In its view, practices should be adopted which reward employers that comply with the law and limit intervention by the labour inspectorate in enterprises covered by a collective agreement to cases in which a complaint has been made.

The Committee notes with interest, from the information provided by the Government, that Law No. 4817 affords any person concerned a right to information and that advice is provided upon request either by the Labour Inspection Council or its regional departments, and also by the Communication Unit of the Office of the Prime Minister (BIMER). Information on the application of labour legislation and labour disputes is provided to the social partners through a telephone system “Allo labour”. However, the TISK considers that the system is inadequate and that it should be possible to provide information without a request being made, in a proactive manner. While noting the Government’s indications concerning the various information services available, the Committee draws the Government’s attention to paragraph 86 of its 2006 General Survey on labour inspection on this subject. In this paragraph, it refers to Paragraph 14 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), which provides examples of measures for the promotion of continued education intended to inform the social partners of the applicable legal provisions and the need to apply them strictly, as well as the dangers to the life or health of persons and the most appropriate means of avoiding them (clause 1) and appropriate means of workers’ education (clause 2). ***The Committee encourages the Government to take inspiration from this guidance to develop educational approaches and tools intended to give the best possible effect to Article 3, paragraph 1(b), of the Convention and asks it to inform the ILO of any progress achieved in this respect.***

Improvement of the labour inspection system in the field of occupational safety and health. The Committee notes with interest the information provided by the TISK concerning the development of an inspection policy based on prioritizing sectors and establishments that are at risk and involving the regular redefinition of the relevant criteria with a view to improving the supervisory techniques and methods of labour inspectors, their training and their capacity to issue appropriate recommendations. ***The Government is requested to provide information on the impact of this policy on the occupational safety and health situation in the industrial and commercial workplaces covered by the Convention, including the level of application of the relevant legislation and the number of accidents and cases of diseases that are occupational in origin. The Committee would be grateful if the Government would also provide data on the prosecutions made against employers which are at fault or in violation in the above fields and on the penalties imposed during the period covered by the next report.***

Labour inspection and child labour. With reference to its comments under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee notes with interest the information provided by the TISK reporting the conclusion between the TISK and the TÜRK-IS on 12 December 2005 of a collaboration agreement to contribute to the implementation of the social collaboration project to combat child labour and the time-bound policies and programmes in the province of Adana. This collaboration takes the form of the establishment of an office responsible for the education of children, their families and employers, and for the provision of appropriate training in several regions and for various sectors. This structure followed the opening by the TISK of a working children’s bureau, which has been operational since April 1999 in three industrial sites. The joint office is reported to have begun providing services to seasonal child workers and street children, as well as those engaged in furniture production. The TISK suggests that this model should be extended to industrial regions of the organized economy and to smaller industrial sites. The objective is to provide health, education and training services to child workers and advice to adult workers and employers throughout the country. According to the TISK, as 87 per cent of children who work do so in small-scale workplaces (one to nine workers), measures should be designed to combat illegal employment in those enterprises.

Recalling that, in accordance with Article 3, paragraph 1(a), of the Convention, legal provisions relating to conditions of work include those respecting the employment of children and young persons, and with reference to its 1999 general observation on this issue, the Committee hopes that the Government will rapidly take the necessary measures at the various levels of social policy with a view to bringing an end, with the active collaboration of the labour inspectorate, to the illegal employment of these categories of particularly vulnerable workers, while at the same time guaranteeing their integration or reintegration into school. The Committee requests the Government to provide information on these measures and on the specific role attributed to labour inspectors in this area by the projects implemented in the context of cooperation with the ILO–IPEC programme. It would also be grateful if it would provide relevant statistics on the ten-year project to combat child labour, 2005–15, referred to in its report.

Article 6. Status and conditions of service of labour inspectors. The Committee notes, from the information provided by the TISK, that draft conditions of service for the public service, including a draft text of the specific conditions of service of labour inspectors, have still not been adopted and that labour inspectors are accordingly still covered by a 1979 text. ***The Government is asked to provide clarifications on this matter and to supply a copy, if possible in one of the working languages of the ILO, of any text that is in force determining the status and conditions of service of labour inspectors.***

Article 7. Aptitude of labour inspectors and specific training for the discharge of certain functions. According to the TISK, between June 2005 and July 2007 significant progress was achieved in reforming social security schemes. However, the organization regrets that certain of the government services entrusted with responsibility for supervising the legislation which entered into force in May 2006, in contrast with labour inspectors who are duly trained for this purpose, often lack the necessary technical competence and human qualities indispensable for the discharge of their duties. The Government indicates in this respect that in 2006 labour inspectors participated in training seminars for an accumulated duration of 3,914 hours, particularly in the fields of occupational safety and health, personal protective equipment and labour legislation. ***The Committee requests the Government to provide clarifications on the viewpoint expressed by the TISK regarding the sharing of responsibilities for the supervision of social security legislation and to supply information on the content and regularity of the training provided to inspectors during their employment, and on the number of participants concerned in each case.***

United Arab Emirates

Labour Inspection Convention, 1947 (No. 81) (ratification: 1982)

The Committee notes the Government's reports received in October 2007 and October 2008 and the attached documentation. It would be grateful if the Government would provide further information on the following points.

Article 3, paragraph 1(a), of the Convention. Specific areas covered by the labour inspectorate. Conditions of work, housing, living and transport of the least skilled migrant workers. The Committee notes from a summary report based on a study commissioned by the ILO for the Gulf Forum on Temporary Contractual Labour (Abu Dhabi, 23–24 January 2008) that most low-skilled workers live well away from metropolitan areas in labour camps that stretch for miles in the desert and that they are accommodated in deplorable conditions, particularly in overcrowded apartments which are unsafe and unhygienic, with poor electricity, lack of drinking water and lack of adequate cooking and bathing facilities. The same document, however, reports the implementation of a series of measures to improve the living conditions of these workers. In December 2006, over 100 camps housing construction workers that fell short of minimum standards for health services, waste disposal, pest control, drinking water and other basic facilities were shut down and the firms that owned the camps are reported to have been requested to provide alternative accommodation that meets minimum international standards. The report also refers to the construction of labour residential cities across the country. The Committee notes with interest that one of the first projects, planned for 2008 in the Abu Dhabi industrial zone, will provide accommodation, health care facilities, waste disposal, shopping amenities, etc. These labour cities intended for thousands of migrant workers will be managed by private companies with government supervision. The Government refers to guidelines and decisions adopted in November 2006 by the Vice-President of the United Arab Emirates, the President of the Council of Ministers, the Ruler of Dubai, with a view to raising the living standards of migrant workers by improving their conditions of accommodation, health care and safety, as well as other working and living conditions in accordance with international standards, in particular through the provision of suitable transport facilities between their accommodation and their work. The use of means of transport that expose these workers to direct sunlight and other climatic factors is henceforth prohibited.

The Committee further notes that any worker may henceforth change employer if her or his wage is lower than that agreed upon or if the wages are not paid for two consecutive months, and that accommodation is ensured for workers found to be in violation until their departure. Finally, the issue has been raised of determining the minimum wages and benefits to be granted to workers.

The Committee requests the Government to provide the ILO with copies of the above guidelines and decisions of 2006, as well as information that is as detailed as possible on the progress made in the implementation of the planned labour cities, the proportion of migrant workers who are already accommodated there and the number of those concerned by future projects. It would be grateful if the Government would provide indications on the role entrusted to labour inspectors in relation to the supervision of the enterprises which manage these residences.

The Government is also requested to indicate the manner in which labour inspectors ensure adequate protection to workers who continue to be accommodated in camps that are far from their workplace and who are exposed during transport to the risk of exposure to sunlight and dehydration, including outside the summer season.

The Committee requests the Government to provide copies of the legal texts addressing these issues, and any document relating to their implementation in practice, including: the order announced by the Government under which a worker may change employer and sector of activity; the document serving as a legal basis for the bank guarantee intended to ensure the payment to workers of their entitlements and compensation; the order prohibiting the confiscation of workers' passports based on the principle that a passport is an official document belonging to the worker and only the worker, except where confiscation is based on legal authorization by a court of law.

Specific protection for workers exposed to direct sunlight and dehydration. The Committee notes Order No. 408 of 2007 regulating work under direct sunlight in the months of July and August which, according to the Government, is subject to supervision by the labour inspectorate. It observes, however, that the period of validity of this Order is limited to between 1 July and 31 August of the year 2007, and not every year. Under the terms of section 6 of the Order, where for

technical reasons work has to be carried out without interruption, the employer is under the obligation to take the following measures:

- provision of fresh drinks appropriate to the number of workers and the general requirements of safety and health;
- provision of thirst-quenching products such as salt and lemons;
- first aid at the workplace;
- adequate industrial air conditioning; and
- means of ensuring the necessary shade for protection against direct sunlight.

Without prejudice to the penalties established by the legislation, enterprises that are in violation of these obligations are liable to a fine of 10,000 dirhams for the first violation and 20,000 to 30,000 dirhams and a suspension of the authorization to employ workers for a period of a minimum of three months, six months or one year for first, second or multiple repeat offences, respectively. ***The Government is requested to provide the available statistics of violations of this Order reported by labour inspectors, particularly in construction and public works sites between 1 July and 31 August 2007 and, in so far as possible, statistics showing the relationship between the nature (fine, imprisonment) and the level (amount, duration of imprisonment) of the penalties recommended by inspectors and those effectively imposed. The Committee would be grateful if the Government would also indicate whether a text having the same purpose as Order No. 408 is issued each year and, if so, if it would provide the text covering the summer period of 2008.***

Article 5(a). Support by the judiciary for the activities of the labour inspectorate. The Committee notes with interest that the Government is planning to establish in each Emirate specialized tribunals for the expeditious handling of labour issues. The Government reports the establishment of coordination between the administration of the courts and the Ministry of Labour with a view to developing a system for the direct referral of complaints by the Ministry to the courts and the transfer to the labour courts of staff working on individual workers' issues. Such a system has started operating in the Emirate of Dhahi. With reference to its general observation of 2007, in which it strongly encourages governments to take measures to promote effective cooperation between the labour inspection services and the judicial system, the Committee notes the general information provided by the Government in this respect. ***It hopes that the Government will keep the ILO informed of the progress achieved in the implementation of the announced collaboration measures and that it will provide copies of the relevant texts.***

Article 7, paragraph 3, and Articles 8, 10, 11, 20 and 21. Increase in the numbers and improvement of the quality of staff and strengthening of the material facilities for the activities of the labour inspectorate. The Committee notes with interest the increase in the total number of inspectors, which is now reaching 2,000 officials distributed, according to the Government, on the basis of the geographical location of enterprises and the number of workers in each Emirate. It also notes with interest that the number of vehicles made available to inspectors has increased significantly.

According to the Government, these developments will ensure the independence of the labour inspectorate. It adds that the method of compiling inspection reports has changed, with four different types of report now being drawn up, each corresponding to the type of activity carried out in enterprises and the manner in which inspections are discharged: one report covers enterprises engaged in services, maintenance and similar activities; another concerns industrial enterprises and those involving the use of chemical and industrial substances; a third relates to enterprises of an administrative and commercial nature, which employ the majority of workers (with the exclusion of craftwork enterprises); and finally, a fourth type relates to enterprises employing up to 14 workers. It is envisaged that these reports will be introduced taking into account the size of enterprises. The Government adds that 22 inspectors have been selected at the national level to follow a training course provided by experts from outside the Ministry with a view to familiarizing them with the new inspection system and providing them with training so that they are able to direct new inspectors. The Committee however notes that the statistics provided with the report received in October 2008 do not reflect the new methods of labour inspection that have been announced. ***The Committee therefore requests the Government to provide a copy of any document relating to the organization and operation of the new inspection system, including copies of reports such as those described above, and information on the geographical distribution of inspectors, with an indication of the number of women and the specific functions with which they may be entrusted, where appropriate. Recalling the obligation to publish the annual report required by Article 20 of the Convention, and drawing attention to Chapter IX, Part II, of the 2006 General Survey, referred to above, the Committee also requests the Government to ensure that effect is given to this provision as soon as possible and to keep the ILO informed immediately.***

Article 12, paragraph 1(c)(iii). Enforcement of the posting of notices required by the legal provisions. Language aspects. The Committee notes with interest that Order No. 408 of 2007 provides in section 3 that hours of work shall be posted by all employers in Arabic for the labour inspector and in a foreign language that is accessible to the workers. ***It would be grateful if the Government would indicate whether measures have been taken to ensure that employers are complying with their obligations to post such information in languages that are accessible to the workers, including information on the rights and duties of workers in relation to occupational safety and health, wages, overtime hours and their remuneration. If so, please provide samples of the information posted in the relevant languages over the past two or three years. If not, please ensure that measures are also taken for this purpose and provide information on the progress achieved.***

Articles 14 and 21(f) and (g). Notification of, and statistics on, employment accidents and cases of occupational disease. The Committee notes that, contrary to the indication in the report received in October 2007, statistics on employment accidents have still not been provided. According to the Government, information on employment accidents is communicated by workers' representatives to the Occupational Safety and Health Service of the Inspection Department. However, it recognizes the weaknesses of this information system with regard to certain workplaces and envisages the use of modern technology to ensure a working environment free of risk. With reference to its 2006 General Survey, the Committee draws the Government's attention to paragraph 118, in which it emphasizes the importance of establishing formal mechanisms to provide the labour inspectorate with information on employment accidents and cases of occupational disease so that it has the data necessary to identify high-risk activities and the most vulnerable categories of workers, and to carry out research into the causes of occupational accidents and diseases. In paragraphs 119 and 120, the Committee emphasizes in this respect the need for detailed regulations and precise instructions to those concerned, namely employers, workers, social and health insurance funds, the police and other bodies involved in dealing with occupational accidents and diseases to ensure that the principles set out in law are actually put into practice. It recalls the publication by the ILO in 1996 of a code of practice to achieve harmonization and greater effectiveness in the recording and notification of occupational accidents and diseases, and its general observation of the same year inviting all governments that have ratified the labour inspection Conventions to take inspiration from the code of practice. ***The Committee urges the Government to take these recommendations into account and to provide specific information as soon as possible on employment accidents.***

Articles 15(c) and 16. Frequency and quality of inspections and confidentiality of complaints. Further to its previous comments, the Committee notes the Government's description of new trends in relation to inspection. The number of inspections carried out upon the request of the employer with a view to the granting of work permits, which previously represented around 75 per cent of inspections, has been reduced to allow for inspections based on workers' complaints against the employer, or vice versa. The Committee fears that it is extremely difficult, or even impossible, to ensure compliance with the letter and spirit of *Articles 15(c) and 16* of the Convention if most inspections which are not carried out upon the request of the employer are related to complaints. Indeed, as *Article 15(c)* of the Convention establishes the requirement for labour inspectors to treat as absolutely confidential the source of any complaint and the prohibition to give any intimation to the employer or his representative that a visit of inspection was made in consequence of a complaint, effect can only be given to these provisions if inspectors also carry out routine, planned or programmed inspections as often and as thoroughly as envisaged in *Article 16*. This is one of the requirements for ensuring that the preventive function of inspection can be discharged and that the suspicions of employers or their representatives in relation to workers who may have complained to inspectors can be allayed. ***The Committee urges the Government to take measures to ensure that labour inspectors discharge their duties by inspecting the workplaces under their supervision not only in response to a request or a complaint, but also on a routine basis so as to ensure that effect is given to legal provisions relating to conditions of work and the protection of workers throughout the territory.***

The Committee also notes the Government's indication in relation to *Article 11, paragraph 1(a)*, that complaints from employers, workers and citizens are transmitted to the Department of Labour and that many complaints have been made by workers by fax or in person to the Department, which refers them to labour inspectors for verification. ***The Committee therefore requests the Government to specify whether personal access is also available for workers to labour inspectors with a view to making their complaints directly to them concerning a defect or breach of legal provisions. If not, it urges the Government to take measures for this purpose and to keep the ILO informed.***

Articles 17 and 18. Dissuasive effect of legal proceedings and penalties applied against employers who are in violation of the legal provisions enforced by labour inspectors. The Committee notes that, according to the Government, where such violations are considered to be serious (such as the non-payment of wages, the illegal recruitment of workers or the unilateral termination of an employment contract) they are reported to the higher authority of the Ministry of Labour with a view to the imposition of penalties. In certain cases, these consist of the definitive transfer of workers to another employer, the classification of the enterprise into a category involving unfavourable financial conditions or the removal of the enterprise in violation from the computer system of the Ministry under the terms of ministerial orders respecting administrative penalties. The Committee also notes with interest that Order No. 408 referred to above envisages that in all cases of violations of its provisions, the name of the enterprise and the employer shall be published in the national daily press and posted by the Ministry of Labour until the fine is paid and the expiry of the period during which the authorization to employ workers is suspended. The Committee is bound to reiterate the viewpoint expressed in its 2006 General Survey that the publicity given to legal proceedings can have a dissuasive impact, particularly when it results in measures restricting credit, the allocation of subsidies or social benefits in respect of enterprises which have committed grave violations.

The Committee would be grateful if the Government would provide copies of daily newspapers indicating the identity of those in violation of the above Order, as well as other legal provisions relating to conditions of work and the protection of workers in industrial and commercial establishments covered by the Convention. It further requests the Government to indicate whether measures are also envisaged to encourage employers which scrupulously comply with the relevant legal provisions and, if so, to provide a copy of any relevant text. Finally, it would be grateful if the

Government would provide information on the purpose for which enterprises in violation are removed from the Ministry's computer system.

The Committee is also addressing a request directly to the Government on other matters.

Yemen

Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)

The Committee notes the Government's report for the period from 1 June 2006 to 1 September 2007 and the evaluation report on the 2006 Plan of the Department of Industrial Relations, including the budget for that year.

Articles 19, 20 and 21 of the Convention. The Committee's follow-up of the content of labour inspection reports as tools for evaluating and improving the operation of the inspectorate. In the comments that it has been making for nearly 20 years, the Committee has encouraged the Government to take the necessary steps to publish and send to the ILO an annual inspection report containing in particular, the information required on the matters listed in *Article 21* of the Convention. In the dialogue that it has held with the Government over these years, the Committee has noted that despite the political and economic difficulties it has had to cope with, the Government has done its utmost to send available information, largely in the form of statistical tables on some of the subjects covered by the Convention pertaining to one or other geographical or administrative division of the country. The Government has repeatedly stated, however, that the labour inspectorate's lack of financial resources was the cause of the failure to publish an annual report as required by the Convention. In 1994, the Committee noted with interest an annual report on the work of the inspection services for an earlier period, but pointed out that it lacked information essential to an assessment of the extent to which the labour inspection system actually covers the duties that have to be discharged (for example, the number of workplaces liable to inspection and the number of workers employed therein). It also noted that the Government had obtained technical assistance from the ILO to restructure and reorganize the Ministry of Labour in the context of the country's reunification, and expressed the hope that application of the Convention would improve as a result. In 1995, however, the Committee observed that the Government was having difficulty in providing the labour inspectorate with sufficient well-qualified human resources and the material and logistical resources it needed to carry out its functions.

The Government nonetheless stated that it would shortly be sending an inspection report for 1994. Although this proved impossible, the Government continued to send statistical tables covering in part some of the subjects listed in *Article 21*. In a direct request sent to the Government in 2000, the Committee again pointed out the need to know the number of industrial and commercial establishments liable to inspection, the activities they carry on and the number of workers they employ, as a basis for determining the inspectorate's needs in terms of human and material resources. It also asked the Government also to send information on developments in the legislation affecting the organization and operation of the labour inspectorate and the status and conditions of work of labour inspection officials.

In its observation of 2004, the Committee took note of the Government's efforts to gradually reinforce the labour inspection system, in particular by including in the Labour Code new provisions setting out the duties and powers of labour inspectors, and to equip the inspection services with computer hardware with a view to setting up a countrywide network for exchanging information and to providing the central administration with the means to monitor compliance with the law in workplaces on a permanent basis. The Committee accordingly considered that it should henceforth be possible for an annual inspection report to be drawn up and expressed the hope that such a report would shortly be published. It also welcomed the fact that an inventory of workplaces liable to inspection had been undertaken in Sanaa and hoped that such an inventory would also be undertaken for all other parts of the country, thus allowing an objective evaluation of the coverage of the inspection services with a view to determining what needed to be done in order to improve them gradually.

In its observation of 2006, the Committee continued to monitor progress reported by the Government in the development and efficiency of the statistical system and sought information on the action taken by the Government further to its commitment to send the Office a report by the General Administration of the Labour Inspectorate showing inspections by workplace, the number of workers by enterprise, the number of infringements reported and the penalties and other measures applied. It nonetheless noted that, according to the Government, owing to a lack of resources the General Administration had no computers; that eight governorates had no inspection service because there was no economic activity; and that the inspections recorded concerned only the capital and the governorate of Hamdramaout because the other governorates had not sent in statistics. The Committee asked the Government to report on legislative developments announced previously concerned with ILO technical assistance and the participation of the social partners. In its report received in September 2007, the Government provides information on the content of the statistics by enterprise (number of workers broken down between Yemeni and non-Yemeni, situation at the workplace at the time of the inspection, type of infringement of the provisions of the Labour Code and action taken by the labour inspectorate) and states that these data are published in an annual report of the General Department of Labour Inspection. The Government indicates, however, that the draft revision of the Labour Code is still under consideration by the social partners, and again requests technical assistance in undertaking the necessary amendments. A report issued by the ILO's Beirut Office on a mission carried out from 9 to 14 October 2008 shows that the revision of the Labour Code should be completed before the end of the year.

The Committee notes that the Department of Industrial Relations' annual assessment report for 2006, which the Government sent with its report for 2007, contains information and statistics on the activities of numerous labour agencies, including the labour inspectorate, in ten of the country's 21 governorates. The Committee notes, however, that according to the introduction to the report, the labour administration is weak, disorganized and operates in a routine manner on a shoestring budget. The report launches an urgent appeal to the Minister of Social Affairs and Labour to give labour issues the importance they deserve and to implement the necessary measures, particularly financial measures, to stop the exodus of labour administration managers at a time when such heavy demands are being made of the Ministry of Social Affairs and Labour.

Implementing the provisions of the Convention and reinforcing the labour inspection system by launching a Decent Work Country Programme (DWCP). The Committee notes with interest that a DWCP, prepared in cooperation with the Government, the social partners and the ILO, and launched in August 2008, makes the establishment of an efficient labour inspection system a priority. A tripartite committee should soon be set up to monitor the implementation of the programme and a national working group appointed by the Minister of Social Affairs and Labour to ensure coordination with the ILO. The DWCP provides, inter alia, for ILO technical assistance in setting up a tripartite audit and formulating and implementing a national action plan that takes due account of the provisions of the Conventions on labour inspection and health and safety. The programme will also seek to promote the adoption of modern inspection practices that target prevention and more efficient integration of labour inspection in other programmes, focusing on the efforts that will be needed in those areas of labour inspection that target the worst forms of child labour. The Committee also notes with interest that one of the roles assigned to the ILO will be to promote the recruitment and training of women inspectors with a view to proper supervision of the conditions of work of women workers. ***The Committee would be grateful if in its next report the Government would provide information on all progress made, particularly through the implementation of the DWCP for 2008–10, in establishing and operating a labour inspection system in industrial and commercial enterprises that is consistent with the principles laid down in the Convention and the guidance provided in the corresponding Recommendation No. 81. Such information should cover the legislative amendments that the Committee has recommended in its comments since the ratification of the Convention, the number and qualifications of men and women labour inspectors (Articles 8, 10 and 21(b)); their status and conditions of service (Article 6); the material resources, including computers, facilities and means of transport needed for the performance of their duties (Article 11); the machinery set up by the central inspection authority for the control and supervision of all the services for which it is responsible, including compliance by labour inspectors with their obligation to report on their work in the areas of prevention and the enforcement of legislation on conditions of work and the protection of workers while engaged in their work (Articles 4 and 19); measures to secure effective cooperation between the labour inspection services and other public or private institutions and bodies engaged in similar work, including judicial bodies, so as to enlist their support for the work of the labour inspectorate (Article 5(a)); and measures for effective collaboration between labour inspectors and employers and workers (Article 5(b) and Part II of Recommendation No. 81).***

The Committee hopes that, in view of the progress already made in compiling certain statistics that are of use in assessing the operation of the labour inspection system, the Government will be in a position to take the necessary steps to ensure that an annual inspection report is published and sent to the ILO within the time limits set by Article 20 of the Convention, containing the information required by Article 21(a) to (g). So that the information is useful to the central inspection authority in defining priorities for action in collaboration with the social partners and other interested parties while taking into account the financial resources available under the national budget, the Committee invites the Government to follow the guidance given in Recommendation No. 81 (Part IV) on the level of detail that is appropriate.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 81** (Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Barbados, Belize, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Colombia, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, France, France: New Caledonia, Grenada, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, India, Indonesia, Jamaica, Japan, Kenya, Kyrgyzstan, Latvia, Lithuania, Malawi, Malaysia, Republic of Moldova, Panama, Peru, Qatar, Romania, Rwanda, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Serbia, Sierra Leone, Slovenia, Solomon Islands, Syrian Arab Republic, United Arab Emirates, United Kingdom: Gibraltar, United Kingdom: Guernsey, United Kingdom: Isle of Man); **Convention No. 129** (Azerbaijan, Bosnia and Herzegovina, Colombia, Côte d'Ivoire, Estonia, France: French Guiana, France: Guadeloupe, France: New Caledonia, France: St Pierre and Miquelon, Hungary, Latvia, Malawi, Republic of Moldova, Netherlands, Poland, Romania, Serbia, Slovenia); **Convention No. 150** (Belize, Guinea, Kyrgyzstan, Lebanon, San Marino); **Convention No. 160** (Kyrgyzstan).

Employment policy and promotion

Algeria

Employment Policy Convention, 1964 (No. 122) (ratification: 1969)

1. *Articles 1 and 2 of the Convention. Implementation of an active employment policy.* In its previous comments, the Committee expressed its concern regarding the effective pursuit of an active policy designed to promote the objectives of the Convention. It emphasized the importance of consultations with the representatives of the persons affected in an environment of very high and persistent unemployment. In March 2008, the Government submitted a brief report indicating that the national employment policy has been characterized in recent years by the implementation of state-financed programmes to support employment, the creation of micro-enterprises and the reform of the public employment service. In its previous reports, the Government indicated that the national employment policy aimed to reduce the unemployment rate to less than 10 per cent by 2009, by creating 2 million jobs. The Committee understands that these objectives were confirmed in March 2008 in the context of a strategy to promote employment and combat unemployment. ***The Committee requests the Government to provide information in its next report on the results achieved and difficulties encountered in implementing the strategy to promote employment and combat unemployment, including updated quantitative information on the development and results of the programmes implemented to promote growth and economic development, raise living standards, meet the needs of the labour force and resolve the problem of unemployment and underemployment (Article 1, paragraph 1).***

2. *Role of the employment services in employment promotion.* In its report, the Government emphasizes the modernization of the National Employment Agency (ANEM) and its network of agencies, and the opening up of the possibility for private operators to offer employment services. The Committee noted the Government's first report on the application of the Private Employment Agencies Convention, 1997 (No. 181), and addressed a request to the Government concerning cooperation between the public employment service and private employment agencies. ***It hopes that in its next report on Convention No. 122 the Government will provide an account of the measures taken by ANEM and private employment agencies to ensure that the objectives of the Convention, in particular the objective of ensuring productive employment for all those available for work, have been pursued by all actors in the labour market.***

3. *Collection and use of employment data.* The Government recalls in its report that, in June 2005, it created a National Employment and Poverty Reduction Observatory. However, the report does not contain the statistical information requested in the report form. ***The Committee once again requests the Government to provide an account of the progress made by the National Employment and Poverty Reduction Observatory in improving the labour market information system and to provide detailed statistics on the situation and trends in employment, specifying the manner in which the collected data have been used to determine and review employment policy measures.***

4. *Article 1, paragraph 2. Labour market policies in favour of young people.* The Committee notes that priority will be given to practical measures to address the vocational integration needs of young people, who account for more than 70 per cent of the population seeking employment. Measures to support vocational integration and new employment contracts will be offered to young graduates. The Committee refers in this regard to paragraph 9 of the *Conclusions on promoting pathways to decent work for youth*, adopted at the 93rd Session of the Conference (June 2005), which states that while employment cannot be directly created but only encouraged by legislation or regulation, labour legislation and regulation based on international labour standards can provide employment protection and support increased productivity, which are conditions basic to the creation of decent work, particularly for young people. ***The Committee invites the Government to provide information in its next report on the results achieved through measures taken to promote decent employment for young people, particularly for those who have few or no qualifications.***

5. *Labour market policies in favour of workers with disabilities.* The Committee recalls that, in previous reports, the Government had reported that regulatory provisions make it compulsory for employers to reserve a quota of 1 per cent of posts for workers with disabilities. ***The Committee once again asks the Government to provide information on the impact in practice of the measures taken to increase the level of participation of workers with disabilities in the labour market and to ensure that such workers are engaged in productive and lasting employment.***

6. *Article 3. Participation of the social partners in policy preparation and implementation.* The Committee regrets that the Government has not provided the information requested on the manner in which the consultation of representatives of the persons affected, required under *Article 3* of the Convention, is ensured in practice. ***The Committee can only emphasize once again the importance of giving full effect to this key provision of the Convention, in particular in an environment of very high and persistent unemployment. It hopes that the next report will contain information in that regard and that it will include information on the consultations held with representatives of the most vulnerable categories of the population, in particular with representatives of workers in the rural sector and the informal economy, in order to secure their cooperation in formulating and implementing employment policy programmes and measures.***

7. Finally, the Committee recalls that the preparation of a detailed report, responding to the questions raised in this observation, will serve as an opportunity for the Government and social partners to evaluate the achievement of the

objective of full and productive employment provided for by the Convention. *Consequently, it once again asks the Government to provide detailed information so as to enable it to examine how the guiding principles of economic policy in areas such as monetary, budgetary, trade and regional development policy contribute, “within the framework of a coordinated economic and social policy” (Article 2, paragraph (a)), to the pursuit of the employment objectives established by the Convention. The Committee once again asks the Government to provide information on the measures adopted to lower the unemployment rate, and on the results achieved by the measures taken in the public and private sectors in order to promote productive employment, particularly amongst young people.*

Angola

Employment Service Convention, 1948 (No. 88) (ratification: 1976)

Contribution of the employment service to employment promotion. In reply to the 2007 observation, the Government provided a short statement in August 2008 in which it indicates that, in the context of its policy to combat unemployment and poverty, public policies have been established with a view to stimulating employment. Significant legal texts have been approved to promote employability, such as the First Job Strategy and Act and the Decrees granting subsidies for vocational internships, as already mentioned in the 2007 observation. Since 2005, a total of 282 vocational training centres have been established and, as of June 2008, the Government inaugurated 54 vocational training centres in rural locations. The Committee notes that employment and vocational training are one of the ten priorities of the poverty reduction strategy (PRS), which should channel the resources obtained from oil to create favourable opportunities for productive employment for young persons and to reduce the informal economy. As the Committee has observed in previous comments, the social indicators are a source of great concern – 70 per cent of the population survives on less than US\$2 a day and enrolment in primary schools is increasing very slowly (from 50 per cent in 1990 to 53 per cent in 2000). The Committee therefore emphasizes the need to guarantee the essential function of employment services to promote employment in the country. *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 (Part IV of the report form) and to provide information on the following matters:*

- *consultations held with representatives of employers and workers on the organization and operation of the employment service, and on the development of employment policy (Articles 4 and 5);*
- *the manner in which the employment service is organized and the activities which it performs to effectively carry out the functions set out in Article 6;*
- *the activities of the public employment service in relation to socially vulnerable categories of jobseekers, with particular reference to workers with reduced mobility and disabilities (Article 7);*
- *the results of the measures adopted to give effect to Act No. 1 of 2006 to encourage young persons seeking their first job (Article 8);*
- *the measures proposed by the Training Centre for Trainers (CENFOR) and other institutions to provide training or further training to employment service staff (Article 9, paragraph 4);*
- *the measures proposed by the employment service in collaboration with the social partners to encourage the full use of employment service facilities (Article 10); and*
- *the measures adopted or envisaged by the employment service to secure cooperation between the public employment service and private employment agencies (Article 11).*

The Committee recalls that the Office is in a position to provide the Government with technical advice and assistance for the establishment of a public employment service, as required by the Convention.

[The Government is asked to reply in detail to the present comments in 2010.]

Barbados

Employment Policy Convention, 1964 (No. 122) (ratification: 1976)

The Committee notes with regret that the Government’s report has not been received. The Committee notes the comments of the Barbados Workers’ Union (BWU) received in June 2008. The BWU indicates that the Congress of Trade Unions and Staff Associations of Barbados continues to support policy interventions on behalf of micro-enterprises and the self-employed, aimed at promoting increased access to credit facilities and market information, formal education and training and, generally, the provision of decent work in the informal economy. *The Committee refers to its previous comments, and requests the Government to submit a report, for examination by the Committee at its next session, containing information on the following matters.*

Articles 1 and 2 of the Convention. Implementation of an active employment policy. The Committee requests information on the programmes implemented and their impact on employment promotion both in the aggregate and as

they affect particular categories of workers such as women, young persons, workers with disabilities, older workers and workers in the rural sector.

Collection and use of employment data. Please provide information on how the various policies and programmes to promote employment are kept under periodical review within the framework of a coordinated economic and social policy.

Article 3. Participation of the social partners in the formulation and implementation of policies. The Committee reiterates its requests for information on the manner in which consultations are held with representatives of the social partners, including representatives of the rural sector and the informal economy, and on the outcome of these consultations concerning employment policies.

[The Government is invited to reply in detail to the present comments in 2009.]

Bolivia

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1954)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its 2006 and 2007 observations, which read as follows:

Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit. The Committee notes the report for the period between 2000–05 and the attached documentation which was received in February 2006. The Government has forwarded a draft of a Presidential Decree regulating the activities of private employment agencies. Certain provisions of the draft regulations could give effect to the provisions of the Convention: for example, private employment agencies appear to be subject to the supervision of a competent authority. However, the draft regulations do not include other requirements envisaged by the Convention: the text examined appears to show that only in the case of domestic work may the fees charged for the employment placement undertaken by private employment agencies not be charged to domestic workers. The Committee emphasizes that in accepting Part II of the Convention, the Government made an undertaking to abolish fee-charging employment agencies conducted with a view to profit. Bolivia ratified Convention No. 96 in 1954, but has not given effect to its provisions, which require the adoption of regulations establishing: a yearly permit or licence renewable at the discretion of the competent authority; a scale for the charging of fees and expenses approved by the competent authority or fixed by the said authority; and authorization by the competent authority to place or recruit workers abroad (*Articles 5 and 6 of the Convention*). Moreover, the International Labour Conference has adopted the Private Employment Agencies Convention, 1997 (No. 181), which recognizes the role played by private employment agencies in the operation of the labour market. The Governing Body of the ILO has invited States which are parties to Convention No. 96 to contemplate ratifying, as appropriate, Convention No. 181, the ratification of which will involve the immediate denunciation of Convention No. 96 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). *The Committee therefore requests the Government to provide information on the adoption of the draft Presidential Decree regulating private employment agencies. The Committee requests the Government to keep it informed of the consultations that may have been held with the social partners concerning the eventual ratification of Convention No. 181.*

Employment Policy Convention, 1964 (No. 122) (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat the matters raised in its 2006 and 2007 observations, which read as follows:

1. *Articles 1 and 2 of the Convention. Coordination of economic policy with poverty reduction.* The Committee noted the report received in November 2005 and the additional documentation received in February 2006. The Government provided a copy of the Statistical Yearbook 2004, as well as reports of the National Regional Development Fund and the National Productive and Social Fund on the implementation of the National Emergency Employment Plan (PLANE I, II and III) and the PROPAS Plan. PLANE provided temporary jobs for 250,000 people during the period May 2004–September 2005. PROPAS assisted over 200,000 people by providing temporary work through the execution of around 1,300 projects to finance infrastructure and community development projects. The Government has also provided information on the new structure and functions of the Ministry of Labour, as set out in Presidential Decree No. 27732 of 15 September 2004. The Ministry of Labour has been assigned responsibility for improving employment policies through their design, adaptation and implementation. The Government also recalled the components of the Bolivian Poverty Reduction Strategy and the main activities envisaged under the Strategy. According to the data provided by the Government, open unemployment in urban areas fell to 8.7 per cent in 2004, although over 36 per cent of the active urban population are self-employed; 12 per cent are reported to be family workers or unpaid apprentices and 4 per cent household employees. *The Committee requests the Government to specify whether the Ministry of Labour is still responsible for declaring and pursuing an active employment policy, as required by the Convention, and asks the Government to provide detailed information on the results achieved in the creation of lasting employment and the reduction of underemployment in the context of the national employment policy.*

2. *Coordination of education and vocational training policies with employment policy.* The Committee noted the information concerning the process of the Bolivian National Productive Dialogue (DNBP) 2004, during which it was considered necessary to promote technical and technological education with a view to achieving effective economic recovery. Furthermore, in May 2005, a programme for young persons was approved, consisting of voluntary work by young persons leaving public universities. *The Committee asks the Government to provide information in its next report on the results achieved by the initiatives adopted in the framework of the 2004 dialogue (such as the development of an Integrated Skills System and the implementation of the Programme for the Strengthening of Technical and Technological Training) so as to ensure the coordination of vocational training policies with employment policy. The Committee requests the Government to indicate the results achieved in terms of young persons leaving university who find lasting employment.*

3. *Article 3. Participation of the social partners in the formulation and implementation of policies.* The Committee noted that, in 2005, as proposed by the ILO Subregional Office, an Inter-Institutional Employment Promotion Committee was

organized, with the participation of Government authorities and representatives of employers' and workers' organizations. The specific objectives of the Inter-Institutional Committee included the establishment of a climate for the exchange of experience with a view to facilitating employment generation policies. The Government also referred to the National Industrial Development Council (CONDESIN), established in 2002, to coordinate the National Industrial Development Strategy with a view to promoting manufacturing in the country as a strategic basis for employment generation. *The Committee requests the Government to provide with its next report the documents on employment policy approved by the Inter-Institutional Committee and by CONDESIN. The Committee also requests the Government to consider the manner in which representatives of the most vulnerable categories of the population, and particularly representatives of those working in rural areas and the informal economy, are included in the consultations required by the Convention when formulating and enlisting support for employment policy programmes and measures.*

Bosnia and Herzegovina

Employment Policy Convention, 1964 (No. 122) (ratification: 1993)

Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy. The Committee notes the Government's report received in November 2007. The Government appended the first Labour Force Survey carried out in 2006 in Bosnia and Herzegovina by the statistical institutions of the competent entities and co-financed by the World Bank, the Department for International Development (United Kingdom), the Government of Japan and the UNDP. Methodological principles behind the survey were based on the recommendations and definitions of the ILO and the requirements of Eurostat. The survey covered 10,000 households, including 5,943 in the Federation of Bosnia and Herzegovina, 3,457 in the Republika Srpska and 600 in the Brcko District. It appears that employment rates in Bosnia and Herzegovina are low compared to neighbouring countries and that there is a large gap between men and women. Almost 63 per cent of women of working age are inactive. Registered employment data suggest that there has been some modest growth in formal employment since 2003. The informal economy may account for one third of all employment. The Committee notes with concern that the overall unemployment rate is estimated at 32.7 per cent in the Federation of Bosnia and Herzegovina and at 29.8 per cent in the Republika Srpska. Youth unemployment rate is among the highest worldwide (62.3 per cent). There is a prevalence of long-term unemployment in particular for those with lower levels of education.

The Committee also notes the Country Review of Employment Policy on Bosnia and Herzegovina prepared by the ILO and the Council of Europe in June 2008. One of the main purposes of the document is to contribute to the implementation of international labour standards and principles relating to employment in Bosnia and Herzegovina, in particular Convention No. 122. The main employment policy priorities for Bosnia and Herzegovina identified in the review appear to be the development of an active policy on employment, tackling the informal economy, improving education and training outcomes, modernizing employment services and targeting active labour market policies to disadvantaged groups, providing adequate support during unemployment, ensuring an effective and equitable income policy and promoting social dialogue on employment. *The Committee welcomes this approach but expresses its concern regarding the effective pursuit of "an active policy designed to promote full, productive and freely chosen employment", "as a major goal" and within the framework of a coordinated economic and social policy (Articles 1 and 2 of the Convention). It therefore asks the Government to provide in the report that it is due in 2009, full particulars on the follow-up given by the competent authorities and the social partners in each entity to the recommendations made by the Country Review of Employment Policy. Please provide information on the manner in which the available data on the employment situation and trends have been used as a basis for the adoption and review of an effective active employment policy including productive employment opportunities for disadvantaged groups as required by the Convention.*

Brazil

Employment Policy Convention, 1964 (No. 122) (ratification: 1969)

1. *Implementation of an active employment policy in the framework of a coordinated economic and social policy.* The Committee notes the Government's brief report received in December 2007 containing indications relating to *Articles 1 and 2 of the Convention*. The Committee notes that in January 2007, the Government launched the Growth Acceleration Programme (PAC) to raise investment in infrastructure, increase credit, and improve the long-term investment climate and fiscal policies, with a view to providing a consistent macroeconomic basis and sustainability to all the measures adopted through the Programme. According to data published by the ILO in *Labour Overview 2007*, GDP growth, which was 5.3 per cent, accelerated in 2007 by 1.6 per cent in relation to the previous year (3.7 per cent), which is associated with the high level of private investment and the public investment in infrastructure promoted by the Government through the PAC. Labour market indicators also followed an upward trend. The urban unemployment rate fell from 10.2 per cent in 2006 to 9.9 per cent in 2007, with a 0.3 per cent rise in the employment rate. These positive results were also reflected in the rise in formal employment, with the proportion of private employees registered between 2006 and 2007 (average for the first nine months) increasing from 61.8 to 63.2 per cent. According to data published by the General Register of Employees and the Unemployed (CAGED) of the Ministry of Labour and Employment of Brazil, 1.6 million jobs were created between January and September 2007, which is one of the best results for the period since 1985. The branches in which most jobs were created were: agriculture and forestry (13.7 per cent), construction (12.8 per

cent) and manufacturing (7.4 per cent). *The Committee once again asks the Government to provide information in its next report on the experience of the social partners with regard to the application of the Convention, particularly where representatives of the rural sector and the informal economy have been included in consultations. With reference to its previous comments on the measures included in the National Decent Work Agenda, the Committee would like to be able to examine detailed information on the measures adopted to reduce the unemployment rate and the average duration of unemployment. In particular, the Committee asks for information on the measures that have been implemented to promote local development, strengthen micro- and small enterprises and cooperatives, and social economy initiatives with a view to continuing the creation of productive employment.*

2. The Committee notes that there are over 340 centres in the Public Employment, Labour and Income System (SPETR). The Government is aware that, in view of the expansion of the SPETR network over the past ten years, it is necessary to achieve greater integration of the services provided in the various centres in different areas in relation to employment placement, social skills, vocational qualifications and unemployment insurance. *The Committee requests information on the progress achieved in attaining greater integration between the various activities of the system and a more adequate distribution of the resources made available to the SPETR.*

3. *Article 2(a). Compilation and use of employment data.* The Committee notes the progress achieved in the decentralization of the systematic compilation of labour market information through the creation of the Commission for the Management of the Employment and Unemployment Survey which, among other functions, supervises the implementation of the Employment and Unemployment Survey in the various regions of the country, ensuring its uniformity and methodological consistency. *The Committee would appreciate receiving information on the progress achieved in compiling labour market information and trends. It requests the Government to specify the manner in which the available statistics on the employment situation and trends have contributed to the adoption and review of employment policy.*

4. With reference to its previous comments, the Committee notes the progress of the Job and Income Generation Programme (PROGER) as a series of special credit facilities to finance initiatives for the start-up of, or investment in, individual businesses, both in urban and rural areas, including associative, export and conservation enterprises, productive investments in tourism, etc. *The Committee would appreciate receiving information on the impact of PROGER on the most vulnerable categories of workers, such as the poor, women, young persons, the African and mixed-race population and those living in areas with high unemployment rates.*

Chile

Employment Policy Convention, 1964 (No. 122) (ratification: 1968)

The Committee notes the Government's report for the period ending August 2007, which includes information on the employment situation in 2006 and summarizes the activities carried out by the National Training and Employment Service (SENCE).

1. *Articles 1 and 2 of the Convention. Declaration and pursuit of an active employment policy.* In its previous comments, the Committee noted the good labour market indicators, however it also noted the lack of an integrated employment policy system. The Committee notes that the national unemployment rate reached 7.1 per cent in the first three quarters of 2007, representing a fall of 1.3 per cent in relation to the same period in 2006, due to a moderate increase in labour supply. For the same period, the employment rate also rose from 50.2 per cent to 50.8 per cent, while labour demand decreased slightly over the same period. These results reflect the GDP growth, which in the first and second quarters of 2007 was 5.8 and 6.1 per cent, respectively (data published by the ILO in *Labour Overview 2007*). The Committee recalls once again that the provisions of the Convention require the Government to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment, within the framework of a coordinated economic and social policy, and in consultation with all the persons affected. *Accordingly, so as to be able to fully examine the manner in which the Convention is applied, the Committee requests the Government to provide a report containing detailed information on the manner in which an active policy designed to promote full and productive employment has been declared in the framework of a coordinated economic and social policy. The Committee once again requests that the next report identifies those programmes which have been most effective, and have had the most positive results in terms of employment generation for the most vulnerable categories of the population, such as women, workers in precarious forms of employment and workers affected by restructuring measures.*

2. *Youth unemployment.* The Committee notes that the unemployment rate amongst young persons (15 to 19 years) is 3.4 times higher than the average global unemployment rate, which it considers to be a cause for concern. *The Committee requests the Government to provide detailed information in its next report on the measures adopted to ensure decent working conditions for young persons entering the labour market.*

3. *Coordination of vocational education and training measures with employment policy.* In reply to the 2006 direct request, the Government refers to the success achieved by the Continuous Education and Training Programme, *Chile Califica*. It also provides information on the activities carried out in collaboration with the Chile Foundation in the context of the National System for the Certification of Labour Skills. The Government had proposed to train 1 million workers

each year as from 2005. The Committee is grateful for the information provided on the activities of the SENCE and the results achieved by the labour skills certification programme. ***The Committee once again requests detailed information in the next report on the manner in which education, training and lifelong learning policies are coordinated with prospective employment opportunities.***

4. *Article 3. Participation of the social partners in the formulation and implementation of policies.* The Committee notes once again that the report for the period ending August 2007 does not contain information on the consultations held, as required by this important provision of the Convention. In an ILO publication, referred to in the 2006 direct request, it was proposed that it might be of interest to promote a private or public-private body (foundation or corporation) to provide support for the management of labour market policies at the local level which could implement programmes, provide technical assistance and coordinate public and private actors under the guidance of the central public authority (*Chile: Superando la crisis. Mejorando el empleo. Políticas de mercado de trabajo*, 2000–05, Santiago, ILO, 2006, pages 30–31). The Committee refers to its previous comments in which it emphasized that the consultations required by this provision of the Convention should cover all aspects of economic and social policy which affect employment and that, in addition to representatives of employers and workers, they should include representatives of other sectors of the economically active population, such as those working in the rural sector and the informal economy. ***The Committee asks the Government to provide detailed information in its next report on the manner in which the experience and views of the social partners are fully taken into account, their full cooperation secured, and their support enlisted for the formulation and implementation of the employment policy. Please also indicate whether formal consultative procedures have been established for this purpose and the action taken as a result of the assistance or advice received from the ILO (Part V of the report form).***

China

Employment Policy Convention, 1964 (No. 122) (ratification: 1997)

The Committee notes the information provided in the Government's report received in August 2007 including replies to its previous observation. It also notes the comments by the All-China Federation of Trade Unions (ACFTU) and the China Enterprise Confederation (CEC), appended to the Government's report.

1. *Articles 1 and 2 of the Convention. Formulation of an employment strategy.* The Committee notes that by the end of 2006, 764 million people were employed in China, of which the urban employed accounted for 283 million people. In terms of the employment structure, 326 million people were in the primary sector of industry, 192 million in the secondary sector and 252 million in the tertiary sector, which is the result of a rapid transition of the rural labour force to non-agricultural industries. It also represents a steady increase of the proportion in the tertiary industry, demonstrating that the services industry has become a major source for the expansion of employment. The Government indicates that, by the end of 2006, registered unemployment in the urban areas accounted for 8.47 million people, representing an unemployment rate of 4.1 per cent, demonstrating a trend of decreasing unemployment and increased stability in employment. The Government indicates that some 21.48 million persons were affected by poverty at the end of 2006, representing a drop of 2.17 million persons over the previous year. The Government forecasts that in forthcoming years the number of the urban population in need of employment will remain over 24 million every year, while the present economic structure can only afford 12 million jobs, which demonstrates an imbalance between supply and demand for jobs. ***The Committee wishes to continue to receive information on how the goal of full employment guides macroeconomic policies. In this respect, the Committee would like to examine information on the manner in which other macroeconomic policies, such as monetary and fiscal policies, advance the promotion of full, productive and freely chosen employment. The Committee also requests information on how the measures taken to promote full and productive employment operate within a "framework of a coordinated economic and social policy".***

2. The Government's report provides information on the adoption of the Labour Contract Law which standardizes practices in full-time employment and includes special provisions concerning contingent work and part-time work. The Government indicates that the law provides protection for workers' rights and interests in different types of employment. The Government also provides details on the adoption, in August 2007, of the Employment Promotion Law which includes provisions addressing, amongst other things, the promotion of employment, protection of fair employment, government support to employment promotion, employment assistance to special groups, public employment services, strengthening of vocational education and training, with a view to promoting coordinated economic and social development, expanding employment opportunities, promoting employment and realizing social harmony and stability. ***The Committee asks for information regarding the manner in which the texts enacted are contributing to the generation of productive employment and the improvement of employment security for workers.***

3. *Promotion of employment and vulnerable groups.* The Government indicates that, by the end of 2006, the population in poverty in the rural areas was 21.48 million, representing a decrease of 2.17 million over the previous year and that the population in rural areas with a low level of income was 35.5 million, representing a drop of 5.17 million over the previous year. The Government has made efforts to promote employment of the rural labour force in their own localities, through readjusting the economic structure in agricultural and rural areas, developing non-agricultural production, boosting township industries and constructing small cities. It has adopted policies for equal employment,

improved conditions for urban employment, and organized and guided an orderly mobility of the rural labour force, across the regions, through labour service coordination. ***The Committee invites the Government to continue to inform on the efforts made to further reduce the gaps between the employment situation of urban and rural workers. It also invites the Government to include information in its next report regarding the measures taken to ensure economic recovery with employment creation in those areas affected by the earthquake in Sichuan Province (May 2008).***

4. According to the statistics provided by the Government in its report, of the 82.96 million persons with disabilities, 22.66 million have been in employment. The Committee notes that the Regulations concerning the Employment of People with Disabilities establish that authorities at and above the county level should include, in their plan for economic and social development, the issue of employment for persons with disabilities and formulate preferential policies and adopt practical measures to create conditions for employment of persons with disabilities. ***The Committee wishes to continue to receive information on the measures adopted to open up channels for employment for persons with disabilities and, in particular, to support persons with disabilities in rural areas.***

5. *Consistency and transparency of labour market information.* The Committee notes that the Government indicates progress in improving the labour market information system, specifically by: (a) collecting, processing and analysing information concerning supply and demand in labour markets in over 100 cities and publicizing the results; (b) organizing and conducting investigations of personnel costs in enterprises and the salary scale for different professions in the whole country; and (c) continuing the survey of the labour force. ***The Committee wishes to receive information on the improvements made to the labour force survey and progress in the enhancement of the labour market information system, with an indication of the manner in which the data has been used to formulate and review employment policies.***

6. *Unifying the labour market.* The Committee notes that, according to data available to the ILO, internal migrant workers account for 16 per cent of national GDP growth over the last 20 years and represent 40 per cent of the urban workforce. Yet today, 90 million internal migrant workers cannot obtain an urban residence and work permit (*hukou*), giving them access to better jobs, health care and education. The Committee also notes that in the past few years, the Government has taken important steps, such as ensuring a guaranteed minimum wage and the enforcement of a labour contract system, as well as improving access to employment services and job training. The Committee also notes that in some localities the disparity between urban and rural residents has been removed. In its report, the Government indicates that it is adopting various measures to further improve the present permit system. Efforts have been made to fully guarantee the legitimate rights and interests of internal migrant workers in employment, housing, medical care and education so as to form a nationally unified labour market. ***The Committee wishes to continue to receive information on the measures adopted to improve the residence and work permit system in order to ensure labour market integration and a unified labour market.***

7. The Committee notes that the Government is implementing the public budget and a sunshine budgetary policy to increase budgetary allocations for social insurance. The competent authorities in the various localities have also readjusted their expenditure structure to support social insurance. The Committee further notes the information regarding the intensified guidance provided to social insurance agencies at various levels, and the promotion of social insurance coverage through publicity and law enforcement inspections in the workplace. The Government reports that, by the end of May 2007, a total of 191.93 million persons participated in the old-age insurance; 163.45 million in medical insurance; 107.46 million in work injury insurance; and 67.72 million in child birth insurance, representing an increase over the situation at the end of 2006 of 2.27 million persons, 6.13 million, 4.78 million and 2.14 million people, respectively. A total of 25.15 million and 29.16 million migrant workers have participated, respectively, in the medical insurance and work injury insurance, with a respective increase of 1.49 million and 3.79 million over that at the end of 2006. ***The Committee asks the Government to include information in its next report on the measures it is taking to encourage employers and employees to contribute to social insurance schemes, considering the proportion of self-employed and informal employees in the urban areas. It also requests information on how the social security system considers the challenges of flexible employment such as low wages and unstable income.***

8. *Reinforcing public employment services.* The Committee notes that by the end of 2006, a total of 37,450 employment service agencies were established. In 2006, these employment agencies recruited 49.51 million people for various enterprises and provided job recommendations and employment guidance to 47.36 million people who were registered for jobs, of whom 24.93 million were successfully recommended to jobs. ***The Committee reiterates its request to receive information describing the measures taken to ensure cooperation between the public employment service system and private employment agencies. It also wishes to receive information regarding the current employment registration system in rural areas and proactive measures oriented to help the rural unemployed.***

9. *Measures to promote the re-employment of laid-off workers.* The Government reports on the difficulties in solving problems left by the economic restructuring. Between 2003 and 2006, a total of 20 million workers that were laid off from state-owned enterprises and collectively owned enterprises were re-employed. Technical training programmes which facilitate the self-employment of such laid-off workers have been defined and developed in line with the specific conditions in the localities. ***The Committee asks the Government to continue to supply information on the measures taken to improve the technical skills of laid-off workers in order to enhance their employability. It also requests information on the measures it envisages to improve the stability of workers and to reduce employment insecurity in the labour market.***

10. *Promoting small and medium-sized enterprises.* The Committee notes that over the last years most job creation has come from the non-state sector, especially small business, self-employment and the informal sector. In 2005, the Government issued “Views on Encouraging, Supporting, and Guiding Development of Small Business and the Non-State Economy”. The Government reports that, through the implementation of these guidelines, all regions and government departments will promote private and self-employment and the development of the non-state economy, thus stimulating job creation to the fullest and, in particular, generating opportunities for low-income groups. ***The Committee wishes to receive information on the impact of the measures adopted to minimize the obstacles encountered by small and medium-sized enterprises, for example in obtaining credit to start up businesses. Please also continue to provide information on the manner in which employment creation is promoted through small and medium-sized enterprises.***

11. *Vocational training and education.* The Committee notes that the information provided by the Government indicates that it has developed various types of vocational training initiatives and intensified efforts to foster highly skilled people in employment, and in close relation to the needs of the market and of enterprises. By the end of 2006, there were a total of 2,880 technical schools, 3,212 employment training centres and 21,462 private training institutions, which provided training to 22.43 million people. ***The Committee asks the Government to supply information on the measures taken to ensure that vocational training and educational policies are oriented to cover the demands of the labour market. Please also provide information on the measures taken to increase the viability of rural workers in the labour market through formal and on-the-job training.***

12. *Article 3. Consultation of representatives of the persons affected.* The Committee notes from the Government’s report that the ACFTU and the CEC have actively participated in the formulation of laws and regulations relating to the Labour Contract Law and the Law on Employment Promotion. The Government reports that trade unions at various levels have set up vocational training and job agencies, and popularized the re-employment model of microcredit loans, entrepreneurship training and the re-employment nurturing base. The Committee also notes the CEC’s statement indicating that, in promoting corporate social responsibilities among the enterprises, enterprises have been called upon to create more employment opportunities, especially jobs suitable for young people. ***The Committee wishes to continue to receive information regarding consultations to secure the full cooperation of representatives of the social partners in the formulation and implementation of employment policies. Please also indicate the measures taken or envisaged to ensure that representatives of the rural sector and the informal economy are also included in the consultations required by the Convention.***

13. *Part V of the report form. ILO technical cooperation.* The Committee notes that the ILO, in collaboration with national partners, is implementing a project and conducting activities aimed at enhancing the capacities of government, employers’ and workers’ organizations, associations of persons with disabilities and NGOs, to enable them to promote legislation relating to the employment of persons with disabilities, as well as to improving the working environment so as to increase employment opportunities for persons with disabilities in China. The Committee also notes that the Start and Improve Your Business (SIYB) China Programme, Phase III, was implemented jointly by the Ministry of Labour and Social Security and the ILO, with financial inputs from the Department for International Development (DFID, United Kingdom), to facilitate the socio-economic integration of particularly vulnerable categories of persons among the local migrant community by enabling them to start up and run their own small social businesses, covering western cities and provinces in China. ***The Committee requests the Government to provide information on the results that have been achieved, in terms of job creation and the integration of jobseekers in the labour market, as a consequence of the advice and technical assistance from the ILO and other international donors.***

Comoros

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

Articles 1 and 2 of the Convention. Implementation of an active employment policy. The Committee notes the information provided by the Government in its brief report of September 2008. The Government indicates that a framework document on the national employment policy has been adopted following a national workshop organized in November 2007 and that a Bill formulated on this basis has been submitted to the Assembly of the Union for examination and adoption. The Government adds that a survey of young graduate jobseekers, undertaken in the island of Grande Comore by the General Directorate of Employment, will be extended to the islands of Mohéli and Anjouan so as to obtain full data on the employment market. The Committee notes that the central objective of the ILO Decent Work Country Programme (DWCP) in the Comoros is employment promotion and that the expected outcomes include the formulation of an employment promotion strategy and the adoption of laws and regulations with a view to: the implementation of the strategy; the development of the Act respecting cooperatives; the formulation of a strategy for women’s entrepreneurship and youth employment; the introduction of transparent and confidence-building procedures to spur investment and job creation; and, finally, the implementation of an information and monitoring system on labour market trends. ***The Committee hopes that the Government will be in a position to indicate in its next report whether specific difficulties have been encountered in achieving the objectives established by the framework paper on national employment policy and the extent to which these difficulties have been overcome. The Government is also invited to provide indications on***

the progress achieved in the collection of labour market data and on the manner in which such data are taken into consideration in the formulation and implementation of the employment policy.

Article 3. Participation of the social partners in the formulation and application of policies. The Government refers to the importance of the involvement of the social partners both in the formulation and implementation of employment policies and in the preparation of the DWCP, which is due to be launched in the Comoros. ***In this respect, the Committee requests the Government to provide detailed information in its next report on the measures adopted with a view to achieving the priorities of the DWCP, with an indication of the mechanisms and regularity of the consultations held with the representatives of the persons concerned, in particular the representatives of employers and workers, on the subjects covered by the Convention. Please also indicate the initiatives that have received ILO support for the promotion of the objectives of the creation of productive employment, as set out in the Convention (Part V of the report form).***

Costa Rica

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

1. *Adoption and application of an active employment policy in the framework of a coordinated economic and social policy.* The Committee notes the detailed answers to its observation of 2006, which were forwarded in a complete report prepared by the National Employment Administration and the General Administration for Work Planning in September 2007. The key element of the employment policy involves the creation of quality jobs. In order to increase people's employability, the Government proposes to attract quality foreign investment, support small and medium-sized enterprises, train a competitive labour force and formalize the informal sector (that is, allow enterprises that finance labour costs and generate quality jobs). In 2006, the National Employment Programme had a budget of 150 million colones, which were allocated to the areas with the highest levels of unemployment and poverty (Chorotega, Central Pacific, Brunca and Huetar). Most of the projects were aimed at improving infrastructure, such as local roads, building of bridges, aqueducts and schools. ***The Committee requests the Government to continue to provide information in its next report on the manner in which it has taken into account the objectives of full employment in formulating the economic and social policies and to indicate the results achieved in creating productive employment in the framework of the National Employment Programme.***

2. *Employment promotion and vulnerable groups.* The information provided by the Government indicates an increase in the economically active population in 2006 of approximately 1.83 million workers, including 10,138 unemployed persons. The official unemployment rate in 2006 reached 6 per cent of the population. The participation of women increased but their participation rate is around 30.1 per cent, while that of men is around 71.8 per cent. Most of the paid work performed by women is concentrated in the domestic sector or as self-employed persons. Furthermore, young persons have higher unemployment rates than the rest of the population, with an unemployment rate of 13.8 per cent for young persons under 25 years of age. ***The Committee requests the Government to describe in its next report the measures adopted to create sustainable employment for women and young persons. The Committee asks that it also include detailed information on the situation, levels and trends of employment, unemployment and underemployment, indicating the manner in which the most vulnerable sectors (women, young workers, older workers, rural workers and workers in the informal economy) have overcome the difficulties encountered in the labour market.***

3. *Small enterprises and the informal sector.* In its report, the Government indicated that, according to data from 2002, some 275,000 non-agricultural micro-businesses and 66,000 micro-enterprises existed, while pointing out the need to update the data, particularly with respect to activities in the informal sector whose growth increased significantly in the tourism and construction sectors. ***The Committee asks the Government to indicate in its next report whether the tasks of updating the information on small and micro-enterprises have been carried out so that new measures can be adopted with a view to increasing employment opportunities, improving working conditions in the informal sector and facilitating the gradual integration of this sector in the national economy.***

4. *Export processing zones.* In response to previous comments, the Government indicates that the creation of jobs through direct foreign investment had been continuous. Most of such investments were concentrated in the export processing zones. These zones had generated approximately 36,000 jobs, twice as many as existed a decade ago. At the end of July 2006, the Coalition for Development Initiatives (CINDE) had stated that in the last four years, enterprises in the export processing zones had created some 9,000 new jobs. ***The Committee requests the Government to continue to provide information on the contribution of export processing zones to the creation of lasting and quality employment.***

5. *Coordination of education and training policies with employment opportunities.* The Committee notes with interest the information provided on the initiation of an electronic work platform, coordinated jointly by the Ministry of Labour, the National Training Institute and a network of technical colleges and municipal employment offices. The Government also mentioned the National System for Professional Training. ***The Committee reiterates the importance of continuing to provide information on the coordination of education and vocational training policies with employment policies. The Committee particularly requests information on the concrete results achieved by the provision of guidance and training services for young persons, migrants and persons with disabilities.***

6. *Article 3. Participation of the social partners.* The Committee notes that the Higher Labour Council had been elected as a forum for discussion and improvement of the National Employment Plan. The Union of Private Sector Enterprises had forwarded its comments in March 2007, and the opinion of the trade union sector was awaited. The Government indicates that in order to carry out such activities it hoped to continue to have the participation and collaboration of the ILO. ***The Committee requests that the next report include more detailed information on the tripartite consensus reached in the framework of the Higher Labour Council with regard to employment policy. Please also indicate the initiatives supported by the ILO to promote the Convention's objectives for the generation of productive employment (Part V of the report form).***

Czech Republic

Employment Policy Convention, 1964 (No. 122) (ratification: 1993)

1. *Articles 1 and 2 of the Convention. Employment trends and active labour market policies.* The Committee notes the Government's detailed report received in August 2007 including the comments and a statement from the Czech–Moravian Confederation of Trade Unions. The Government indicates that unemployment fell to 8.1 per cent in 2006, down from 9 per cent in 2005 and, as at 31 May 2007, the registered unemployment rate decreased to 6.4 per cent. It further indicates that in 2006 the employment rate increased by 1.3 per cent over the previous year and that employment was at its highest level since 1999. The highest unemployment rate was registered in the northern regions of Bohemia and Moravia. Approximately 41 per cent of unemployed persons are long-term unemployed (for longer than 12 months). In terms of age structure, the highest specific unemployment rate is among those up to 25 years of age (15.9 per cent as at 31 December 2006), which is two times more than the overall unemployment rate. The Government confirms that it must keep fighting the structural causes of unemployment so that, by 2010, it meets the EU goal of a 60 per cent employment rate. ***The Committee asks the Government to provide information in its next report on various policies and programmes promoting regional development and how these policies and programmes will translate into productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers such as young people, older workers and persons with disabilities.***

2. The Committee notes that the National Reform Programme 2005–08 was approved by the Government under Resolution No. 1200 of 14 September 2005. Special attention is paid to groups at risk of social exclusion such as poorly skilled workers, the long-term unemployed, persons with disabilities and older workers. In its 2006 observation, the Committee asked the Government to continue to report on how employment policy measures are kept under regular review within the framework of a coordinated economic and social policy. The Government indicates in its report that the basic task of achieving the goals of the employment rate and thus reducing unemployment primarily requires the implementation of systemic changes. It also indicates that this goal cannot be achieved merely by means of the active employment policy but that it is also necessary to respect the broader dimensions influencing employment, such as the economic policy, tax and budget policy, education policy, social policy and regional policy. The Committee further notes that the Czech–Moravian Confederation of Trade Unions has stated its opposition to the draft bill for the proposed public finance reform. The Czech–Moravian Confederation of Trade Unions indicates that the reform proposals are primarily aimed at the sharp lowering of taxes for those inhabitants and companies with the highest incomes and the greatest holdings, a fundamental change of the distribution and redistribution systems in society, and therefore a pronounced reduction of social solidarity. The opinion of the Czech–Moravian Confederation of Trade Unions is that the reform will not lead to the proclaimed social guarantees, but will bring about a sharp decline in income and social expenditures, with implications for a majority of the people, namely employees. ***The Committee requests information on the manner in which the social partners' views are taken into account when formulating, and enlisting support for attaining, the employment objectives of the National Reform Programme and the public finance reform.***

3. *Education and training policies.* The Government indicates that education reform included in the National Reform Programme focuses on enhancing the quality of the workforce, expanding the possibilities of education and training, and supporting citizens' ability to cope with the demanding conditions of the evolving labour market. It includes an amendment to the education law (Schools Act), the adoption of a law on the recognition of the results of further education and the creation of a functioning system of lifelong learning. The Government also describes in its report the training and retraining of employees under specific investment incentives. For example, in 2006 the Ministry of Labour and Social Affairs awarded grants to 29 investors for the training or retraining of 3,320 employees in new positions intended for highly skilled workers. ***The Committee asks the Government to provide updated information on the impact of such measures in overcoming the difficulties in finding lasting employment for young workers and other categories of vulnerable workers entering the labour market.***

4. *Business development.* The Government indicates that the support of businesses and the business environment, especially to small and medium-sized enterprises (SMEs), is based on a system of direct and indirect financial assistance. One of the main measures focusing on the direct support of SMEs via resources from EU funds is the Enterprise and Innovation Operational Programme (EIOP) approved under Government Resolution No. 1302 of 13 November 2006 and complemented by national SME support programmes in accordance with Government Resolution No. 1425 of 12 December 2006. ***The Committee asks the Government to include information in its next report on the effects of these***

measures on employment creation. It also asks for information concerning the methods used by the Government to improve the success rate of young entrepreneurs and to involve the social partners in informing SME owners and entrepreneurs of key labour market concerns and opportunities.

5. *Article 3. Participation of the social partners in the formulation and application of policies.* The Government provides an overview of the plenary sessions of the Economic and Social Council with regard to consultations with the social partners in 2006. Furthermore, the social partners participated in a second joint work programme of European social partners, 2006–08 that is based on joint analysis on the key challenges facing Europe's labour markets. On that basis, the social partners wish to contribute to support economic growth, job creation and modernization of the EU social model. Among the expected outcomes of such cooperation is an agreement on joint recommendations and priorities in employment at the European and national levels, and an autonomous framework agreement on either the integration of disadvantaged groups in the labour market or lifelong learning at the European level. ***The Committee refers to point 2 of this observation and asks the Government to also include indications in its next report on the manner in which the consultations held by the Economic and Social Council have contributed to the implementation of an active employment policy.***

Djibouti

Employment Service Convention, 1948 (No. 88) (ratification: 1978)

Articles 1 and 3 of the Convention and Part IV of the report form. Contribution of the employment service to promoting employment. The Committee notes the Government's report received in May 2008 in reply to the observation of 2007. The Government indicates that under Act No. 203/AN/07/5thL of 22 December 2007, establishing the National Employment, Training and Vocational Integration Agency (ANEFIP), the National Employment Service (SNE) has been converted into a directorate for the promotion of employment and integration within this new agency. The Committee notes, in particular, that one of the main objectives of the ANEFIP is to provide a better employment service. The Government indicates that despite the existence of private employment agencies, a significant number of applications for employment, originating in particular from young graduates, are received by the ANEFIP. According to the statistics provided by the Government, the SNE received 3,173 requests for placement and only 79 offers of employment in 2007. In total, 897 people found employment with the help of the SNE in 2007. In order to meet the expectations of the persons concerned, the Government acknowledges that a real "employment space" equipped with qualified staff and appropriate material resources should be put in place. The Government also indicates that the ANEFIP must meet the needs of particular categories of jobseekers, such as persons with disabilities and young people who are no longer in the school system. Furthermore, a technical assistance project designed to enhance the quality of the public employment service will be submitted by the Government to the ILO soon. ***The Committee requests the Government to provide information in its next report on the measures taken by the ANEFIP to achieve the best possible organization of the employment market, in particular by adapting the network of its services according to the needs of the economy and the active population. The Committee once again requests the Government to provide information on the progress made with regard to the vocational integration of persons with disabilities and young people. Please also indicate the number of public employment offices established and their results in terms of placement.***

Articles 4 and 5. Participation of the social partners. The Committee notes with interest the adoption of Decree No. 2008-0023/PR/MESN of 20 January 2008 establishing the composition, organization and operation of the National Labour, Employment and Vocational Training Council. The Council is a new tripartite body which has, as its permanent task, to study problems linked to work, workforce movements, guidance, employment and vocational training, placement, migration, social security, health and safety in enterprises (section 3 of the abovementioned Decree). ***The Committee invites the Government to continue reporting on the progress made by the National Labour, Employment and Vocational Training Council to carry out the objectives for which the Council has been established and its impact, if any, on the organization and operation of the public employment service, as well as on the development of employment service policy.***

Article 9. Training of the staff of the employment service. The Government indicates that, within the SNE, a number of staff have benefited from training provided in the context of the EEC/World Bank project. ***The Committee hopes that the Government will be able to indicate in its next report the measures taken or envisaged to ensure appropriate training for staff of the new Directorate for the Promotion of Employment and Integration within the ANEFIP.***

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1978)

The Committee notes that the Government has not sent any report in reply to the observation of 2007. However, noting the information supplied by the Government in the reports received in May 2008 on the application of Conventions Nos 88, 122 and 144, and with reference to its previous comments on Conventions No. 96, the Committee invites the Government to supply a report containing information on the following questions.

Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit. Previous observations reveal that the proliferation of private employment agencies following the liberalization of

employment under Decree No. 11/PRE/97 has resulted in a reduction of the activities of the public employment service. According to previous observations from the General Union of Djibouti Workers (UGTD) and the Labour Union of Djibouti (UGT), fee-charging employment agencies have been legalized in Djibouti and are acting as filters for recruitment. Furthermore, the unions alleged that these agencies charge jobseekers and even deduct sums illegally from workers' wages. The Committee notes that section 7 of Decree No. 2004-0054/PR/MESN of 1 April 2004 concerning private employment agencies expressly prohibits the latter from imposing charges or fees on workers. Moreover, section 14 of the same Decree provides that private employment agencies are required to send the labour inspector and the National Employment Service (SNE) a monthly summary of contracts concluded. The Committee notes that, under section 31 of Act 203/AN/07/5th L of 22 December 2007 establishing the National Agency for Employment, Training and Vocational Placement (ANEFIP), one of the tasks of the latter is to monitor the application of the provisions of Decree No. 2004-0054/PR/MESN concerning private employment agencies. ***The Committee requests the Government to state the specific measures taken to monitor the activities of agencies covered by the Convention, providing a summary of the reports of the inspection services, information on the number and nature of infringements reported and also any other available information, particularly with regard to the recruitment and placement of workers abroad.***

Revision of Convention No. 96. The Committee recalls that one of the objectives of the Private Employment Agencies Convention, 1997 (No. 181), is to allow the operation of private employment agencies as well as to protect workers using their services. The ILO Governing Body, during its 273rd Session in November 1998, invited the State parties to Convention No. 96 to contemplate the possibility of ratifying, if appropriate, the Private Employment Agencies Convention, 1997 (No. 181). Such ratification would entail the immediate denunciation of Convention No. 96. Consequently, as long as Convention No. 181 has not been ratified by Djibouti, Convention No. 96 remains in force in the country, and the Committee will continue to examine the application of *Part II* of the Convention in national law and practice. ***In this regard, the Committee refers to its comment on Convention No. 144 and requests the Government to indicate whether tripartite consultations have been held within the National Council for Labour, Employment and Vocational Training with a view to the ratification of Convention No. 181.***

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

1. *Article 1 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the Government's report received in May 2008 in reply to the 2007 observation. The Government indicates in particular that, for the first time since the country's independence, structures have been established in Djibouti in 2008 for the organization and development of the employment market. The Committee *notes with interest* the creation, by Act No. 203/AN/07/5thL of 22 December 2007, of the National Employment, Training and Vocational Integration Agency (ANEFIP), which is responsible for implementing national policies and programmes relating to employment, vocational training and vocational integration. The Committee also notes the adoption of Act No. 211/AN/07/5thL of 27 December 2007 creating the Djibouti Social Development Agency (ADDS), which has the task of contributing to the eradication of poverty among vulnerable groups and reducing disparities between regions. With regard to the employment situation, the unemployment rate is estimated at 60 per cent of the active population and young people are particularly affected. Furthermore, 75 per cent of workers are employed in the informal economy. The Government intends, in the context of the implementation of the poverty reduction strategy, to promote labour-intensive activities, vocational training, the development of small and medium-sized enterprises and microfinance. With regard to microfinance, funding given to women's organizations seems to have met with some success. ***The Committee hopes that the Government will provide information in its next report on the results achieved by the ANEFIP and ADDS to implement an employment promotion and poverty reduction strategy, including updated quantitative information on the development of the programmes put in place to promote the objectives of the Convention.***

2. *Article 2. Collection and use of employment data.* The Government indicates that the development of information on employment is one of the tasks of the newly created ANEFIP. To that end, section 32 of Act No. 203/AN/07/5thL provides for the creation of an Employment and Qualifications Observatory. The Observatory will be responsible in particular for establishing an employment database and carrying out specific surveys in this field. ***The Committee trusts that the Government will provide information in its next report on the progress made by the Employment and Qualifications Observatory in collecting data on employment as well as on the employment policy measures adopted following the establishment of the new labour market information systems.***

3. *Article 3. Participation of the social partners.* The Committee notes *with interest* the creation of the National Labour, Employment and Vocational Training Council which, in accordance with section 3 of Decree No. 2008-0023/PR/MESN of 20 January 2008 regulating the organization and operation of the Council, has as its task "to study problems linked to work, workforce movements, guidance, employment and vocational training, placement, migration, social security and health and safety in enterprises". According to the same provision of the abovementioned Decree, the Council is "a tripartite body and a unique framework in which the Government and the social partners will be able, freely and openly, to exchange ideas and experiences in the fields of work, employment, vocational training and social security". Furthermore, the Government indicates that representative organizations of workers and employers were involved in establishing the ANEFIP. ***The Committee requests the Government to provide information in its next report on any consultations held on employment policies in the newly created National Labour, Employment and Vocational Training Council.***

4. *Part V of the report form. ILO technical assistance.* The Committee notes that, under the ILO's Decent Work Country Programme (DWCP) in Djibouti for 2008–12, priority is given to job creation, with particular emphasis on women and young people, and to access to employment through vocational training. ***In this regard, the Committee requests the Government to indicate in its next report the results achieved during the implementation of the DWCP in terms of job creation.***

Dominican Republic

Employment Policy Convention, 1964 (No. 122) (ratification: 2001)

1. In its direct request of 2006, the Committee requested the Government to prepare a report containing detailed replies to all the points that had been raised, and reminded the Government that the drawing up of a report would enable the Government and the social partners to evaluate the way in which the objective of full productive employment established by the Convention could be achieved. The Committee observes that the report received in August 2007 only contains brief replies which do not allow an examination of the way in which this priority Convention is being applied.

2. *Articles 1 and 2 of the Convention. Declaration of an active employment policy.* The Government indicates that plans were laid between October 2004 and September 2007 for a new active employment policy, creating 345,777 new jobs, with 59,141 jobs created between October 2006 and April 2007. In its previous report, the Government mentioned two poverty reduction programmes (“Food First” and “Solidarity”), under the responsibility of the President of the Republic. According to data published by the ILO in *Labour Overview 2007*, the urban unemployment rate was still at 16.2 per cent in 2006, with the unemployed population comprised of 9.2 per cent men and 28.8 per cent women, and also nearly 32 per cent for young persons between 15 and 24 years of age. The Committee emphasizes the central role to be played by employment policy in economic, social and development policies for generating employment and reducing poverty. ***The Committee therefore requests the Government to provide detailed information in its next report on the way in which an active policy designed to promote full, productive and freely chosen employment has been formulated. The Committee would like to analyse the results achieved in terms of the creation of lasting employment and the reduction of underemployment in the framework of a national employment policy. The Committee requests the Government to include up to date statistical data on the size and distribution of the workforce, and the nature and extent of unemployment, as an essential basic stage in the implementation of an active employment policy within the meaning of the Convention.***

3. The Government indicates in its report that the Government Council has implemented an action plan for the active creation of jobs and increased productivity. The aim of the plan is to create 400,000 new jobs. ***The Committee therefore requests the Government once again to include in its next report a summary of the abovementioned action plan and of other programmes containing specific arrangements which are components of an active employment policy, in accordance with Article 1 of the Convention. The Committee requests information which will enable it to ascertain whether particular difficulties have been encountered in attaining the employment objectives established in the Government's plans and programmes and the extent to which such difficulties have been overcome.***

4. *Article 1, paragraph 3, and Article 2. Coordination of employment policy with economic and social policy.* In its report, the Government mentions the courses offered by the National Employment Service in 2007. It also refers to the holding of a workshop on national employment policy for young persons and women. ***The Committee requests the Government to provide further details of the way in which adequate coordination is established between the Secretariat of State for Labour, the Central Bank, the Ministry of Finance and the National Planning Office with a view to formulating and applying an active employment policy. In this regard, the Committee reiterates its interest in being informed of the manner in which employment objectives were taken into account when formulating the Government's other economic and social objectives.***

5. *Article 3. Participation of the social partners in the formulation and application of policies.* In the report received in August 2007, the Government refers to previous information. ***The Committee requests the Government to provide detailed information on the consultations held in the Labour Advisory Council on the formulation and implementation of an active employment policy. Please also provide information on the consultations held with representatives “of the persons affected by the measures to be taken” in other sectors of the active population, such as rural workers and workers in the informal economy.***

6. *Employment promotion for young persons and women.* ***The Committee requests the Government to include in its next report quantitative evaluations of the creation of productive employment as a result of the measures taken by the Government in favour of young persons and women. Please also include statistical data on the situation, level and trends of employment, unemployment and underemployment, indicating the manner in which they affect particular categories of workers in the Dominican Republic who experience difficulties in finding lasting employment, such as women and young persons.***

7. *Migrant workers.* ***The Committee requests the Government to provide information on the measures taken in the context of an active employment policy to prevent abuses in the hiring of foreign workers and of those who leave the country to seek employment opportunities abroad.***

8. *Coordination of education and training policy with employment opportunities. The Committee requests the Government to provide information on the measures taken to coordinate education and vocational training policies with prospective employment opportunities. Please indicate the results achieved in terms of the placement in employment of beneficiaries of the activities of the National Institute of Technical and Vocational Training (INFOTEP).*

9. *Part V of the report form. ILO technical cooperation.* The Government states in its report that the ILO Subregional Office has presented a plan of action. In its previous comments, the Committee referred to the Tripartite Declaration on the promotion of employment and decent work in Central America and the Dominican Republic, concluded by the Ministers of Labour and representatives of employers' and workers' organizations in Tegucigalpa in June 2005. In the Tripartite Declaration, among other significant policies, it was agreed to place the objective of the creation of worthwhile, sustainable and high-quality jobs, in accordance with the parameters of the ILO, at the centre of macroeconomic policy, with efforts being focused not only on controlling inflation and the fiscal deficit but also, and with equal priority, on the promotion of investment and equitable growth. *The Committee requests the Government to supply information in its next report on initiatives that have been taken with ILO support to promote, in the context of the Decent Work Country Programme, the objective of the creation of productive employment as set out in the Convention.*

Ecuador

Employment Policy Convention, 1964 (No. 122) (ratification: 1972)

1. *Articles 1 and 2 of the Convention. Coordination of employment policy with economic and social policy.* In reply to the 2006 observation, the Government indicates, in its report received in October 2007, that the Ministry for the Coordination of Social Development has been established for the planning of joint action by ministries in the social field. The Government comments that Ecuador is a country in which productive assets, such as land and credit, are badly distributed, and that labour is the only real asset that individuals have for their integration into productive life and as a means of overcoming poverty. The Committee notes that the labour indicators from January to August 2007 in Cuenca, Guayaquil and Quito indicate that the unemployment rate was 9.8 per cent (lower than the 10.3 per cent registered during the same period in 2006), principally attributable to the expansion of employment, but also to a slight fall in the participation rate. According to the data published by the ILO in *Labour Overview 2008*, the increase in labour demand, especially in commerce, was due to the expansion of internal demand. There was also a significant reduction in the underemployment rate which on average fell from 48.2 per cent in 2006 to 42.6 per cent in 2007. With a view to addressing an employment situation which gave grounds for concern, the Committee had requested the Government to provide information on the manner in which employment policy objectives were related to other social and economic objectives. In this respect, the Committee notes with interest the 11 areas for action by the Ministry of Labour and Employment which are enumerated in the report:

- re-establishment of social dialogue;
- elimination of disparities in basic minimum remuneration;
- implementation of a modern system of labour records and statistics;
- intensive vocational training;
- abolition of private recruiters, labour subcontracting and other precarious forms of employment;
- integration of persons with disabilities and those affected by HIV/AIDS;
- progressive elimination of child labour;
- creation of employment programmes for young persons;
- coordination of the supply of vocational training with the National Plan for Economic Inclusion;
- implementation of the National Occupational Safety and Health Plan; and
- strict compliance with the standards and labour rights set out in ratified international labour Conventions.

With regard to the above, the Committee hopes that the Government will be in a position in its next report to provide updated information on the situation, level and trends of employment, unemployment and underemployment in the country and the extent to which specific measures enumerated above have been taken and, if so, whether they have been successful in generating lasting employment for the most vulnerable categories of workers (such as women, young persons and rural workers).

2. *Youth unemployment.* The Government indicates that up until 2006 there were no employment policies for young persons designed to achieve their integration into the labour market. In its report, the Government refers to a National Youth Employment Plan for the implementation of productive projects by young persons who have entrepreneurial skills and various internship programmes for students in higher education in the public sector (such as the programme *Mi Primer Empleo*). *The Committee requests the Government to provide detailed information in its next report on the measures adopted to implement the National Youth Employment Plan and the results achieved.*

3. *Unemployment and the informal economy.* The Government indicates that in March 2007, the underemployment rate in urban areas was 45.31 per cent of the economically active population, meaning that around 2 million people are engaged in informal or precarious work in activities that do not bring in a steady income, are not covered by the Ecuadorian Social Security Institute and do not benefit from employment stability or social benefits. According to *Labour Overview*, over 70 per cent of jobs in Ecuador are informal. ***The Committee requests the Government to indicate in its next report the most effective programmes in terms of the generation of productive employment for precarious workers and those in the informal economy.***

4. *Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government refers once again to the consultations held in the National Labour Council, and to the participation of citizens through peoples' assemblies, which express views directly to the National Government on various subjects, including economic and social matters. ***The Committee once again emphasizes the importance of the Government including information in its next report on the manner in which the National Labour Council, and if possible the peoples' assemblies, have participated in the formulation and implementation of an active employment policy, as required by the Convention. With a view to assessing the manner in which effect is given to this important provision of the Convention, the Committee requests sufficiently full and detailed information to assess whether the measures adopted have fully taken into account the experience and views of the representatives of organizations of employers and workers, including the representatives of those who work in the rural sector and the informal economy.***

El Salvador

Employment Policy Convention, 1964 (No. 122) (ratification: 1995)

Articles 1 and 2 of the Convention. Coordination of employment policy and poverty reduction. In response to the observation of 2006, the Government presented a comprehensive report in August 2007. The Government indicates that the annual economic growth rate in 2006 was 4.2 per cent, the highest in the last ten years. In 2006 some 35,000 new jobs were created and 29 new enterprises were established, thereby increasing the number of contributors to the Salvadoran Institute of Social Security and slightly reducing the official unemployment rate (6.5 per cent in 2007 according to data published by ECLAC). From 2005 to 2006 some 600,000 to 625,000 new regular jobs were created in the agricultural sector. The Government emphasizes that the economic indicators are a positive sign that efforts to create lasting and decent employment are succeeding. With regard to the impact of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR), the Government projects major economic growth and employment gains in the entire region, including the creation of between 120,000 and 360,000 new jobs during the first six years of its entry into force. ***The Committee hopes that the next report will include an update on the impact of the trade agreements on the creation of lasting employment. In this respect, the Committee asks the Government to provide information on the manner in which the Government's programmes and plans have included the promotion of employment to ensure that the creation of quality jobs is a central aspect of the macroeconomic and social policies.***

The Committee notes the efforts being made in the framework of the National Network for Employment Opportunities in which placement services and labour-related information were being offered. With the support of the Spanish International Cooperation Agency, an action plan for the network had been formulated to facilitate the establishment of local employment management offices in the metropolitan area of San Salvador, La Paz and Ahuachapán. In 2006 the National Network for Employment Opportunities succeeded in finding jobs for a total of 16,102 persons. Furthermore, the Government included information on the results obtained by means of employment fairs (82,754 jobs had been offered and 40,984 jobseekers had found work opportunities). Measures to promote employment had been implemented in the Gulf of Fonseca region and other areas (Nonualcos, San Andrés Valley) through coordinated action among members of the employment network. ***The Committee asks the Government to continue to provide information on the measures taken and the results achieved to encourage lasting employment in the most vulnerable sectors (women, young workers, older workers, rural workers and workers in the informal economy). Please add a summary of the policy proposal to promote youth employment and the results obtained for the promotion of their employment and vocational training.***

Article 3. Participation of the social partners in the formulation and application of policies. The Government indicated that assistance from the ILO in the framework of the National Programme for Decent Work would be extremely helpful for the strengthening and continuity of its initiatives. ***The Committee once again requests the Government to forward the documents approved on the National Programme for Decent Work in relation to employment policy. The Committee also invites the Government to provide more detailed information on the consultations held with representatives of the most vulnerable categories of the population, in particular representatives of rural workers and workers in the informal economy, when formulating programmes and seeking support to implement employment policy measures.***

Finland

Employment Policy Convention, 1964 (No. 122) (ratification: 1968)

The Committee notes the information contained in the Government's report received in October 2007, the attached documents and the information sent in reply to the observation of 2006. It also notes the comments from the Central Organization of Finnish Trade Unions (SAK).

1. *Articles 1 and 2 of the Convention. Active employment policy measures.* In reply to the observation of 2006, the Government indicates that thanks to the five-year National Programme for Older Workers, the employment rate for this category has increased to reach the level that existed before the economic recession of the 1990s. According to the data published in the *OECD Factbook 2008*, the employment rate for the 55–64 age group was 54.5 per cent in 2006. The proportion of persons who took early retirement also decreased. The Government thinks that the National Programme for Older Workers has proved effective in responding to the problems of availability of the workforce arising from demographic changes. According to a report published by the Finnish Central Pensions Office in April 2008, the average actual age for retirement increased from 59.1 years in 2005 to 59.5 years in 2007. The *Veto* National Programme, which began in 2003 and is intended to motivate older workers to continue working for an additional two or three years, also continued during the period covered by the report. However, during the period examined, the employment situation for young people did not improve; in 2006, the unemployment rate for young people under 25 years of age was more than two times greater than that of the working population as a whole (18.8 and 7.7 per cent, respectively, according to OECD statistics). The Government points out that, in the context of the reform of the mode of operation of employment offices carried out between 2004 and 2006 as part of the reform of public employment services, 44 job centres have been created to assist jobseekers. ***The Committee invites the Government to continue to supply information on the effects of measures intended to improve job opportunities for older workers who wish to remain in the labour market. It requests the Government to include in its report information on the way in which recently adopted measures to combat youth unemployment have increased opportunities for lasting employment for young people entering working life. It also requests the Government to continue to supply information on the effects of the reform of public employment services on the pursuit of the objectives of the Convention.***

2. *Measures in favour of workers affected by change in the enterprise.* The Committee notes the adoption, on 30 March 2007, of the Act on Cooperation with Enterprises with the objective of supporting employment in the event of change in the operations of the enterprise. Apart from timely communication on the current situation and future projects of the enterprise, the Act also provides for measures enabling employees to be consulted on decisions concerning their work and their position in the enterprise. Furthermore, the Act of 1 July 2005 on Change Security also aims to improve the situation of workers facing dismissal or dismissed for economic or production-related reasons. ***The Committee would like to receive information on the experience of the social partners with regard to the impact on job creation of measures taken in favour of workers affected by changes in enterprises.***

3. *Training policies.* The Government indicates that, in 2006, 69,000 persons commenced training in the form either of advanced vocational training or as a diploma course in vocational training. In accordance with the Finnish Government's programme announced on 15 April 2007, resources will be allocated to increase the volume of vocational training dispensed in partnership with private enterprises and also for subsidized employment within them. ***The Committee asks the Government to indicate in its next report the results in terms of employment of the training dispensed jointly with private enterprises.***

4. *Article 3. Participation of the social partners.* The Committee notes the comments formulated by the SAK, which expresses satisfaction at the reforms implemented, and notices that unemployment has decreased, even among older workers and the long-term unemployed. However, the SAK fears that the possibilities for long-term jobseekers to find work might suffer from the fact that the Government is orienting its employment policy towards greater cooperation with private enterprises. Furthermore, the SAK considers that linking employment policy resources to changes in the employment situation will lead to those resources being reduced and to a deterioration in the structure of unemployment. The SAK notes that, during the previous Government, employment measures were drawn up in cooperation between labour market organizations and the Government. Moreover, the SAK indicates that the new Government has declared in its programme that measures such as protection in the case of change, employment insurance and reforms relating to adult education will be drawn up in collaboration with labour market organizations. The Government, for its part, states that labour market organizations have actively participated in the drawing up of the Act on Change Security. ***In this regard, the Committee would be grateful if the Government would continue to supply information on the way in which account is taken of the opinions of employers' and workers' representatives and other stakeholders in the preparation, application and revision of employment policies and programmes.***

France

Employment Service Convention, 1948 (No. 88) (ratification: 1952)

Parts I and II of the report form. Article 4 of the Convention. Reform of the public employment service. Participation of the social partners. The Committee notes the information contained in the Government's report received

in January 2008 for the period ending June 2007. In reply to the observations made in 2006 and 2007, the Government recalls that Act No. 2005-32 of 18 January 2005 on programming for social cohesion redefined the scope of the public employment service, particularly by establishing the principle of closer operational links between the National Employment Agency (ANPE) and the National Occupational Union for Employment in Industry and Commerce (UNEDIC). The State-ANPE-UNEDIC agreement of 5 May 2006 on the coordination of actions of the public employment service described the details of these operational links, placing the emphasis on a “one-stop shop” and an information system. ***The Committee again asks the Government to indicate what arrangements are made for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy, in the context of the reform of the public employment service (Article 4). It also requests the Government to supply a detailed report on the way in which the regulations in force give effect to each of the provisions of the Convention (Parts I and II of the report form).***

Article 1, paragraph 1. Contribution of the free public employment service to employment promotion. In response to the Committee’s previous comments, the Government states that the agreement of 5 May 2006 establishes the conditions under which UNEDIC may have recourse to private operators. In this regard, the Committee notes section 5(c) of this agreement, which states that the conditions under which placement bodies may be remunerated by the unemployment insurance system must be laid down by the agreement and the relevant terms and conditions, but that remuneration of these external bodies must largely depend on results in terms of employment placement and quality and that the services are free of charge for the jobseekers concerned. The Committee refers to its observation of 2008 on the application of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), in which it notes the planned reinforcement of the trial use of private job placement operators. ***The Committee asks the Government to supply information on the results of the new evaluations conducted regarding the use of private placement operators, in order to ensure the essential task of the employment service to achieve the best possible organization of the employment market, in cooperation, where necessary, with other public and private bodies concerned.***

Article 3. Development of employment offices throughout the territory. The Government states that Decree No. 2005-259 of 22 March 2005 established procedures for allocating state aid to “employment centres” and provided for the setting up of a national committee for employment centres, which was established in April 2005. With reference to a survey conducted at the end of 2006 by DARES and DGEFP, the Government states that a gradual increase in employment centre operations could be seen in 2006 and the first half of 2007. ***The Committee requests the Government to describe the impact of the reforms under way on the creation, establishment and functions of employment centres. Please also supply information on all developments that have occurred with regard to the actual establishment of employment offices sufficient in number to meet the requirements of employers and workers in each geographical area.***

[The Government is asked to reply in detail to the present comments in 2009.]

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1953)

Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit. The Government states in its report received in January 2008 that the abolition of fee-charging employment agencies has been “effective and complete” since the entry into force of Act No. 2005-32 of 18 January 2005 on programming for social cohesion, which states that no direct or indirect payment may be demanded from jobseekers in return for providing a job placement service. The Committee refers to its previous observations, in which it noted that “the reform of the public employment service, introduced by the Act of 18 January 2005, forms the basis of the new dynamic sought by the Government, so as to achieve conformity with the provisions of the Private Employment Agencies Convention, 1997 (No. 181), and accelerate the reintegration of the unemployed into working life by allowing private operators to enter the employment market”. The Committee had also drawn attention to the fact that, unlike Convention No. 96, the Private Employment Agencies Convention, 1997 (No. 181), acknowledges the role played by private employment agencies in the operation of the labour market, and that the provisions of Convention No. 96 would remain in force until its denunciation by the ratification of Convention No. 181. The Committee however notes that private placement activity is regulated by Decree No. 2007-851 of 14 May 2007. The Government’s report has also referred to sections R.312-1 to R.312-8 of the Labour Code which establishes rules relating to private placement activity including, in particular, the requirement for private placement agencies to notify statistics to the public employment service, and procedures for supervision of employment placement activities of the private agencies which may lead to their temporary closure and the withdrawal of registration of their placement activity. ***The Committee again draws the attention of the Government to the fact that, like other member States which have ratified Convention No. 96, France has accepted Part II of the Convention, which obliges it to abolish fee-charging employment agencies conducted with a view to profit in conformity with Article 3, paragraph 1, and that the aforementioned provisions concerning private employment placement activities do not give effect to the obligations contained in the parts of Convention No. 96 accepted by France.***

Revision of Convention No. 96. The Government has also stated that in February 2005, the unemployment insurance administrators decided to extend the monitoring, on a trial basis, to those persons who chose to remain voluntarily

unemployed and that they fixed a target of providing increased support for 92,000 persons over two years. This experimental project is geared to reach a larger number of persons who have remained unemployed for a long period of time and, at present, relates to 25 zones. The second phase of this experiment has produced a tenfold increase in the number of placement staff and in the related cost of the operations. The Committee reiterates that Convention No. 181, unlike Convention No. 96, is based on a recognition of the role played by private employment agencies in the functioning of the labour market. Ratification of Convention No. 181 would involve a denunciation of Convention No. 96 ipso jure. The Committee notes that in its report on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), received in October 2007, the Government has indicated that it is in the process of reviewing Convention No. 181 along with other unratified Conventions, with a view to its ratification. ***The Committee reminds the Government that the provisions of Convention No. 96 will remain in force until such time as Convention No. 181 is actually ratified. It requests the Government to supply information on developments which have occurred, in consultation with the social partners, in order to ratify Convention No. 181.***

[The Government is asked to reply in detail to the present comments in 2009.]

Employment Policy Convention, 1964 (No. 122) (ratification: 1971)

1. The Committee notes the Government's report for the period November 2004 to January 2007, which was received in August 2008. It also notes the attached observations provided by the General Confederation of Labour-Force Ouvrière (CGT-FO), which considers that placing greater responsibility on the unemployed through the introduction of a system of graduated sanctions places the responsibility on employees for their unemployment despite the fact that most are dismissed as a consequence of the economic situation of the enterprise. The CGT-FO also points out that the references made in the report to the "contract for new employment" (CNE) disregard the developments which led to the repeal of the CNE and the fact that the CNE would never have worked from the viewpoint of job creation. The Committee refers to its observation on the Termination of Employment Convention, 1982 (No. 158), and the other matters raised in the present observation. ***It hopes that the Government will provide data in its next report providing a basis for an evaluation of the employment situation and its development over the period under consideration and the measurement of the impact on employment of the policies pursued and the principal active measures adopted.***

2. *Article 1, paragraphs 1 and 2, of the Convention. Labour market trends and active employment policy.* The Committee notes that, during the period under consideration, positive results were achieved in relation to the employment rate, which experienced a regular rise between mid-2006 and the end of 2007 (increasing from 63.6 per cent in 2005 to 64.3 per cent in 2007, according to the information published in June 2008 by the Directorate of Dissemination and Research, Studies and Statistics (DARES)). The unemployment rate has fallen slightly to around 8.5 per cent in 2006 and 8 per cent in 2007. The Government recalls in its report that the French employment strategy is defined in the context of the European Employment Strategy and particularly in the national reform programme 2005-08 "For social growth". In this context, the Government is pursuing a strategy whereby employment development will remain the principal objective of Government action, with employment being placed at the centre of the fiscal and social reforms that have been carried out in recent years. The Committee notes the adoption of Act No. 2007-1223 of 21 August 2007 to promote work, employment and purchasing power (TEPA), which envisages several specific mechanisms intended to act on both the supply and demand for labour: a lowering of social contributions for enterprises which increase the hours of work of their employees, a reduction in social contributions and, for workers, exemption from income tax in respect of the overtime hours performed. With a view to the implementation of the national interoccupational agreement of 11 January 2008, Act No. 2008-596 of 25 June 2008 to modernize the labour market introduces amendments to the Labour Code designed to allow greater flexibility in the employment relationship while at the same time offering employed persons greater security by providing them with new safeguards. ***In this respect, the Committee invites the Government to include in its next report an evaluation of the impact of the TEPA Act and the amendments to the Labour Code on the employment situation, and to indicate the problems encountered and the lessons to be drawn from the experience of the social partners with regard to their application.***

3. *Article 1, paragraph 2. Youth employment.* In its previous comments, the Committee invited the Government to provide information on the results achieved through the measures taken to promote decent employment for young persons. In its report, the Government indicates that the vocational and social integration of young persons is at the heart of the priorities set out in the emergency employment plan. Youth employment experienced a slight improvement as a result of the emergency employment measures taken in the autumn of 2006, and the youth unemployment rate fell from 21.3 per cent in 2004 to 19.3 per cent in 2007. According to the DARES, one economically active young person out of five was unemployed; young persons are frequently outside the labour market, as many of them pursue studies without working (only one third of young persons are economically active). Among the measures taken to promote youth employment, the Government refers to the reform of the mechanism for "support for the employment of young persons in enterprises", intended to allow a broader application of assisted contracts for lower skilled and unskilled young persons so that such contracts can be of benefit to young persons who are distant from employment and likely to be affected by discrimination, and particularly those living in sensitive urban areas. For young persons who work, the TEPA Act envisages exemption from income tax. ***The Committee hopes that the Government will be in a position to provide an overall evaluation in its next report of the results of the measures adopted to combat youth unemployment, particularly for young persons in***

sensitive urban areas and underprivileged regions, and those without qualifications, with a view to their integration into active life.

4. *Employment of older workers.* In its previous comments, the Committee also invited the Government to provide information on the results achieved by the measures adopted to promote the continued employment and reintegration into the labour market of older workers. The DARES indicates that the employment rate of persons aged 55 to 64 years increased (by 1.4 points) between 2005 and 2007, with this rise being explained by the arrival into this age category of generations of women who have a higher activity rate than their predecessors. In its report, the Government refers to the implementation of the national interoccupational agreement of 13 October 2005 and the concerted national plan of action for the employment of older workers in 2006–10. This plan of action is intended to increase the employment rate of workers between the ages of 55 and 64 years so as to achieve an employment rate of 50 per cent by 2010. This increase in the employment rate should be achieved by the combined effect of the financial incentives established to push back the age of cessation of work and the measures adopted to facilitate the maintenance in and return to employment of older workers, and to improve the organization of the latter years of their career. In its observations, the CGT–FO indicates that the concerted national plan of action has not achieved the expected results and that new measures promoting the active management of older workers in enterprises and branches of activity are envisaged at the end of 2008. ***The Committee hopes that the next report will contain updated information on the results achieved by the measures adopted for older workers.***

5. *Education and training policies.* The Government refers in its report to the continued reform of apprenticeships that has been undertaken since 2002 and the reform of the vocational training system. These reforms have been pursued in collaboration with the regions and employers' and workers' organizations. In its comments, the CGT–FO refers to measures allowing the transfer from one enterprise to another of the hours of individual entitlement to training envisaged in the interoccupational agreement of 11 January 2008. ***The Committee refers to its observation on the application of the Human Resources Development Convention, 1975 (No. 142), and invites the Government to provide information on the measures adopted to coordinate education and training policies with employment.***

6. *Participation of the social partners in the preparation and formulation of policies.* In reply to the previous comments concerning the participation of representatives of the persons affected in the preparation and follow-up of employment policies, the Government describes in its report the mandate and provides details on the dialogue and consultation bodies, with emphasis on the adoption of Act No 2007-130 on the modernization of social dialogue of 31 January 2007. The Committee notes that section 1 of the Act provides that any draft reform envisaged by the Government which relates to individual and collective labour relationships, employment and vocational training and to fields covered by national and interoccupational collective bargaining shall be the subject of prior dialogue with the representative organizations of employed persons and employers at the national and interoccupational levels with a view to the possible opening of such negotiations. ***The Committee invites the Government to provide examples in its next report of the manner in which prior dialogue with the social partners has been held in the field of employment policy. It hopes that the report will also provide a basis for examining the manner in which the views and experience of the representatives of the persons affected have been taken into account in the formulation of employment policy. Finally, the Government is requested to report on the manner in which employers' and workers' organizations collaborated in and assisted in securing support for the measures adopted to promote full and productive employment, as required by Article 3 of the Convention.***

Germany

Employment Policy Convention, 1964 (No. 122) (ratification: 1971)

1. *Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes the detailed information contained in the Government's report for the period ending in May 2007. It further notes the comments transmitted by the Confederation of German Trade Unions (DGB) in December 2007. The Government reports that the continuing economic growth in 2006 and the application of labour market measures resulted in a drop of the average unemployment rate, as compared to 2005, by eight percentage points to 10.8 per cent. Despite a persistently high rate of unemployment in the new Länder, in 2006 the number of unemployed persons fell by 124,038 as compared to 2005. Still, unemployment levels in the new Länder remained at 17.3 per cent, as compared to 9.1 per cent in the old Länder. The labour market measures applied comprised of continuing, yet decreased, funding initiatives related to vocational training, job creation and structural adjustment, along with self-employment and integration incentives. In this regard, the Committee notes that the employment measures that were started as part of the Agenda 2010 through tax measures are continuing to facilitate the creation of new jobs, especially in small businesses and new enterprises. The DGB queries the overall link between policy measures and the downturn in unemployment and states that the reduction of unemployment was nearly entirely caused by the strong economic growth in 2006. ***The Committee asks the Government to provide in its next report information available on the impact of the various labour market reform measures undertaken on the employment situation and, more generally, on the pursuit of the objective of full, productive and freely chosen employment, as set out in the Convention.***

2. *Long-term unemployment.* The Government reports that the number of persons without work for more than 12 months in the period under review rose from 1.5 million to 1.6 million, of which 49.6 per cent were women. In general, 40.1 per cent men and 43.6 per cent women have been unemployed for more than 12 months. One third of the long-term unemployed women were registered in the new Länder. In the new Länder, the absolute figure of women affected by long-term unemployment was 274,000 (45 per cent) as opposed to 253,000 (38 per cent) men. The Government reports that long-term unemployed were a particular target group for employment promotion. Accordingly, legislation was reformed in 2003 with a view to improving the hiring of workers over 50 years of age, through the possibility of limiting the duration of contracts without specific reasons. Furthermore, a new Act to improve employment opportunities of older people, in force since 1 May 2007, brought some provisions concerning the duration of an employment contract into line with European Community law. This led to a rise of part-time employment by 1.4 million (4.7 per cent of overall employment) to 7.9 million in 2005, which constituted a 24.5 per cent rise. The DGB noted that, by focusing on persons easier to reintegrate into the employment market, the benefit of the Government's measures for long-term unemployed persons was only marginal and failed to effectively combat long-term unemployment. In addition, the DGB noted that the reforms had led to considerable negative repercussions for workers, evidenced, inter alia, in the fivefold increase of persons, who, despite being employed, face difficulties in sustaining their standard of living. ***The Committee asks the Government to provide information in its next report on the results achieved through measures taken to combat long-term unemployment, particularly for those who have only benefited from part-time jobs.***

3. *Youth unemployment.* The Committee notes that the average unemployment rate for persons below 25 years stood at 7.9 per cent in May 2007, reflecting a decline of 25.9 percentage points as compared to the previous year. The unemployment rates of persons below 25 years still differs between new and old Länder, amounting to 6.4 per cent for the old Länder and 13.6 per cent for the new Länder. The Government has focused on specific employment promotion measures, for which €4 billion have been allocated. Almost 40 per cent of the recipients of these measures are located in the new Länder. Under the National Agreement on Training and Young Skilled Workers, adopted in 2004, the number of new training contracts increased from 550,200 in 2005 to 576,200 in 2006. The Government reports that the integration of young people into the labour market would continue to be a central area of its concern. It had therefore developed draft legislation under which provisions for qualifications and integration allowances were developed. While welcoming the Government's efforts in combating long-term youth unemployment, the DGB remains concerned about the increase in precarious employment in this age group, which regularly led to unemployment in later working life. ***The Committee asks the Government to continue providing detailed information in its next report on the efforts made to improve the employment situation of young persons, and the results achieved in terms of job creation as a result of the programmes adopted, particularly in the new Länder.***

4. *Women.* The Committee notes the Eurostat figures reported by the Government, showing that, in line with the overall development, the general unemployment rate among women declined from 13.4 per cent in 2005 to 12 per cent in 2006 and was on a par with the figure for men. Despite these achievements, the DGB noted that women were largely in precarious and insecure employment relationships and that the high employment participation rate was only achieved through the large number of "mini-jobs" which are exempt from social security contributions. ***The Committee asks the Government to continue providing detailed information in its next report on the efforts made to improve the employment situation of women, and the results achieved in terms of job creation as a result of the programmes adopted, particularly in the new Länder.***

5. *Article 3. Participation of the social partners in the preparation and formulation of policies.* The DGB notes that, in general, trade unions are consulted formally and informally concerning legislative processes on employment policy. It maintains that the reorganization of the welfare system for the long-term unemployed has impaired the right of employment agencies to self-regulation, thus depriving the social partners of any possibility to be consulted, let alone participate in the discussions. ***Bearing in mind the numerous initiatives taken to promote employment, the Committee asks the Government to provide in its next report information on the manner in which the representatives of the social partners were consulted when policies were prepared and formulated "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies".***

Ghana

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1973)

Part II of the Convention. Progressive abolition of fee charging employment agencies conducted with a view to profit. In its 2007 observation, the Committee drew the Government's attention to the fact that the provisions regarding private employment agencies contained in the Labour Act, 2003, and in the Labour Regulations, 2007, did not give effect to the obligations set out in the Parts of Convention No. 96 that have been accepted by Ghana. The Committee also invited the Government to report in 2008 on the measures taken, in consultation with the social partners, in relation to the ratification of the Private Employment Agencies Convention, 1997 (No. 181). In the reply received in September 2008, the Government stated that it is in the process of ratifying Convention No. 181, which would involve the immediate denunciation of Convention No. 96, in view of the recognition of the role played by private employment agencies in the

operation of the labour market. *The Committee welcomes this approach and hopes that the Government will be in a position to communicate the corresponding instrument of ratification to the Office in the very near future. The Committee recalls that the provisions of Convention No. 96 remain in force until the ratification of Convention No. 181 becomes effective.*

Guatemala

Employment Policy Convention, 1964 (No. 122) (ratification: 1988)

1. *Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the detailed information sent by the Government in August 2007 and the attached explanations provided in relation to the observation of 2006. The Government states that the employment component corresponds to one of the fundamental objectives of the “Economic and social revival programme”. In the context of the programme, job creation is boosted through the promotion of key sectors such as tourism, agriculture, forestry and manufacturing. Efforts are also being made to create a better climate for investment. The overall management of public sector actions to reduce poverty and achieve the Millennium Development Goals forms part of the “Guate Solidaria Rural” (Guatemalan rural solidarity) programme, according to the Planning and Programming Secretariat of the Presidency. The Government also mentions the support received from the United States Agency for International Development (USAID) for formulating public policies in favour of workers in the informal economy and migrant workers in Guatemala. In the preliminary proposal (May 2007) of the Decent Work Country Programme (DWCP), provision is made for the tripartite adoption and execution of a “National Plan for decent work and employment”. *The Committee requests the Government to provide information in its next report on progress achieved by the implementation of the National Plan for decent work and employment in order to ensure that employment plays a central role in macroeconomic and social policies.*

2. *Article 2. Collection and use of information on employment.* The Committee notes the detailed information collected by the Department of Employment and the National Institute of Statistics. The available data indicate that the employment situation remained stable since 2004. *The Committee requests the Government, taking account of the results of its most recent surveys on employment and unemployment, to include information in its next report on the situation, level and trends of the labour market. The Committee hopes that the data collected will enable new measures to be determined which foster employment of those in the most vulnerable sectors (women, young persons, older workers, rural workers and workers in the informal economy).*

3. *Coordination of education and training policy with employment opportunities.* The Committee notes with interest the information sent by the Technical Institute for Training and Productivity (INTECAP), whose strategic plan for 2006–10 considers aspects such as skill certification, strengthening of initial vocational training, support for administrative and quality processes in organizations, catering for vulnerable groups and strengthening human resources and institutional infrastructure. The Ministry of Education has provided a detailed report on the measures taken to improve the national curriculum, educational coverage, support for competitiveness, and other measures designed to improve schools and training for teachers. *The Committee requests the Government to continue to supply information on the impact on the beneficiaries of plans and programmes of the Ministry of Education and INTECAP so that persons who have acquired the necessary training are able to gain access to decent jobs.*

4. *Export processing zones and impact of trade agreements.* In reply to the observation of 2006, the Government has supplied detailed information through the Industrial Policy Directorate of the Ministry of Economic Affairs on employment generated in the export processing zones. Some 200 clothing factories occupy 90,335 workers. The Government also indicates that, in order to estimate the impact of employment generated by the United States and Central America Free Trade Agreement (CAFTA), the elasticity between growth in GDP and formal employment is being measured. The growth–employment elasticity of the agricultural and industrial sectors provides the estimate that a 1 per cent increase in GDP in those sectors would entail a 0.86 per cent reduction in employment in the agricultural sector and an increase of 2.19 per cent in the industrial sector. Some 700 formal jobs have been lost in the agricultural sector and around 4,400 additional jobs have been generated in the industrial sector in the first nine months that the CAFTA agreement has been in force. Observations from the Movement of Trade Unions, Indigenous Peoples and Peasant Farmers of Guatemala in defence of workers’ rights, which were sent to the Government in 2007, state that CAFTA has caused the loss of some 60,000 jobs in the first year that it has been in force. The trade union also refers to the resurgence of unemployment through the loss of jobs due to the destruction of national agriculture and of small and medium-sized enterprises. *The Committee requests the Government to supply further information on the measures adopted for infrastructure development and its impact on job creation, and also on the contribution of export processing zones to the creation of lasting, high-quality employment and the impact of trade agreements on the labour market.*

5. *Article 3. Participation of the social partners.* The Government reports on the work of the Tripartite Subcommittee on Employment Generation. Furthermore, in the preliminary document of the DWCP, the second priority is to strengthen the Government and the employers’ and workers’ organizations in the development of their capacities for the adoption and implementation of a National Plan for decent employment and work and to improve the quality and coverage of the services offered. The Committee emphasizes the fact that *Article 3* of the Convention states that representatives of persons affected by the measures to be taken – and in particular representatives of employers and workers – shall be

consulted with regard to the formulation and adoption of employment policies. The Committee considers that it is the joint responsibility of governments and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries (see paragraph 493 of the General Survey of 2004 on employment promotion). ***In this regard, the Committee hopes that the next report will include more detailed information on the measures taken as a result of the tripartite consensus reached with regard to employment policy. The Committee trusts that the report will also include information on consultations held with respect to the formulation and implementation of measures to achieve the objectives of full productive employment established by the Convention, including information on consultations with all sectors concerned, such as representatives of the rural sector, the informal economy and the export processing sector.***

Guinea

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

The Committee notes with regret that the Government has not provided any information on the application of the Convention since its last report received in February 2004. ***The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including clear and up to date information, in reply to the points raised in the Committee's 2004 observation, which read as follows:***

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. In its report received in February 2004, the Government provided information on the establishment of the "employment" component of the Poverty Reduction Strategy approved in 2002. It was planned to enhance the range of vocational and technical training available, promote small and medium-sized enterprises, promote labour-intensive work and improve access to employment for women (conclusions of the workshop held in Conakry in September 2003 for approving the framework document for employment policy in Guinea). The Government also pointed out the distinct trend towards self-employment in the informal economy, resulting in the urgent need to set up a genuine micro-enterprise development programme. The Committee noted the objectives of the Labour and Employment Statistical Information Network (RISET), the establishment of which was already noted in its previous comments. ***The Committee requests the Government to provide up to date information on the measures taken to guarantee that employment, as a key component in poverty reduction, is at the heart of macroeconomic and social policies. It asks the Government in particular to provide information on the results achieved, by group such as for young people and for women, by the measures taken to improve the range of vocational and technical training available, on the promotion of small and micro-enterprises and on the jobs created by labour-intensive programmes.***

Article 3. Participation of the social partners in the formulation and application of policies. The Committee recalls that Article 3 of the Convention requires consultations with all interested parties – in particular representatives of employers and workers – in the establishment and implementation of employment policies. It is the joint responsibility of the Government and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries (see paragraph 493 of the 2004 General Survey on promoting employment). ***The Committee trusts that the Government will include detailed information in this regard.***

Part V of the report form. ILO technical assistance. ***Furthermore, the Committee once again asks the Government to indicate the actions taken to implement an active employment policy within the meaning of the Convention, further to the technical assistance received from the ILO.***

India

Employment Policy Convention, 1964 (No. 122) (ratification: 1998)

The Committee notes the detailed report provided by the Government in August 2007 including replies to its previous comments. The ILO technical departments in headquarters and the field have also brought additional information concerning the application of the Convention to the Committee's attention.

1. *Articles 1 and 2 of the Convention. General economic policies.* The Government recalls that providing gainful and high-quality employment was one of the targets of the Tenth Five-Year Plan (2002–07). In its approach paper to the 11th Five-Year Plan, the Planning Commission has made an assessment of the previous Plan: employment growth accelerated to 2.6 per cent during 1999–2005 outpacing population growth. The unemployment rate, which increased from 6.1 per cent in 1993–94 to 7.3 per cent in 1999–2000, increased further to 8.3 per cent in 2004–05. The Government explains that this was because the working-age population grew faster than the total population and the labour force participation rates increased, particularly among women. Agricultural employment has increased at less than 1 per cent per annum, slower than the population growth and non-agricultural employment expanded robustly at an annual rate of 4.7 per cent during 1999–2005. The Committee notes that 47 million employment opportunities were created per year during the Plan period (2002–07), which was quite close to the target of 50 million. In spite of high gross domestic product and high employment growth, decline in poverty has been relatively low, at 0.8 per cent per annum. The Committee further notes that the approach paper for the 11th Five-Year Plan (2007–12) therefore calls for more inclusive growth and envisages employment as a central element of such growth. It has been proposed to create almost 70 million work opportunities as one of the socio-economic targets which can be monitored during the plan. The emphasis seems to be on productivity and incomes to address the challenges of the working poor and improvement in the employability of the poor through a concerted and large-scale programme for training and upgrading of skills. ***The Committee thus invites the Government to***

provide in its next report indications on the adoption of a more comprehensive approach to formulate and apply an active employment policy. The Government is invited to state precisely how the goal of full and productive employment has been taken into account in formulating macroeconomic and sectoral policies.

2. *Promotion of employment for poor workers in the rural sector.* The Committee notes that the National Rural Employment Guarantee Act (No. 45 of September 2005) (NREGA) is now being implemented. The schemes implemented aim to provide 100 days of guaranteed unskilled wage employment to each rural household in more than 600 districts of India. Provisions for regular inspection and supervision of works taken up under the scheme shall be made to ensure proper quality of work as well as to ensure that the total wages paid for the completion of the work is commensurate with the quality and quantity of the work done (see paragraph 14 of Schedule I of Act No. 42 of 2005). The Committee also notes that the ILO suggested a pilot programme on mainstreaming decent work elements in the implementation of the NREGA and promoting a consultative process with concerned stakeholders at the national and district level. ***The Committee welcomes this approach and looks forward to examining in the Government's next report further information on how the NREGA has improved employment opportunities, in particular in favour of vulnerable categories of workers such as dalits and tribal peoples, and where it has failed to meet these expectations.***

3. *Other schemes to promote employment.* The Government mentions in its report other schemes in operation for poverty alleviation and employment creation. ***The Committee reiterates its interest in examining information on the measures taken to reduce the decent work deficit for men and women workers in the informal economy and to facilitate their access to the labour market.***

4. *Collection and use of employment data.* The Committee notes with interest the analysis provided by the Government in its report on the employment and unemployment situation in the country. ***The Committee asks the Government to report on how the data available is being used to prioritize and formulate employment policies in favour of socially vulnerable groups such as young persons, women jobseekers, scheduled castes and scheduled tribes, ethnic minorities and people with disabilities (Article 1, paragraph 2, and Article 2(a)). Please also continue to include detailed statistical data on the situation and trends of the active population, employment, unemployment and underemployment disaggregated by state, sector, age, sex and skills.***

5. *Labour market policies and training.* In its previous comments, the Committee noted that a national vocational training policy was under discussion. The Government indicates in its report that vocational training for both men and women is being accorded top priority in the 11th Five-Year Plan and is being treated as an industry. Efforts are being made to attract private investment into the sector. Private investment has come in only for the higher wage skills or for skills linked with government jobs. The Government recognizes that it is necessary to encourage a broader based system offering skill enhancement possibilities in smaller towns. The Government also plans to upgrade 500 industrial training institutes into centres of excellence for producing a multiskilled workforce of world standard. ***In this respect, the Committee invites the Government to include in its next report information on the effectiveness of the measures introduced in responding to the demand of skills in the labour market. Please also indicate how attention was given to the challenge of meeting the skill needs of the unorganized sector.***

6. *Article 3. Consultation of the representatives of the persons affected.* In reply to its previous comments, the Government indicates that the Special Tripartite Meeting has yet to be held. In its previous reports, the Government mentioned that a special Tripartite Committee was formed to consider the impact of the new industrial policy on problems of labour and related matters and to make appropriate recommendations. ***Taking into account the employment challenges that face the country and the importance of establishing an adequate strategy, in consultation with the representatives of the workers' and employers' organizations, on the matters covered by the Convention, the Committee reiterates its interest in receiving detailed information on the frequency and results of the consultations to secure the full cooperation of representatives of the social partners, in the formulation and implementation of employment policies. Please also report on any consultations held with the beneficiaries of the NREGA and provide details of the way in which the Government and the social partners have addressed the matters noted in this observation.***

Islamic Republic of Iran

Employment Policy Convention, 1964 (No. 122) (ratification: 1972)

1. *Articles 1 and 2 of the Convention. Adoption and implementation of an employment policy.* The Committee notes the Government's report received in June 2007 containing elements of a reply to the observations that it has been formulating since 2004. The Committee had requested detailed information on the measures adopted to promote the implementation and achievement of the objectives of the Convention, particularly in a context of high and persistent unemployment (around 10 per cent according to the available official data). In its report, the Government indicates that a decrease in State participation is planned in the execution phase of the Fourth Five-Year Development Plan (2005–10). The Government indicates that it has formulated an employment strategy and is taking measures for its implementation. One of the central measures of the strategy consists of identifying new employment opportunities for the young persons arriving in massive numbers on the labour market. More particularly, the Government intends to promote self-employment through the allocation of funding for economic projects intended to develop entrepreneurship, telework and small enterprises. The diversification of economic activities, the increased use of information technologies and support for

the creation of consultancy enterprises are mentioned as strategic means of promoting employment. The Five-Year Development Plan envisages a fall in the unemployment rate to 8.3 per cent by 2009. *The Committee requests the Government to specify in its next report whether specific difficulties have been encountered in reducing unemployment and achieving the employment objectives set in the Five-Year Plan. It hopes that the Government will also provide detailed information on the principal objectives of general and sectoral economic policies and the measures adopted to ensure that employment, as a key element in poverty reduction, is the central focus of coordinated macroeconomic and social policies (Article 2(a) of the Convention).*

2. *Labour market policies.* In its 2004 observation, the Committee requested the Government to indicate the progress achieved in the modernization of employment services and labour information. In its reply, the Government indicated that, in the context of the Fourth Five-Year Development Plan, financial incentives are planned to promote recruitment through employment offices. In addition, the Government indicated that measures had been taken with a view to: (i) encouraging the establishment of employment offices, including private agencies, in all provinces; (ii) facilitating the implementation of a national information network linking employment offices; (iii) encouraging the establishment of a specialized employment office for persons with university qualifications; (iv) updating databases of registered jobseekers; (v) undertaking surveys and compiling labour market data; and (vi) improving information systems for the various economic sectors and facilitating access to information by investors and employers. The Committee recalls that the Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation No. 188, recognize the role played by private employment agencies in the operation of the labour market. *The Committee requests the Government to report on the measures adopted, in collaboration with the social partners, to ensure the effective operation of the employment services and to describe the observed impact of the measures taken by the employment services for specific categories of workers (women, young workers, migrant workers). In particular, the Committee requests detailed data on the impact of the measures adopted to ensure that progress is achieved in relation to the labour market participation rate of women.*

3. *Training policies.* In its previous observation, the Committee requested the Government to describe the measures adopted to improve the coordination of education and training policies with the objective of full employment. In its reply, the Government indicates that, in view of the constant increase in the number of young persons entering working life and the increased presence of women with university qualifications on the labour market, special attention is given to training activities for these categories of workers. Emphasis is placed on training activities which promote entrepreneurship among young graduates, and particularly women, and on training for trainers in relation to vocational guidance in the Ministry of Labour and Social Affairs. *The Committee requests the Government to provide detailed information, disaggregated by gender, in its next report on the training provided to young persons entering the labour market, particularly those with university qualifications and on their impact in terms of the integration of the persons concerned into lasting employment.*

4. *Article 3. Participation of the social partners in policy design and implementation.* With reference to its previous observation, the Government reports on the annual meeting of a National Labour Conference in the Islamic Republic of Iran, without specifying whether representatives of employers and workers, and of persons engaged in the rural sector and the informal economy, participate in the conference and are, in practice, consulted on employment policies in this context. *In the comments that it has been making for several years, the Committee has recalled the importance of giving full effect to Article 3, which is an essential provision of the Convention and envisages that representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, shall be consulted concerning employment policies. The Committee trusts that the Government will be in a position to indicate in its next report whether procedures have been introduced with a view to holding such consultations, either in the context of the National Labour Conference or any other competent body, and to specify the purpose and arrangements of such procedures.*

Japan

Employment Service Convention, 1948 (No. 88) (ratification: 1953)

Organization and functions of the employment service. The Committee notes with interest the comprehensive information and detailed statistics provided in the Government's report received in November 2007, including the information provided in response to the Committee's 2005 observation. The Committee also takes note of the comments provided by the Japanese Trade Union Confederation (JTUC-RENGO) in November 2007, attached to the Government's report. In particular, the Committee takes note of the comments expressed by JTUC-RENGO concerning a "marketization test" introduced by the Government on the free employment exchange services offered by the Public Employment Security Offices. JTUC-RENGO expresses its concern that the participation of private services may lead to a loss of emphasis by the Public Employment Security Offices on providing support to people who have difficulty in finding work. *The Committee hopes that the Government's next report will provide more information on the implementation of the "marketization test" as referred to by JTUC-RENGO. The Committee would also welcome receiving information on the results of the "marketization test", and any corresponding implications on the ability of the public employment service 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.

Development of employment offices throughout the territory. The Committee takes note of the concerns expressed by JTUC-RENGO over the decreasing number of employment security offices in the light of plans for their merger or closure. JTUC-RENGO also expressed the concern that a reduction in the number of public employment security offices will hamper the accessibility to such services by both workers and employers. The Committee notes from the Government's report that, as at 1 April 2007, 466 Public Employment Security Offices, 100 branch offices and 18 local offices were in existence throughout the country. The Government reports that between June 2005 and May 2008, 19 locations were reviewed, with one new location being established and 18 either merged or closed down. ***The Committee requests the Government to also indicate in its next report information on the process by which the organization of the network of employment offices are reviewed, and the extent to which social partners participate in such a review process. The Committee would also welcome receiving information on the steps which are taken to ensure that such offices are sufficient in number to serve each geographical area of the country and are conveniently located both for employers and workers.***

[The Government is requested to reply in detail to the present comments, in 2009.]

Employment Policy Convention, 1964 (No. 122) (ratification: 1986)

1. *Article 3 of the Convention. Participation of social partners in the formulation of policies.* The Committee takes note of the information provided in the Government's report received in November 2007, including its replies to matters raised in the Committee's 2005 direct request. The Committee also takes note of the comments provided by the Japanese Trade Union Confederation (JTUC-RENGO), attached to the Government's report. The Committee notes the comments provided by JTUC-RENGO in which it states that councils which do not incorporate labour representatives, such as the Council on Economic and Fiscal Policy and the Council for the Promotion of Regulatory Reform, recommend concrete policies on employment and labour and enjoy decision-making power in respect of the fundamental direction of such policies. JTUC-RENGO expresses its concern that policy-making based on consultations with representatives of workers and employers are becoming insubstantial. The government reports that consultations on employment measures were carried out with social partners. Specific issues relating to the formulation, amendment and execution of laws relating to employment measures were deliberated on by the Subcommittee on Human Resources Development and Employment Security of the Council on Labour Policy, which is composed of representatives of Government, employers and workers, while consultations with representatives of labour-management parties that are impacted by the implementation of employment measures were under way. The Government also reports that discussions and opinions expressed in the deliberation councils are taken into account when designing and planning employment measures. ***The Committee hopes that the Government's next report will contain detailed information, including examples, on the manner in which social partners are consulted concerning employment policies, and the means by which their experience and views are fully taken into account in formulating such policies.***

2. *Articles 1 and 2. Implementation of an active employment policy.* The Committee notes from the Government's report a decline in the unemployment rate, which fell from 4.4 per cent in 2005 to 4.1 per cent in 2006, and stood at 3.8 per cent in April 2007. The Government reports that the appropriate handling of the "Year 2007 Problem", namely the onset of the transition of the baby boomer generation from working life to retirement, and the need to improve the practical vocational capabilities of youth to support the future economic society, were urgent issues which needed to be addressed in order to maintain and improve the Japanese socio-economic outlook in light of its slowing rate of population growth. In addition, the Government reports that the unemployment rate of workers above 55 years of age fell from 3.5 per cent in 2005 to 3.4 per cent in 2006, and stood at 3.2 per cent in April 2007. The Committee notes that, further to the Law concerning Stabilization of Employment of Older Persons, job security measures for older persons were being put in place since 2006 to secure steady employment of persons up to 65 years of age in various companies. The Government also reports that steps were being taken to raise awareness and exchange information on the experiences of businesses whose employees may work until the age of 70. ***The Committee would welcome receiving more detailed information on the measures implemented as part of an active policy intended to promote full, productive and freely chosen employment, and the means by which these have addressed the employment situation caused by an ageing workforce and a slowing rate of population growth. The Government is also requested to indicate the manner in which employment objectives are taken into account in the adoption of measures in monetary, budgetary and taxation policy, and price, income and wage policy.***

3. *Employment of women.* The Government reports that the rate of unemployment for women has also been in decline, falling from 4.2 per cent in 2005 to 3.9 per cent in 2006, standing at 3.6 per cent in 2007. The Committee notes from the OECD *Employment Outlook 2008* that there has been a slight increase in the employment rates for women to 58.8 per cent in 2006 which, however, is significantly lower than the male rate of 81 per cent. The Committee further notes that measures have been taken to reintegrate women into the labour force after a significant period outside employment. In this respect, the Government, amongst other measures to improve the participation of women in the labour market, revised the Equal Employment Opportunity Law in June 2006 to entail: (i) a prohibition of discrimination against both men and women, and an expansion of the scope for prohibiting sexual discrimination, including indirect forms of discrimination; (ii) a prohibition of disadvantageous treatment based on reasons such as pregnancy and

childbirth; and (iii) a reinforcement of obligations made by employers in relation to sexual harassment. The Committee notes that the Government has sought to implement measures to increase employment of women and child-rearing women. To this end, the Government reports that, since 2006, 12 Mothers Hellowork offices were established throughout the country and, as at April 2007, steps were being taken to establish “Mother Salons” in major public employment security offices, to provide comprehensive employment support for women who are raising children, but who wish to return to the labour market. The Government also reports that a Positive Action Promotion Council was set up at the central government level and, from 2002 to 2006, at each Prefectural Labour Office level, it has sought to support companies experiencing a significant disparity between female and male workers, and to encourage the adoption of a positive approach through, for example, the expansion of job categories for women, and the promotion of women to managerial posts. ***The Committee invites the Government to continue to provide such information on initiatives taken to promote increased participation of women in the labour market. Please also provide further information, including statistics, on the effect such initiatives have had on dismantling the gender-based career tracking system to ensure that there is freedom of choice of employment and that each worker shall have the fullest possible opportunity to qualify for and use his or her skills, in the conditions set out in Article 1, paragraph 2(c), of the Convention.***

4. *Youth employment.* The Government recalls that the unemployment rate of persons between 15 and 24 years of age was 8.7 per cent in 2005 and 8.0 per cent in 2006, and stood at 7.5 per cent in April 2007. In order to address the employment situation of young persons, such as the large number of job-hopping part-timers, problems relating to delays in the improvement of local employment situations, and declining population levels, amendment bills to the Employment Measures Law and the Law concerning the Promotion of Local Employment Development to: (i) clarify the employment realization of all people who have the desire to work; (ii) expand opportunities for youth; (iii) create an obligation to prohibit age restrictions for recruitment; and (iv) place a focus on support towards regions with particularly severe employment situations, were presented to the 166th ordinary Diet session in 2007. The Government also reports that, in June 2006, amendments were made to the Law concerning the Promotion of Improvement of Employment Management in Small and Medium-sized Enterprises for Securing Manpower and Creating Quality Jobs and, as at October 2006, a support system for small and medium-sized enterprises was established which seeks to improve employment management systems which contribute to the creation of favourable employment opportunities for youth through promoting the development and improvement of their practical vocational capabilities. ***The Government is requested to indicate in its next report information on the results of such initiatives designed to promote the employment opportunities for young persons and to address their practical vocational capabilities, and the impact they have had on the employment situation of young persons. In this connection, the Committee recalls the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), which provides that Members should consider specific measures and incentives for persons aspiring to become entrepreneurs (Paragraph 16(4) of Recommendation No. 189).***

Kyrgyzstan

Employment Policy Convention, 1964 (No. 122) (ratification: 1992)

The Committee notes with regret that it has not received a report from the Government since June 2005. ***The Committee asks the Government to provide a detailed report on the application of the Convention containing up to date and precise information in response to the 2005 observation which raised the following matters.***

1. *Articles 1 and 2 of the Convention. Policies to promote employment and coordination with poverty reduction.* The Government enumerated the aims of the National Employment Policy, which was established in the context of the national poverty reduction strategy 2003–05, and was approved by Decree No. 126 on 14 March 2005. The objectives of the employment policy aimed, amongst others, at assisting unemployed citizens in choosing an occupation and placement; improving vocational training and retraining of the unemployed; organizing temporary employment and voluntary work; preventing the rise of unemployment by eliminating or reducing the effect of the factors which lead to mass unemployment; and supporting entrepreneurship and self-employment. The Government also indicated that the employment rate fell slightly from 92.5 per cent in 2000 to 91.1 per cent in 2003. The unemployed young people accounted for 53 per cent of overall unemployment and remained one of the most problematic issues (as mentioned in the Poverty Reduction Strategy Paper Progress Report of July 2004). In 2001, the poverty rate was estimated by the World Bank to be considerably high between 45 per cent and 56.4 per cent. The Committee noted the Government’s indication that the goals of employment policies and their relation to social and economic development are reflected in the programme on the “Comprehensive basis of development of the Kyrgyz Republic until 2010”, which was adopted on 29 May 2001. ***The Committee asks the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies.*** Indeed, the Committee considers that it is essential from the outset for employment objectives to be included “as a major goal” in the formulation of economic and social policy if these objectives are truly to be an integral part of the policies that are adopted (paragraph 490 of the General Survey of 2004 on promoting employment). ***The Committee requests the Government to provide detailed information on the results and progress achieved with the implementation of the measures envisaged by the National Employment Plan, including information on the employment situation of socially vulnerable groups such as women, young persons and older workers.***

2. *The Committee also requests the Government to include in its next report information on the following matters that were raised in its 2004 observation:*

- *training and retraining measures for workers affected by structural reforms (such as the declining of the Kumtor gold mine);*

- *the impact of the different programmes adopted by the Government concerning specific groups of workers, such as the “National programme Zhashtyk on youth development until 2010” and the “State programme New Generation for the protection of children’s rights”.*

3. *Article 3. Participation of the social partners in the formulation and application of policies.* The Government reported that a tripartite committee has been created to regulate issues of employment promotion, which held its first session on 17 May 1999. The basic tasks of the tripartite committee were the preparation of the National Employment Policy up to 2010; the development of corresponding measures to determine future directions in reducing tensions in the labour market; and the development of proposals to introduce amendments in Kyrgyz legislation on employment promotion and other regulatory acts in application of employment policy. *The Committee asks the Government to provide specific information about the operation of the abovementioned tripartite committee, as well as the involvement of social partners in the formulation and implementation of the National Employment Plan. It also requests information regarding the measures taken or contemplated to involve in the consultations required by the Convention, the representatives of other sectors of the active population, such as persons working in the rural sector or in the informal economy.*

Pakistan

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1952)

The Committee notes that the Government’s report has not been received. It must therefore repeat its 2006 observation, which read as follows:

1. *Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit.* The Government refers in a report received in February 2006 to the operation of the Overseas Employment Corporation (OEC), which operates in the public sector and has been able, to date, to dispatch 125,000 Pakistanis in various professions for employment abroad. The OEC is utilizing modern techniques by striving to obtain maximum job opportunities for Pakistanis abroad. Foreign employers are required to ensure completion of the necessary documentation and to seek permission from the concerned Protector of Emigrants. Foreign employers initiate the process of recruitment by inviting applications from the general public, including interviews and tests. Neither regional nor provincial quotas are followed in the selection of workers. The Government also states that the Overseas Employment Promoters (OEPs) operate in the private sector and have established an association, that is, the Pakistan Overseas Employment Promoters’ Association (POEPA), along with provincial and regional heads. The POEPA deals with the issues and grievances confronted by the OEPs while processing the recruitment of Pakistanis for placement abroad. There exists a close liaison between POEPA and the Ministry of Labour, Manpower and Overseas Pakistanis to resolve issues and problems that are faced from time to time. The Ministry – under section 12 of the Emigration Ordinance, 1979 – has issued 2,265 licences – out of which 1,180 are actively functioning in the recruitment business.

2. In relation to the abolition of fee-charging employment agencies, as required by *Part II of the Convention*, the Government reiterates that draft rules have been framed to regulate the operation of fee-charging employment agencies. The Government also confirms that the policy of renewal of licences for OEPs is made for a period of one, two or three years. In relation to *Article 9* of the Convention, the Government indicates that due to the economic conditions of Pakistan, levies have been established for migrant workers. Therefore, the Government is not in a position to adopt a policy of abolishing fee-charging employment services for migrant workers. It also adds that punitive action is taken against those OEPs that are involved in violations of the Emigration Ordinance, 1979, and Emigration Rules, 1979.

3. The Committee recalls the comments made by the All Pakistan Federation of Trade Unions (APFTU) on the application of the Convention, which were forwarded to the Government in June 2005. The APFTU stated that agencies are allowed to charge fees for recruitment abroad and that some of them are involved in human trafficking.

4. The Committee also recalls that in 1977 it noted the enactment of the Fee-Charging Employment Agencies (Regulation) Act, 1976, which provided for the licensing of fee-charging employment agencies and empowered the public authorities to prohibit all or any fee-charging employment agencies in any area where a public employment service has been set up. According to section 1(3) of the Act, the Act would come into full force when the federal Government notified the same in the *Official Gazette*. The Committee has from time to time requested the Government to take the necessary steps to bring the Act into operation in order to achieve the aim of *Part II* of the Convention, that is the progressive abolition of fee-charging employment agencies conducted with a view to profit. *Taking into account the lack of progress in achieving the abolition of fee-charging employment agencies, the Committee asks the Government to provide information in its next report on the following issues:*

- *the measures taken to abolish fee-charging employment agencies, the numbers of public employment offices and the areas served by them (Article 3, paragraphs 1 and 2);*
- *the measures taken to consult employers’ and workers’ organizations as regards the supervision of all fee-charging employment agencies (Article 4, paragraph 3);*
- *with regard to overseas employment promoters, the measures taken to ensure that these agents may only benefit from a yearly licence renewable at the discretion of the competent authority (Article 5, paragraph 2(b)) and charge fees and expenses on a scale submitted to and approved by the competent authority (Article 5, paragraph 2(c)).*

5. *Revision of Convention No. 96 and protection of migrant workers.* The Committee recalls that, in March 2006, a *Multilateral Framework on Labour Migration* has been published by the ILO which includes non-binding principles and guidelines for a rights-based approach to labour migration. It provides particularly for the licensing and supervision of placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No. 181), and its Recommendation (No. 188). Convention No. 181 recognizes the role played by private employment agencies in the functioning of the labour market. The ILO Governing Body invited the States parties to Convention No. 96 to contemplate ratifying, as appropriate, Convention No. 181, the ratification of which would involve the immediate denunciation of Convention No. 96 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). *The Committee invites the Government to keep it informed of any developments which, in consultation with the social partners, might occur to ensure full application of the relevant international labour standards for the placing and recruitment of workers abroad (Article 5, paragraph 2(d), of the Convention).*

San Marino

Employment Service Convention, 1948 (No. 88) (ratification: 1985)

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

The Committee notes with regret that the Government's report has not been received since 1998. It hopes that a report will be supplied and that it will contain full information on the matters raised in its 1998 direct request, in which it noted the provisions of sections 46 and 47 of a Bill respecting placement and vocational training as they relate to the responsibilities, composition and functioning of the Placement Commission. The Committee considered that the establishment of this Placement Commission would meet the requirements of *Articles 4 and 5 of the Convention* with regard to the "suitable arrangements" which were to be made for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of its general policy. *The Committee had therefore requested, in 2005, a copy of the Act replacing the Bill. Since there has been no response, the Committee asks the Government to transmit a detailed report so that it can re-examine the situation in the light of the texts which are in force.*

Senegal

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2007 observation, which read as follows:

1. *Articles 1 and 2 of the Convention. Coordination of employment policy and poverty reduction.* The Committee notes the Government's report for the period ending September 2006, the observations of the National Union of Autonomous Trade Unions of Senegal (UNAS) and the Government's reply received in October 2006. The Government indicates that the urban unemployment rate remains very high, although it fell to 12.7 per cent in 2001, compared with 14.1 per cent in 1994. The Committee notes with interest the Growth and Poverty Reduction Strategy Paper (GPRSP) 2006–10, of October 2006, which indicates that the principal problem of the employment market is visible underemployment, which is at the rate of 21.8 per cent of the population (or 1,002,372 active persons). The Government reports that it has formulated in a participatory manner a new national employment policy (PNE), which is currently being validated. In this respect, the Committee notes from the GPRSP 2006–10 that, with a view to promoting a decent employment policy, the State will implement a policy of productive and inclusive employment which has the following specific objectives: (i) promoting the improved management and employability of the labour force; (ii) reinforcing the effectiveness and transparency of the employment market; (iii) promoting self-employment in rural and urban areas; (iv) increasing the employment content of growth; (v) reinforcing and intensifying the contribution of productive sectors to employment creation and poverty reduction; (vi) developing and modernizing the public employment system; (vii) promoting an improved organization of the participation of migrant workers; (viii) promoting labour-intensive works; (ix) improving the economic and social situation of persons experiencing difficulties on the employment market; and (x) improving the health and living conditions of workers. *The Committee emphasizes the importance of ensuring that employment, as a key component of poverty reduction, is central to macroeconomic and social policies. It requests the Government to provide a report containing detailed information on the manner in which the employment policy objectives set in the context of the GPRSP 2006–10 have been achieved. It also requests the Government to provide information on the results achieved by the measures adopted in the context of the Poverty Reduction Strategy, with particular reference to young persons and women, and through any other measure implemented to promote full, productive and freely chosen employment.*

2. *Compilation and utilization of employment data.* The Government indicates that the employment market is characterized by a lack of visibility, with no coordination between the various sources of information. To remedy this situation, the Government indicates that a project has been developed for the establishment of a national observatory of employment and vocational skills (ONEQP). The Committee notes with interest that the Government has also received ILO assistance for the initiation of other projects, such as the operational list of occupations and jobs (ROME). In this respect, the UNAS reports slowness and delays in the implementation of the National Employment Agency, ONEQP and ROME. *The Committee therefore requests the Government to indicate in the next report the progress achieved in the compilation of employment data, with an indication of the employment policy measures adopted as a result of the establishment of the Statistical Agency and the National Observatory of Employment and Vocational Skills.*

3. *Article 3. Participation of the social partners in the design and formulation of policies.* In reply to the comments of the UNAS, the Government emphasizes that tripartism is used systematically in all phases of the design, implementation and evaluation of all employment programmes. It adds that the National Employment Policy Monitoring Committee has been replaced by the Intersectoral Committee to follow up the implementation, supervision and evaluation of the Statement by Heads of State and Government of the African Union on employment and combating poverty. The Government indicates that this tripartite committee has held several meetings with a view to formulating the new national employment policy. *The Committee requests the Government to provide examples in its next report of the consultations held with the social partners, among others in the context of the intersectoral follow-up committee, on the subjects covered by the Convention, with an indication of the opinions expressed and the manner in which they have been taken into account. The Committee recalls that the consultations envisaged by the Convention require the consultation of representatives of all of the persons affected, including those in the rural sector and the informal economy, and it requests the Government to indicate the measures envisaged with a view to ensuring that the latter collaborate fully in the design and implementation of employment policies.*

4. *Part V of the report form. ILO technical assistance.* *The Committee requests the Government to provide information on the action taken as a result of the technical assistance received from the ILO with a view to the implementation of an active employment policy within the meaning of the Convention.*

Serbia

Employment Policy Convention, 1964 (No. 122) (ratification: 2000)

The Committee notes the Government's report received in October 2007 which includes comments by the Union of Employers of Serbia and the Confederation of Autonomous Trade Unions of Serbia, as well as of the trade union federation Nezavisnost. The Committee also benefited from the technical analysis from the ILO Subregional Office in Budapest, which supplemented the information provided by the Government's report and the comments by the social partners.

1. *Articles 1 and 2 of the Convention. Labour market policy measures.* In the period under review, despite high rates of economic growth recorded (5.7 and 7.5 per cent in 2006 and 2007, respectively), employment rates declined (from 51 per cent in 2005 to less than 49.9 per cent in 2006) while the unemployment rate remained stable (21.8 per cent in 2005 and 21.6 per cent in 2006). Following the goals of the European Union Lisbon Strategy, a National Employment Action Plan for 2006–08 (NAPE) and a National Sustainable Development Strategy 2008–13 were adopted. The NAPE encompasses five priorities: (i) decreasing unemployment and increasing competitiveness in the labour market; (ii) broadening the scope and types of active employment measures; (iii) developing employment assistance packages for redundant workers; (iv) promoting social dialogue on employment; and (v) the decentralization and modernization of the work of the National Employment Service. The Government indicates in its report that, out of a total of 357,067 unemployed persons covered by active employment measures, there were 184,939 women, 91,553 workers under 25 years of age and 33,333 workers older than 55. Other available data reflect that the targets of the NAPE have been difficult to achieve and accordingly it was decided to review the existing regulations of the labour market with the participation of the social partners and the assistance of the ILO. The Government also indicates in its report that studies have been carried out concerning the position of women and youth in the labour market. In 2007, the Government took a decision on the need for urgent creation of a Youth Strategy, aimed at solving the problem of young unemployment. ***In this respect, the Committee requests the Government to provide further information in its next report on the results of the initiatives taken under the NAPE and by the National Employment Service, and how they will translate into productive and lasting employment opportunities for the unemployed, the long-term unemployed and other categories of vulnerable workers such as young workers.***

2. The Government reports that it is exploring means to reform the fiscal system through the reduction of the overall burden of taxes and contributions through the introduction of new tax reductions and the development of new forms of credit lines and micro loans, especially in less developed regions and areas with a high rate of unemployment. The Government indicates that this will have a direct influence on increasing employment. ***The Committee invites the Government to provide information on steps that are taken to ensure that employment policy considerations are placed at the heart of macroeconomic and social policies and to provide information on the effect its tax reforms have had in achieving employment promotion.***

3. *Article 2.* In reply to previous comments, the Government indicates that monitoring and evaluation of active measures is being done on a regular basis in accordance with the technical possibilities of the National Employment Service. The Government also recognizes some difficulties in monitoring the effect of the measures implemented due to the lack of a modern information system. It is expected that the modernization of the information system by the end of 2007 will enable efficient follow-up and evaluation of the measures implemented. The Committee stresses the need to evaluate the impact, targeting and cost-effectiveness of active labour market programmes in order to ensure that the measures taken to promote full employment operate "within the framework of a coordinated social policy". ***In this regard, the Government is also requested to include information in its next report on the methods of coordination envisaged between the economic and social ministries, for the achievement of the employment policy objectives.***

4. *Article 1, paragraph 2(c). Employment of the Roma population and other minorities.* The Committee notes the reply provided by the Government to its previous request on the results achieved to generate employment amongst the Roma population, in the sense that it intends to promote employment by applying the principle of positive discrimination according to ethnicity. Over 270 individuals participated in contests for self-employment and 250 unemployed Romas were included in the programme of functional education. Meetings were organized with representatives of the Secretariat for Implementation of the National Roma Strategy and representatives of non-governmental organizations active in issues regarding the Roma population. ***The Committee invites the Government to provide in its next report further information on the measures taken to ensure the participation of the Roma population, as well as of the other minorities in the country, in the labour market.***

5. *Article 3. Participation of the social partners.* The Union of Employers of Serbia indicates that, despite many changes in laws and regulations for creating a more favourable climate for flexible employment, there are still certain formal problems which put employers in an unfavourable position during the recruitment of workers through certain employment programmes. The employers' organization further evokes difficulties linked to tax burdens when hiring workers on a short-term basis. The Confederation of Autonomous Trade Unions of Serbia recognizes that there was a constructive dialogue on issues related to active employment policy and the measures adopted in the framework of the NAPE. Nevertheless, the results have not been visible in practice, especially due to considerable lay-offs following the privatization process. The union requests more social dialogue, in cooperation with the European Union and the ILO, to

address this problem in Serbia and in neighbouring countries dealing with the challenges of transition. The trade union federation Nezavisnost stressed that the social partners have given top priority to the issues related to unemployment. Nevertheless, the federation lists several proposals to be discussed in the framework of the National Socio-Economic Council and at local level. *The Committee welcomes the contributions of the social partners to the design and implementation of an active employment policy. It reiterates its hope that the next report will include more concrete examples of how the social partners have entered into meaningful constructive dialogue in relation to decision-making on employment policies. It further requests information on the measures adopted to implement an active employment policy, with the participation of the social partners, as a result of the technical assistance provided by the ILO and the European Union.*

Tajikistan

Employment Policy Convention, 1964 (No. 122) (ratification: 1993)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its 2006 observation, which read as follows:

1. *Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes from the letter received on 19 October 2005 containing the Government's general report that a number of legal developments relevant to the application of the Convention have taken place since the Government submitted the last report in November 1996. The Committee refers to its 2003 observation and notes in particular the approval of a State Employment Programme in March 2002. However, to evaluate the application of this Convention, the Committee considers it necessary to refer to the Government's Poverty Reduction Strategy Paper: Second Progress Report (PRSP Report), which indicates that despite an increase in the number of employed persons in 2004 (more than 100,000), the overall employment policy remained undeveloped. The Committee recalls the Government's goal set out in the PRSP prepared in 2002 of reaching 59 per cent employment by the year 2006. *It requests the Government to indicate in its next report whether special difficulties have been encountered in attaining the objectives of full, productive and freely chosen employment. It also asks for information on other measures, such as programmes or activities designed to promote employment, and the manner in which these initiatives are kept under review within the framework of a coordinated economic and social policy.*

2. *Regional inequality.* The Committee notes from the PRSP report that significant regional employment differences remain, with high concentrations of labour resources in the densely populated oblasts of Soghd and Khatlon. *It hopes the Government will provide details in its next report on how it intends to ensure balanced regional development with particular attention paid to reducing regional employment inequalities.*

3. *Employment services.* The PRSP report further indicates that the State Employment Service (SEC) held 193 job fairs across the country in 2004 involving 2,311 agencies and private companies. As a result of these fairs, 3,701 people received offers of employment, 2,951 joined paid public works programmes and 1,435 enrolled in vocational training. The work of the SEC is supplemented by the efforts of non-governmental and informal employment agencies, with local authorities establishing volunteer employment coordination committees. Yet, the PRSP report points out that the SEC by and large lacks the capacity to reach out to all unemployed people. *The Government is therefore asked to provide information in its next report on how it intends to strengthen the SEC in order to meet the needs of all unemployed persons, including vulnerable categories of workers such as women, young people, older workers and workers with disabilities.*

4. *Collection and use of employment data.* The Committee notes from the PRSP Report that the structure and dynamics of the labour market are not well understood and that the collection of unemployment data, for example, is difficult because not all unemployed persons register with the SEC. *In view of the high estimated number of informal workers in Tajikistan, the Government is asked to provide information in its next report on the efforts made to improve its capacity to assess the situation of and trends in employment, unemployment and underemployment, both in the formal and informal economy.*

5. *Article 3. Participation of the social partners in policy preparation and implementation.* *The Committee would be grateful to receive information in the next report on the consultations held with representatives of the social partners and on the implementation of employment policies, and in particular with representatives of the rural sector and the informal economy on the matters covered by the Convention.*

6. The Committee once again points out that the assistance of the Office is available to help the Government meet the reporting obligations and for the technical implementation of an active employment policy within the meaning of the Convention.

Thailand

Employment Policy Convention, 1964 (No. 122) (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2007 observation, which read as follows:

1. *Articles 1 and 2 of the Convention. Employment policy and social protection.* The Committee recalls that, as noted in its previous comments, an unemployment insurance scheme was launched since 2004. The Government's report indicates that, between July 2004 and February 2007, out of a total of 403,403 persons registered under the scheme, 111,568 persons – representing 27 per cent of the beneficiaries were re-employed within six months following registration, and a remaining 722 persons were referred to further skills training. Research studies conducted during 2004–05 indicate that there are 15,500,000 workers in the informal economy that are not covered by any form of social protection. To address this, the Government decided in September 2006 to review its policies and extend social security coverage to the informal sector. Consequently, as reflected in the Ninth National Economic and Social Development Plan (2002–06), workers from the informal economy receive benefits to the same extent as other insured persons upon registration. The Committee also notes a communication forwarded by the National Congress of Thai Labour in April 2007 which insists that there are many workers in the informal sector including the service industry as well as self-employed persons who are not covered by the social security system. In a communication received in

October 2007, the Government indicates that concrete measures and plans will soon be introduced to better serve and protect workers in the informal economy. **The Committee requests the Government to include in its next report information on the extent, terms and type of coverage reaching workers in the informal economy under the revised scheme as well as any other steps taken to coordinate the employment policy measures with unemployment benefits.**

2. *Coordination of employment policy with poverty reduction.* The Committee notes that the Government established a policy on employment promotion to increase income, as shown by the priority given to three strategies in its development plan – development of human potential and social protection strategy, sustainable restructuring of rural and urban development strategy and upgrading national competitiveness strategy. The policies implemented under these strategies include job creation for self-employed persons as well as enabling small business ventures through skills training for unemployed persons and enhancing access to credit from cooperative funds. It also includes skills training to generate job opportunities in the informal sector, remote areas as well as to promote overseas employment. Furthermore, online labour market information systems have been set up to assist jobseekers. **The Committee would appreciate receiving information on how the measures taken to promote employment under the three mentioned strategies operate within the “framework of a coordinated economic and social policy” (Article 2, paragraph (a), of the Convention).** In this respect, the Ministry of Labour in cooperation with the Faculty of Economics of Chulalongkorn University, has conducted research on the impact of free trade agreements on labour in seven industrial sectors. According to these studies, labour standards are often compromised as a result of highly competitive practices associated with free trade agreements. The Ministry of Labour expects to improve the employment situation using the information and recommendations of research done in collaboration with the Faculty of Economics of Thammasat University. **The Committee notes these initiatives with interest and would welcome receiving information on labour market programmes implemented to match labour supply and demand so as to ensure that the categories of workers affected by such structural transformations and changes in international trade can enter and remain in the labour market.**

3. *Labour market and training policies.* The Committee notes that the skills training offered by the Department of Skills Development (DSD) focuses on pre-employment training, upgrading training and retraining. Moreover, such programmes are designed based on the market needs. The DSD biannually surveys the needs of the public and private sectors at the provincial and national level and designs programmes accordingly. The Government’s report also provides that a quality assurance system was introduced in 2003 to ensure that skills development will be gradually expanded to cover all the regional institutes and provincial skill development centres by 2008. **The Committee asks the Government to continue to provide information on the results achieved by the measures taken by the Ministry of Labour and the Ministry of Education to coordinate education and training policies with prospective employment opportunities.**

4. *Article 1, paragraph 2(c). Prevention of discrimination.*

- *Women.* The Government indicates that employers were encouraged to appoint female labour advisers in their establishments. In addition, female workers have also been provided with equal opportunities to the same extent as male workers in accessing services of the DSD. In 2006, 102,990 trainees finished vocational skills training courses organized by the DSD; 100,141 were women, mostly employed in the clothing and textile industries and service sectors. The Ministry of Social Development and Human Security also provided courses for women and young female workers and to those at risk of being, or have been, laid off or unemployed or poor. In rural areas, a special project known as “Building New Life for Rural Women” has been organized with the aim of providing vocational training and increasing income. **The Committee requests the Government to continue to provide detailed information in its next report on the impact of the measures adopted to ensure that progress is achieved in raising the participation rate of women in the labour market. Please also indicate the gender distribution of trainees in the training courses of the DSD.**
- *Persons with disabilities.* According to the Government’s statistics, the relative number of persons with disabilities that have found job placements increased in 2006. Other interventions include providing vocational training courses for persons with disabilities; occupational development services to help those that have completed vocational training develop practical skills, as well as family and community welfare services to provide care and support for children with disabilities. **The Committee would appreciate continuing to receive information on the impact of the training programmes for persons with disabilities, in particular, the number of people that completed the programme and were able to find employment in the open labour market.**
- *Migrant workers.* The Government indicates in its report that the registration of thousands of migrant workers has improved their situation. The Committee also notes the statistics for the period 2004–06 on the implementation of bilateral Memoranda of Understanding with neighbouring countries including Cambodia, Lao People’s Democratic Republic and Myanmar. It also notes the observation submitted by the National Congress of Thai Labour, which indicates that illegal foreign workers, especially from Myanmar, are increasing and are paid below minimum wage. In its reply, the Government indicates that irregular migrant workers tend to get lower wages than the minimum rates announced by the National Wages Committee because of their illegal status. **On this important issue, the Committee refers again to the tripartite discussion that took place in June 2006 and asks the Government to continue to report in detail on the impact of the action taken within the framework of an active employment policy to prevent abuse in the recruitment of labour and the exploitation of migrant workers in Thailand (see Part X of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)).**
- *Workers in the rural sector and in the informal economy.* The Government indicates that homeworkers in the informal sector can register at provincial employment offices to receive basic training to enhance their skills. It also initiated a project in 2006 to reach agricultural sector workers and improve working and living conditions and raise awareness of labour protection. **The Committee requests the Government to also provide information in its next report on the implementation of rural employment policies and programmes and on any other measures it has taken to promote employment and improve the quantity and quality of employment opportunities for homeworkers. It also reiterates its interest in examining information on the measures taken to reduce the decent work deficit for men and women workers in the informal economy and to facilitate their absorption into the labour market.**

5. *Article 3. Consultations with representatives of the persons affected.* The Committee notes that, in issuing policies on employment and labour protection, the Ministry of Labour has given opportunities for all parties concerned to participate. Draft copies of policies and regulations are open for public comment. In certain provinces, the Provincial Offices of Labour Protection and Welfare have collaborated with local government authorities, NGOs and foundations in order to access those migrant workers more easily and provide protection more efficiently. **The Committee invites the Government to provide information in its next report on any recommendations made by the abovementioned mechanisms in relation to the formulation and implementation of employment measures.**

Uganda

Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

The Committee notes with regret that the Government has not supplied any information on the application of the Convention since its last report received in June 2004. *The Committee asks the Government to provide a detailed report containing clear and up to date information in reply to its 2005 observation, which read as follows:*

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. The Committee recalls that the draft National Employment Policy was to be submitted by the Ministry of Labour and Social Welfare to Cabinet in July 2004 for consideration and adoption. While the Government explained that the draft National Employment Policy represents the first comprehensive action to address the problems of unemployment, underemployment, labour productivity and poverty in the country, it acknowledged that employment remains one of its greatest challenges since more than half of the population lives below the poverty line. Unemployment and underemployment are rampant among women, youth and graduates from institutions of higher learning, tertiary and other institutions. The Government has thus included employment objectives in the development plans and programmes, such as the Poverty Eradication Action Plan aimed at accelerating economic growth and the eradication of poverty. *The Committee requests the Government to provide detailed information in its next report on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies. It asks the Government to report on the status of the draft National Employment Policy and the Poverty Eradication Action Plan, as well as any evaluation on the impact of its programmes to combat unemployment focusing on university graduates.*

The Committee emphasizes the importance of establishing a system for compilation of labour market data and requests the Government to report on any progress made in this field. *It asks the Government to provide in its next report disaggregated data on trends in the labour market, including information on the situation, level and trends of employment, underemployment and unemployment throughout the country and the extent to which they affect the most vulnerable categories of workers (such as women, young persons and rural workers).*

Article 3. Participation of the social partners. The Government indicated that during the development of the draft National Employment Policy, the views of all affected persons were taken into account through the various workshops held. The Committee takes due note of this information and recalls that *Article 3* of the Convention requires consultations with representatives of all persons affected, and particularly representatives of employers and workers, in the formulation and implementation of employment policies. It is the joint responsibility of the Government and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries (see paragraph 493 of the General Survey of 2004 on promoting employment). *The Committee would appreciate continuing to receive information on the involvement of the social partners in the matters covered by the Convention.*

Zambia

Employment Policy Convention, 1964 (No. 122) (ratification: 1979)

1. *Articles 1 and 2 of the Convention. Active employment policy and poverty reduction strategy.* In reply to the 2006 observation, the Government indicates in the reports received in September 2007 and March 2008 that the comprehensive National Employment and Labour Market Policy was officially launched in 2006. The Government also adopted the Fifth National Development Plan in which it incorporated the Decent Work Agenda to address issues related to employment promotion, and which takes into account the concerns raised under the Convention regarding the need to ensure work for those seeking it. It further asserts that the integration of the employment strategy into the National Development Plan is essential. Nevertheless, according to the Government, the issues linked to poverty reduction and economic growth in the National Development Plan, such as employment creation and maintaining labour standards at places of work, have not yet been adequately addressed. The average population growth between 1990 and 2000 was 2.3 per cent. The country's unemployment rate has worsened due to the disparity between the rate at which the economy can absorb the increasing labour force, and the faster rate at which the population continues to grow. As a result of this mismatch, and according to Zambia's Central Statistics Office (CSO), only 10 per cent of workers are employed in the formal sector, while 68 per cent are employed in the informal sector. The Government also indicates that the HIV/AIDS pandemic, which still remains a major challenge in the labour market, has continued to have a negative impact on labour productivity and national economic development. The Government proposes to reduce the spread and impact of HIV/AIDS on workers and employers through interventions and through facilitating the formulation of policies at the workplace, through educating workers on the relevant legal provisions and the dangers and effects of HIV and AIDS, as well as through the formulation of legislative measures to protect infected workers, and by awareness-raising and sensitization programmes. *The Committee requests the Government to provide further information on the implementation of its HIV/AIDS policy and how it takes into consideration the effects of HIV and AIDS on employment generation. The Committee hopes that the Government will supply a report containing detailed information on the principal policies pursued and measures taken with a view to ensuring that there is work for all who are available for and seeking work, including particular reference to policies and measures implemented under the National Development Plan. The Committee requests the Government to continue to provide information on how Zambia's Poverty Reduction Strategy contributes to the creation of productive employment in the context of a coordinated economic and social policy.*

2. *Article 3. Participation of the social partners.* The Committee notes from the Government's report that the social partners are consulted through the Tripartite Consultative Council and were involved in the drafting of the National Employment and Labour Market Policy. *The Committee notes this approach with interest and asks the Government to*

continue to provide information on the participation of the social partners in the ongoing decision-making, review and implementation processes in relation to its national employment policy and poverty reduction strategy. It further asks the Government to provide information on consultations with representatives of other sectors of the economically active population, such as those working in the rural sector and the informal economy.

3. *Youth employment.* The Committee notes that young people constitute 70 per cent of the 4.7 million workforce in Zambia. In its report, the Government indicates that a National Youth Policy (2005) and various youth development programmes have been introduced within the national employment policy to promote skills development and work opportunities for the young. Combating youth unemployment serves various economic and non-economic goals; it helps avoid delinquency, prepares youth for future leadership, allows the youth to feel useful and supports retirees. The Ministry of Sports, Youth and Child Development has created a fund for the development and sustainability of the youth small-scale enterprises. ***The Government is asked to provide further information on the implementation of these measures and programmes aimed at the employment needs of young workers along with an assessment of their success in increasing their employment opportunities.***

4. *Education and vocational training.* The Committee notes from the Government's report that it is developing a strategic plan aimed at addressing issues of equity, access, quality and relevance of basic education and training in the country. The strategic plan also focuses on building infrastructure for training purposes. The Committee further notes that this strategic plan will support skills training in the informal sector in response to the current labour market demands given that informal sector work is the source of livelihood for some 80 per cent of the working population. The Government further indicates that the Ministry of Science, Technology and Vocational Training has developed a Disability Policy, which was drafted in 2006 and adopted and launched in 2007, to address the training needs of people with disabilities, in an effort to comply with the provisions of Convention No. 159, which was also ratified by Zambia. ***The Government is asked to provide further information on the implementation of the strategic plan aimed at addressing issues of equity, access, quality and relevance of education and training in the country, as well as specific information on the measures taken under the strategic plan to meet the training needs of other particular categories of workers, such as women, older workers and workers with disabilities.***

5. *Article 2. Collection and use of employment data.* In its reply to the Committee's earlier request for information, and within the framework of the Employment and Labour section of Zambia's Second PRSP, the Government indicated its intention to adopt a Labour Market Management Information System (LMMIS) with the objective of creating public awareness on labour and employment matters and enhancing decision-making, which would include strategies for achieving the aforementioned objectives. The Government indicated that it had identified more than 30 indicators, including all ILO key labour market indicators, and that it was installing the LMIS database which was expected to be operational in September 2007. ***The Committee requests the Government to provide additional information, in the next report, on the development and implementation of the Labour Market Management Information System and its impact on the national employment policy.***

6. The Committee notes from the Government's report that the Ministry of Labour and Social Security and the Central Statistics Office have concluded a Memorandum of Understanding to manage the LMIS together by sharing resources and conducting national labour force surveys. The Government highlights that it has put in place an Employment and Labour Sector Advisory Group (ELSAG) to advise on the implementation of employment programmes identified under the National Development Plan. Further to its previous request for specific information on how data are used in the creation of employment policies, the Committee notes the Government's indication that the main ELSAG Committee is split into various subcommittees, including a subcommittee on Labour Market Information (LMI). The LMI subcommittee meets to discuss survey results and presents its findings to the main ELSAG Committee which then makes the appropriate policy recommendations to the Government. The Committee recalls that good data can be used to assess the impact of policy measures and to make adjustments as necessary. They are an essential element for the decision and review of measures to be adopted for attainment of the objectives of the Convention, in accordance with *Article 2* (paragraph 104 of the General Survey of 2004 on promoting employment). ***The Committee therefore notes with interest the approach pursued by the Government and requests further information on the implementation, and successes, of the employment measures adopted resulting from the collaboration of the Ministry of Labour and Social Security and the Central Statistics Office.***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 88** (Ecuador); **Convention No. 96** (Libyan Arab Jamahiriya); **Convention No. 122** (Antigua and Barbuda, Austria, Azerbaijan, Belarus, Belgium, Central African Republic, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Denmark, Denmark: Greenland, Estonia, France: St Pierre and Miquelon, Greece, Honduras, Hungary, Iraq, Ireland, Israel, Jamaica, Jordan, Kazakhstan, Netherlands: Aruba, Netherlands: Netherlands Antilles, Nicaragua, Panama, Papua New Guinea, Paraguay, Spain, United Kingdom: Guernsey, Uzbekistan, Yemen); **Convention No. 159** (Guinea, Yemen); **Convention No. 181** (Algeria, Belgium, Bulgaria).

Vocational guidance and training

Algeria

Human Resources Development Convention, 1975 (No. 142) (ratification: 1984)

Implementation of policies and programmes of vocational guidance and training. The Committee notes the reports received in June 2007 and May 2008 containing elements of a reply to its observation of 2006. It also notes the major legislative texts adopted at the beginning of 2008, in particular Act No. 08-04 of 23 January 2008 issuing the National Education Guidance Act, Act No. 08-06 of 23 February 2008 issuing the Higher Education Guidance Act, and Act No. 08-07 of 23 February 2008 issuing the Vocational Training and Education Guidance Act. It notes that a public service for vocational training and education contributes to the development of human resources through the training of a qualified workforce in all areas of economic activity, to the social and vocational promotion of workers and to the fulfilment of labour market needs. A National Conference on Vocational Training and Education and regional conferences have been organized as a framework for consultation, coordination and evaluation of the activities of the network of vocational training and education. The aims of the three training cycles have been redefined and the possibility of higher level training being provided by private establishments has been regulated. The Committee recalls that, in its 2006 observation, it requested information on the implementation in practice of the policies and programmes initiated, their development and the results achieved in terms of employment, which is one of the major objectives of the policies and programmes covered by *Article 1 of the Convention*. It also recalls the worrying employment situation, in particular, for young graduates, which is the subject of an observation on the application of the Employment Policy Convention, 1964 (No. 122). **The Committee invites the Government to indicate in its next report how it ensures effective coordination between the policies and programmes of vocational guidance and training implemented since 2008, on the one hand, and employment and the public employment services, on the other hand (Article 1, paragraphs 1–4, of Convention No. 142). In this regard, the Committee requests the Government to provide up to date information in its next report on the systems of general, technical and vocational education, educational and vocational guidance and vocational training (Article 2). It requests the Government, in particular, to specify the results achieved with regard to vocational training through the measures taken in favour of young graduates who are unemployed, and to indicate the number of beneficiaries and the types of training provided. Moreover, as previously indicated, and to enable it to examine the role and place of the social partners in the new legislation, the Committee would be grateful if the Government would provide detailed information on the cooperation of employers' and workers' organizations in the work of the National Conference on Vocational Training and Education as well as of the regional conferences and, in general, in the formulation and implementation of policies and programmes of vocational guidance and vocational training, as required by Article 5 of the Convention.**

Article 3 of the Convention. Persons experiencing difficulty. The Government indicates in its report that the provision of training of particular categories is a statutory mission of the vocational training and education sector. This training concerns persons with disabilities (1,587 trainees are receiving residential training, including 618 girls), young people whose morals are at risk (1,693 young people have received training in special centres, including 65 girls) and persons in detention in rehabilitation centres (6,123 beneficiaries, including 287 girls). Other training targets young people, who have not achieved the required level, and housewives. **The Committee requests the Government to provide further information on the manner in which these categories have been defined and on the effective contribution of the different measures to the lasting integration in employment of the persons concerned. It recalls that, in its previous observation, it also asked the Government to provide copies of the agreements concluded with partners acting in the field of vocational training of women, to indicate whether training for housewives is available throughout the territory and provide relevant statistics where they are available.**

Part VI of the report form. Application in practice. **The Committee once again requests the Government to forward any extracts, reports or other information available on the implementation of vocational training programmes targeting certain fields, certain branches of economic activity or certain groups of the population.** The Government might consider it useful to refer to the guidelines on education, training and lifelong learning contained in the Human Resources Development Recommendation, 2004 (No. 195).

Ecuador

Human Resources Development Convention, 1975 (No. 142) (ratification: 1977)

Implementation of policies and programmes of vocational guidance and training. The Committee notes the report received in September 2008 which includes appendices and information on the objectives laid down in the "Social agenda for equity and quality in social services". The Government indicates that in 2007 a total of 2,936 training courses were provided for 39,071 participants. In addition, 83,900 participants from vulnerable categories of workers were trained by

means of 4,252 courses. Provision has been made for the establishment of a new National Vocational Training System, using parameters relating to territorial equity and analysis of inadequacies in training facilities for the most vulnerable in relation to the design of courses geared to their needs. The Committee refers to its observation of 2008 on the application of the Employment Policy Convention, 1964 (No. 122), in which it noted the intention to link the supply of labour training to the National Plan for Economic Inclusion. *The Committee hopes that, at its next examination of the application of Convention No. 142, updated information will be available illustrating the way in which the vocational guidance system has been expanded and effective coordination has been ensured between the initiatives to provide vocational guidance and training and employment policy objectives, taking account of the factors mentioned in Article 1, paragraphs 2 to 4, of Convention No. 142. The Committee requests the Government to continue sending copies of reports, studies and surveys, statistical data, etc., on policies and programmes intended to promote access to education, training and lifelong learning for people with special needs, such as young persons, low-skilled people, people with disabilities, migrants, older workers, indigenous people, ethnic minority groups and the socially excluded, and also for workers in small and medium-sized enterprises in the informal economy, in the rural sector and in self-employment (Paragraph 5(h) of the Human Resources Development Recommendation, 2004 (No. 195)).*

El Salvador

Human Resources Development Convention, 1975 (No. 142) (ratification: 1995)

Implementation of policies and programmes of vocational guidance and training. The Committee notes the Government's report for the period ending June 2008, which includes detailed replies to the matters raised in the 2003 observation. The Government attaches a study on training needs in the western, central and para-central regions conducted in November 2004. In June 2006, a training and vocational integration project was executed with the support of the Spanish Agency for International Cooperation. This project is intended to develop and implement training programmes with standardized criteria of relevance and quality, disseminate the information available in the Labour Market Observatory, achieve the mutual recognition of occupational training at the Central American level and extend coverage of the national territory by the public employment services. The Government adds that 195,310 people were trained between June 2007 and May 2008, of whom 167,504 were active workers and 27,905 were trained in the context of programmes for the unemployed, underemployed and young persons. The Government also provides information on the Vocational Training Programme (HABIL) and the Enterprise-Centre Programme, which are targeted at young people between 16 and 25 years of age. *The Committee hopes that for its next examination it will be provided with updated information illustrating the manner in which the vocational guidance system has been extended and effective coordination ensured between the employment offices of the Ministry of Labour and the El Salvador Institute of Vocational Training (INSAFOR). In particular, the Committee would be grateful to be informed of whether the national vocational training system has been defined with greater precision and to be provided with updated information on the programmes implemented with the participation of the social partners so as to continue giving effect to the Convention.*

France

Human Resources Development Convention, 1975 (No. 142) (ratification: 1984)

Part IV of the report form. The Committee notes the Government's report provided in September 2008, which contains only an outline of the reform of the organization of the public employment service. *It refers to its 2008 observation on the application of Convention No. 122 and invites the Government to communicate any extracts from reports, studies, inquiries or statistical data which will allow an examination of the results achieved by the policies, programmes and measures adopted to give effect to Convention No. 142.*

Guinea

Human Resources Development Convention, 1975 (No. 142) (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2004 observation, which read as follows:

Formulation and implementation of education and training policies. In reply to its previous comments, the Government indicates that there are no coordination structures linking the three ministries responsible for the implementation of vocational guidance and training policies and programmes. The Government's report received in June 2004 enumerates the technical and vocational training institutions that exist. It also provides information concerning the implementation of the "employment" component of the Poverty Reduction Strategy approved in 2002. The Committee refers, in this respect, to the comments on the Employment Policy Convention, 1964 (No. 122), and asks the Government to indicate the manner in which the measures adopted or envisaged in the context of the Poverty Reduction Strategy reinforce the links between education, training and employment,

particularly through the employment services. It asks the Government to provide information in its next report on the efforts being made to secure coordination among the various institutions responsible for developing comprehensive and coordinated policies and programmes of vocational guidance and vocational training. It draws attention once more to the importance of social dialogue in preparing, implementing and reviewing a national human resources development, education and training policy. It would be grateful if the Government would also provide practical information on levels of instruction, qualifications and training activities so that it can assess the application of all the provisions of the Convention in practice.

Kenya

Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1979)

Formulation of a national policy. The Committee notes the Government's report received in September 2008, replying to the observation of 2006. The Government states that there is still no national policy framework or specific law governing paid educational leave as the social partners have failed to agree on the matter. However, it will be brought up for discussion in the National Labour Board, the establishment of which is provided for by the Labour Institutions Act of 2007. The Government states that it supports and promotes training at all levels and again indicates that there is no legislation in contradiction with the Convention. The Government further indicates that the Industrial Training Act regulates the training of workers. Although the Act has no specific provisions on paid educational leave, it does provide for the establishment of a National Industrial Training Council and several training committees, in specified industries. *Referring to its previous comments, the Committee reminds the Government that the formulation and application of a policy designed to promote the granting of paid educational leave for the purpose of training at all levels of general, social and civic education and trade union education are obligations that derive from ratification of the Convention pursuant to Article 2. It points out in particular that Article 2 also facilitates application of the Convention by allowing methods to promote the granting of paid educational leave to be adapted to national conditions and practice and to be implemented in stages, as necessary. Furthermore, Article 9(b) of the Convention provides that special provisions are to be established, as necessary, for particular categories of workers and undertakings liable to have difficulty in fitting into general arrangements (clauses (a) and (b)). The Committee requests the Government, in association with the social partners and with institutions and bodies providing education and training, to adopt measures to create the necessary conditions for formulating and applying a national policy to promote the granting of paid educational leave (Article 6). Lastly, the Committee invites the Government to send any reports, studies, surveys or statistical data allowing it to assess the extent to which the Convention is applied in practice (Part IV of the report form).*

Human Resources Development Convention, 1975 (No. 142) (ratification: 1979)

1. *Article 1, paragraph 1, of the Convention. Adoption and implementation of policies and programmes of vocational guidance and training. Close link with employment.* The Committee notes the report sent by the Government in reply to the direct request of 2003, received in December 2004. The Government indicates that the National Manpower Development Committee gathers information on the employment market, making it possible, in particular, to determine the needs of the employment market in terms of training. A directory of the different occupations has also been created for statistical purposes. Furthermore, the Minister of Labour and Human Resources Development has improved the electronic database on manpower and the labour market, which has allowed the skills required to be identified. The Committee notes that, in its report on the application of Convention No. 140, received in September 2008, the Government indicates that the Vocational Training Act provides for the establishment of a National Vocational Training Council. The Committee also notes that in the Poverty Reduction Strategy Paper, human resources development has been considered at the core of the Economic Recovery Strategy (ERS) for wealth and employment creation in the investment programme adopted in March 2004. It is envisaged to provide opportunities for all Kenyans to productively and self-reliantly participate in employment and wealth creation. The Government also recognized that developing human resources requires complementary efforts to address education and training, health and HIV/AIDS, labour and nutrition. *The Committee welcomes this approach and looks forward to examining in the Government's next report information on the impact of the action taken to promote skills under the ERS. It also requests the Government to provide information in its next report on the existing methods for developing comprehensive and coordinated policies and programmes of vocational guidance and vocational training, indicating, in particular, the manner in which the National Vocational Training Council contributes to the effective coordination of policies and programmes and the manner in which they are linked to employment and to public employment services.*

2. *Article 1, paragraph 5. Equality of opportunity.* According to the information provided by the Government, measures are planned to promote the education and training of women with a view to their increased participation in the labour market. For instance, the Government has organized awareness-raising campaigns targeting policy-makers in several districts of the country. The Government is also continuing its efforts to improve access to credit for women by encouraging them to form credit cooperatives, by establishing contacts with banks and microcredit organizations and by strengthening institutional capacities in collaboration with the private sector. The Government also points out that specific programmes are being devised to combat the high unemployment of young persons, in particular through the promotion of self-employment and the creation of youth polytechnics, but also through mechanisms to manage the transition between school and work, and apprenticeship and vocational guidance. *The Committee invites the Government to continue to*

provide information on the measures taken to encourage women to develop and use their professional abilities in all branches of economic activity and at all levels of skill and responsibility. Please also indicate the measures taken to promote access to education, training and lifelong learning for people with specific needs, such as young persons and the other categories of vulnerable persons identified in Paragraph 5(h) of Recommendation No. 195.

3. *Vocational guidance information.* The Government indicates that school curricula include vocational guidance classes which make pupils aware of the different occupations and employment options available. Furthermore, the information on the programmes of vocational training institutions is disseminated through various media. *The Committee refers to Article 3, paragraph 2, which provides that, in addition to the choice of an occupation, vocational training and related educational opportunities, the employment situation and employment prospects, the information and guidance given shall also cover subjects such as conditions of work, safety and hygiene at work and other aspects of working life in the various sectors of economic, social and cultural activity and at all levels of responsibility. The Committee also recalls that, in accordance with Article 3, paragraph 3, the information and guidance referred to in the Convention shall be supplemented by information on general aspects of collective agreements and of the rights and obligations of all concerned under labour laws and regulations. In this regard, the Committee invites the Government to continue to report on the type of information available for the purposes of vocational guidance and to provide examples of the documentation available (Article 3, paragraphs 2 and 3). Please also provide information on the measures which ensure that comprehensive information and the broadest possible guidance are available to all persons concerned and indicate all measures specifically concerning handicapped and disabled persons (Article 3, paragraph 1).*

4. *Employment and training opportunities in small and medium-sized enterprises.* In reply to the Committee's previous direct request, the Government indicates that a Micro and Small Enterprise Training and Technology Project has been implemented. The project consists of activities relating to training, the development of technology and infrastructure, as well as institutional development and policy analysis, monitoring and evaluation. The project has had an impact in terms of the expansion and diversification of the activities and networks of the enterprises concerned, as well as in terms of employment, income growth and the creation of enterprises by women. According to the information provided by the Government, the results of the project have also contributed to the country's objectives in the context of its poverty reduction strategy, in particular through the creation of jobs, a rise in income levels and the promotion of economic growth. *The Committee refers to Chapter IV of the Job Creation in Small and Medium-sized Enterprises Recommendation, 1998 (No. 189), containing information on the service infrastructure which should be developed in order to enhance the growth of small and medium-sized enterprises, their job creation potential and their competitiveness and hopes that the Government will continue to include information in its next report on the measures taken to this end.*

United Republic of Tanzania

Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1983)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2004 observation, which read as follows:

1. *Granting of paid educational leave to all workers.* The Committee notes that, in its brief reply to the direct request sent in 2003, the Government indicates that, in respect of the costs concerning general, social and civic education, including trade union education, employees suffer no deductions from their salaries. The Committee would appreciate receiving further information on the measures that have been taken, within the framework of a national policy on paid educational leave for workers in all sectors of the economy, to contribute, in association with employers' and workers' organizations and institutions, to the achievement of the objectives set out in *Article 3 of the Convention*, and that have been coordinated with the general policies enumerated in *Article 4 of the Convention*.

2. *Discrimination.* The Committee also notes that its policy statement that whenever opportunity for training occurs, applications are invited through published notices in local news media and without regard to race, colour, sex, religion, political opinion, national extraction or social origin. The Committee recalls that, in its previous comments, it requested the Government to confirm whether paragraph 1.2 of section I of the Parastatal Service Regulations, First Edition, 1984, governing the terms and conditions applicable to attendance at in-service courses or higher education in East Africa, which require recommendation by the party, is still in force. The Committee again asks the Government to provide a copy of the text that has replaced or revoked the 1984 Parastatal Service Regulations. Please describe the measures taken to ensure that workers have equal access to paid educational leave irrespective of race, colour, sex, religion, political opinion, national extraction or social origin (*Article 8*).

3. *Practical application.* Please include in the next report a general appreciation of the manner in which the Convention is applied in practice, including, if available, the number of workers granted paid educational leave (*Part V of the report form*).

Bolivarian Republic of Venezuela

Human Resources Development Convention, 1975 (No. 142) (ratification: 1984)

Implementation of policies and programmes of vocational guidance and training. Cooperation with the social partners. In its previous comment, the Committee noted the activities of the National Institute for Cooperative Education (INCE), which offered continuous training through 21 regional civil associations. The Committee asked the Government

to continue to provide information on the vocational guidance activities carried out by the INCE. In its report received in August 2008, the Government reports on the implementation of the Che Guevara Social Mission and the creation of centres of endogenous development which have put in practice a comprehensive plan for vocational training and labour market integration. Based on a new economic model, the aim is to train workers who are facing structural unemployment and young people so that they obtain a job and fully develop their abilities. The Government reports the adoption of the Decree with the rank, value and force of law, dated 15 July 2008, for the promotion and development of small and medium industry and units of social production. The Committee notes that the INCE has been converted into the National Institute for Socialist Cooperative Education (INCES) through the Decree with the rank, value and force of law, dated 14 May 2008. The Committee notes that in the observations received in September 2008 by the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), it was indicated that there was no tripartite representation on the Executive Board of the INCES. Employers were obliged to pay a contribution equivalent to 2 per cent of the normal salary paid to the staff working for private individuals or enterprises not belonging to the State employing five or more workers. Workers contribute 0.5 per cent of their annual earnings (sections 14, 15 and 17 of the above Decree). The Committee expressed its conviction in its 2004 General Survey that broad social dialogue is the best guarantee of the effectiveness of employment policies and human resources development. Increased involvement of the representatives of employers' and workers' organizations is not only essential to ensure the successful implementation of the necessary measures, but can also contribute to improving the quality of social dialogue (see General Survey of 2004 on promoting employment, paragraphs 495 and 437). In accordance with *Article 5* of Convention No. 142, policies and programmes of vocational guidance and training are to be formulated and implemented in cooperation with the social partners. *The Committee requests the Government to report on the manner in which, in accordance with Article 5 of the Convention, it has ensured the cooperation of employers' and workers' organizations to extend the vocational guidance system and ensure effective coordination between initiatives to provide vocational guidance and training and employment policy objectives, taking into account the factors mentioned in Article 1, paragraphs 2 to 4, of the Convention. The Committee invites the Government to include reports, studies and surveys, statistical data, etc., on the policies and programmes designed to promote access to education, training and lifelong learning for people with special needs, such as youth, low-skilled people, people with disabilities, migrants, older workers, indigenous people, ethnic minority groups and the socially excluded; and for workers in small and medium-sized enterprises, in the informal economy, in the rural sector and in self-employment (Paragraph 5(h) of the Human Resources Development Recommendation, 2004 (No. 195)).*

The Government is asked to reply in detail to the present comments in 2010.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 140** (Belize, Brazil, Czech Republic, Guinea, Guyana, Hungary, Nicaragua, Slovenia, Ukraine, United Kingdom: Anguilla); **Convention No. 142** (Brazil, Central African Republic, France: French Guiana, France: French Polynesia, France: Guadeloupe, France: Martinique, France: New Caledonia, France: Réunion, France: St Pierre and Miquelon, Guyana, Hungary, Kyrgyzstan, Nicaragua, Russian Federation, Slovenia, Switzerland, Tajikistan, United Republic of Tanzania).

Employment security

General observation

Termination of Employment Convention, 1982 (No. 158)

The Committee was informed of the consultation held on the status of the Termination of Employment Convention, 1982 (No. 158) in the framework of the Committee on Legal Issues and International Labour Standards at the 303rd Session of the Governing Body, in November 2008. The Committee is aware that some concerns were reiterated on the record of the ratification of the Convention, in the use of the exclusions provided for in *Article 2*, and the flexibility as to the manner of implementation.

The Committee wishes to note that many more countries than those that have ratified the Convention give effect to its basic principles, such as notice, a pre-termination opportunity to respond, a valid reason and an appeal to an independent body. Most countries, be they ratifying countries or otherwise, have provisions in force at the national level that are consistent with some or all of the basic principles of the Convention. The Committee notes that the principles of the Convention are an important source of law for labour courts and tribunals in countries that have or have not ratified the Convention. At its present session, the Committee noted with satisfaction the rulings handed down in March 2006 and July 2008 by the Court of Cassation in France directly applying the Convention. As an example of a non-ratifying country, the Committee notes from information supplied to it that the courts in South Africa have used the Convention in developing its jurisprudence.

The Committee considers that the principles underlying the Convention constitute a carefully constructed balance between the interests of the employer and the interests of the worker as evidenced by its provisions relating to termination on grounds of operational requirements of the enterprise. This is of particular relevance given the current financial crisis. Because the Convention supports productive and sustainable enterprises, it recognizes that economic downturns can constitute a valid reason for termination of employment. The Committee stresses that social dialogue is the core procedural response to collective dismissals – consultations with workers or their representatives to search for means to avoid or minimize the social and economic impact of terminations of employment for workers.

The Committee is convinced that a better dissemination of the information available on the Convention and the recognition by the stakeholders of the core requirements of the Convention might provide a basis for achieving tripartite consensus in any further consultations.

Cameroon

Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)

1. *Collective dismissals.* The Committee notes the Government's reply to the comments made by the General Union of Cameroon Workers (UGTC) and the General Confederation of Labour – Liberty of Cameroon (CGTL) referred to in the observation of 2007. In its reply received in February 2008, the Government states that the procedure laid down in section 40 of the Labour Code was observed in the dismissals in public and semi-public companies. The dismissals occurred only after measures to avoid them had been exhausted. The compensation claims of the workers dismissed from the state companies were examined by a committee chaired by the Minister of Finance. The Committee again points out that compliance with the principles set forth in the Convention can facilitate the development of socially responsible economic activity when decisions are made regarding collective dismissals. Terminations for reasons of an economic, technological, structural or similar nature must be consistent with *Articles 13 and 14 of the Convention* on consultation with the workers' representatives and notification to the competent authority. In a new communication forwarded to the Government in October 2008, the UGTC raised concerns over the dismissal of 215 workers without consultation. ***The Committee asks the Government to report on decisions taken to ensure the provision of a severance allowance and other income protection for workers dismissed by their employers. It would like to be in a position to ascertain whether such measures to mitigate the adverse effects of dismissals have been taken pursuant to Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). The Committee also requests the Government to provide information on the observation made by the UGTC in November 2008.***

2. The Committee notes with regret that the Government has not reported on the following matters contained in the observation of 2007. ***It trusts that the Government will provide a report replying to the matters already raised in the Committee's observation of 2006, which read as follows:***

Article 4. Determination of valid reasons for termination of employment. The Committee notes the Government's statement that effect is given to *Article 4* by section 34(1) of the Labour Code, which is reproduced in collective agreements and provides that "a contract of employment for an indefinite period may always be terminated at the will of one of the parties. Such termination is subject to notice given by the party taking the initiative to end the contract and shall be notified in writing to the other party with an indication of the reason for termination". The Government indicates that the reasons considered to be valid grounds for termination are generally determined by the internal rules of each enterprise. The Committee recalls that Paragraph 1 of Recommendation No. 166 contemplates "workers' rules" as a method of implementation but, as the Committee observed in paragraph 30 of the 1995 General Survey on protection against unfair dismissal, it may prove difficult to rely on internal work

rules to give effect to the provisions of the Convention when they only cover the enterprise to which they apply. **The Committee therefore requests the Government to ensure, in a manner consistent with its national practice, that full effect is given to the obligation established by Article 4 of the Convention that the employment of any worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the enterprise, establishment or service. Please also provide copies of recent court decisions by which the tribunals have given effect to this important provision of the Convention.**

Article 5(c) and (d). Invalid reasons for termination set out in the Convention. The Government indicates that the application of Article 5 is ensured by sections 39(1) and 84(2) of the Labour Code, which the Committee had already noted in its previous comments. The Committee refers to its 2002 direct request relating to Article 5(c) and (d), as well as the comments that it made in 2004 on the application of Article 1 of Convention No. 111. **It once again requests the Government to indicate the manner in which it is ensured in law and practice that the filing of a complaint or the participation in proceedings against an employer involving alleged violations of laws or regulations, or recourse to competent administrative authorities (Article 5(c)), as well as the race, colour, sex, marital status, family responsibilities, religion, political opinion, national extraction or social origin of the worker (Article 5(d)), do not constitute valid reasons for termination of employment. Please provide copies of relevant court decisions.**

Article 7. Defence procedure prior to termination of employment. The Government indicates that collective agreements and internal rules give effect to the provisions of Article 7. The Committee refers to the observations made in 2001 by the Federation of Free Trade Unions of Cameroon (USCL) to the effect that observance of the procedures established in laws or regulations is not ensured, particularly in cases of dismissal of staff delegates and trade union representatives. **The Committee once again requests the Government to indicate the manner in which the right to defence prior to termination of employment is ensured for all workers, in particular by providing copies of the relevant provisions of any collective agreement or internal rules that are available, and any recent judicial decision.**

Article 8, paragraph 3. Time limits for the appeal procedure. The Government indicates that the time limits available to workers to exercise their right of appeal against termination of employment can be inferred from section 74 of the Labour Code, which provides in subsection 1 that “legal action respecting the payment of wages is subject to a three-year prescription”. The Committee notes that section 74 deals with legal action concerning payment of wages. **It therefore requests the Government to indicate how section 74 of the Labour Code ensures the right to appeal against unfair dismissal within a reasonable period of time after termination, as required by Article 8, paragraph 3, of the Convention.**

Articles 11 and 12, paragraph 3. Time limits for the appeal procedure. The Government indicates that the time limits available to workers to exercise their right of appeal against termination of employment can be inferred from section 74 of the Labour Code, which provides in subsection 1 that “legal action respecting the payment of wages is subject to a three-year prescription”. The Committee notes that section 74 deals with legal action concerning payment of wages. **It therefore requests the Government to indicate how section 74 of the Labour Code ensures the right to appeal against unfair dismissal within a reasonable period of time after termination, as required by Article 8, paragraph 3, of the Convention.**

Parts IV and V of the report form. Application of the provisions of the Convention in practice. The Committee notes the Government’s statement that copies of court decisions relating to questions of principle concerning the application of the Convention will be forwarded subsequently. It draws the Government’s attention to the importance of providing information regularly on the manner in which the Convention is applied in practice so as to enable the Committee to examine the application of its provisions, and particularly Articles 4, 5, 7, 8, paragraph 3, 11 and 12, paragraph 3. **The Committee trusts that the Government’s next report will contain relevant and up to date information on the application of the Convention (Parts IV and V of the report form).**

Democratic Republic of the Congo

Termination of Employment Convention, 1982 (No. 158) (ratification: 1987)

The Committee notes with regret that the Government has not provided any information on the application of the Convention since its last report received in June 2002. **The Committee trusts that the Government will very soon be in a position to supply a report containing clear and up to date information, particularly in reply to the points raised in the Committee’s 2005 comments, which referred to the following matters:**

1. *Article 5(c) and (d) of the Convention. Invalid reasons for termination.* The Government stated that section 62 of the draft revised Labour Code would ensure that sex, religion, matrimonial status, family responsibilities, pregnancy and the fact of having filed a complaint or taken part in an action brought against an employer or having lodged an appeal with the competent administrative authorities did not constitute valid reasons for dismissal. **The Committee hopes that in its next report the Government will be in a position to state that the draft revised Labour Code has been adopted.**

2. *Article 12. Severance allowance and other income protection.* The Government indicated that the provisions of this Article of the Convention are given effect to only by a Memorandum of Understanding concluded in October 1999 between company heads of the commerce sector represented by the Congolese Federation of Enterprises (FEC) and various trade union organizations, which provides for payment of a severance allowance, the amount of which depends on the length of service. The Committee noted that the Memorandum of Understanding was concluded under section 49 of the Labour Code which provides that a worker whose employment has been terminated may also be paid a termination allowance if the contract or collective agreement so provides. In this respect, the Committee recalls, once again, that under Article 1 of the Convention, where the provisions of the Convention are not made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, they shall be given effect to by laws or regulations. **The Committee also recalls that under Article 12, paragraph 1, a worker whose employment has been terminated is entitled to a severance allowance or any other form of income protection or benefit, and trusts that the Government will take the necessary steps to give effect to this provision of the Convention for workers who are not covered by the Memorandum of Understanding in the commerce sector or any other collective agreement, and that it will provide this information in its next report. The Government is also requested to indicate the manner in which it gives effect to Article 12, paragraph 3, under which, in the event of termination for serious misconduct, provision may be made for loss of entitlements or allowances by the methods of implementation referred to in Article 1 of the Convention.**

3. *Parts IV and V of the report form. Application of the provisions of the Convention in practice. Please provide the information required on the application of the Convention in practice, including court decisions involving questions of principle relating to the Convention, available statistics on the activities of bodies of appeal and information on the number of terminations for economic or similar reasons.*

France

Termination of Employment Convention, 1982 (No. 158) (ratification: 1989)

Article 24 of the ILO Constitution. Follow-up of a representation. In the report received in October 2008, the Government indicates that, taking into account the recommendations of the ILO Governing Body of 14 November 2007, it passed Act No. 2008-596 of 25 June 2008 repealing provisions relating to the “Contract for New Employment” (CNE). The Act implements a national tripartite agreement. The CNEs in force at the time of the publication of the Act were reclassified as contracts of unlimited duration. Furthermore, the Court of Cassation referring to the recommendations of the tripartite committee, in a ruling handed down on 1 July 2008 by its social chamber, held that, under the terms of *Article 2, paragraph 2(b), of the Convention*, the CNE is not one of the categories of contracts that can be excluded from the protection of the Convention. The Court of Cassation also held that the CNE did not comply with the requirements of the Convention because it denied workers the right to defend themselves against allegations made prior to termination relating to conduct or performance (*Article 7*); it permitted termination without a valid reason (*Article 4*); and it placed the burden exclusively on a worker to prove an invalid reason for termination under *Article 5 (Article 9, paragraph 2)*. The Committee recalls that the principle of the direct application of the Convention by national courts has been raised by the Court of Cassation in the ruling of 29 March 2006 of its social chamber. **The Committee notes with satisfaction the information provided, which shows that the Convention is applied at the national level. It hopes that the Government’s next report will contain updated information on the application of the Convention in practice and further examples of court rulings concerning questions of principle relating to the application of the Convention.**

Gabon

Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)

The Committee notes that the Government’s report has not been received. It must therefore repeat its 2007 observation, which read as follows:

Parts IV and V of the report form. The Committee notes the Government’s report received in August 2007 which reproduces the information already communicated in September 2005. The Committee regrets that the Government’s report does not contain any specific information in reply to its 2006 observation, which referred to the comments the Committee had been making for a number of years on the application of the Convention. The Committee recalls once again the importance of regularly providing new and relevant information on the application of the Convention so that it can assess the application of each of the provisions. **The Committee trusts that the Government’s next report will finally contain information on the application of the Convention in practice, including examples of recent court decisions, particularly regarding the definition of “real and serious” grounds for termination.**

Articles 8, paragraph 2, and 9, paragraph 3, of the Convention. Termination on economic grounds authorized by the labour inspector. The Committee notes that section 296 of the Labour Code, which refers to the dismissal of a staff delegate or his deputy, provides that the decision by the labour inspector may be challenged in the administrative courts. **The Committee refers to its previous comments and once again asks the Government to indicate whether workers dismissed on economic grounds also have the right to challenge the labour inspector’s decision to authorize their individual or collective dismissal.**

Papua New Guinea

Termination of Employment Convention, 1982 (No. 158) (ratification: 2000)

The Committee notes that the Government’s report has not been received. It must therefore repeat its 2007 observation, which read as follows:

The Committee notes the Government’s report received in January 2007, indicating that, whilst no major amendments have been encountered since its last report in 2002, progress has already been made in the review of the industrial relations machinery in the country, which will culminate in the establishment of a new industrial relations Act, a new industrial relations commission and a new industrial relations administrative structure that will look after the industrial relations processes. It notes that the new industrial relations Act is to be approved in 2007. **The Committee hopes that the Government will report on the enactment of the new industrial relations Act in order to ensure the full and effective application of each provision of the Convention. It requests the Government to supply detailed information on the manner in which the Convention is applied in law and in practice. Please provide a copy of the legislation which gives effect to Convention No. 158, as well as the information specifically requested by the report form under each Article of the Convention.**

In the light of the information which the Government is asked to provide regarding the current observation, the Committee will examine the conformity of the legislation and practice with the provisions of the Convention.

Uganda

Termination of Employment Convention, 1982 (No. 158) (ratification: 1990)

The Committee notes with regret that the Government has not provided any information on the application of the Convention since its last report received in June 2004, which indicated that the draft Employment Bill which, according to the Government, should give effect to the Convention, had still not been adopted. The Committee understands that the Employment Act was adopted and came into force in 2006. In this context, the Committee considers it particularly regrettable that the Government has still not provided the relevant information on the application of the Convention. ***The Committee trusts that the Government will be in a position to provide a detailed report containing full particulars on the application of each of the provisions of the Convention in both law and practice.***

[The Government is invited to reply in detail to the present Comment in 2009.]

Bolivarian Republic of Venezuela

Termination of Employment Convention, 1982 (No. 158) (ratification: 1985)

In reply to the Committee's previous comments, the Government states in its report received in August 2008 that, owing to the nature and type of their duties, managers are unable to enjoy the same security as other workers. With regard to domestic workers, the Committee notes that section 281 of the Organic Labour Act applies specifically to termination of domestic workers. The Government also states that, by decree, the jobs of workers earning up to three times the minimum wage have been preserved. The Government states that this means that an employer may not dismiss a worker without complying with the procedure laid down in the Organic Labour Act. The Committee notes the Government's reasons for excluding managers from the protection of Chapter VII dealing with security of employment in the Organic Labour Act. The Committee observes, however, that the Convention applies to "all employed persons". Please advise the Committee whether the decrees referred to in its report protect managers from unfair termination and, if not, what steps it proposes to take to afford managers the protections afforded by the Convention.

Legislative reforms. In its observation of 2007, the Committee took note of the observations submitted in October 2007 by the International Organisation of Employers (IOE) which referred to an Organic Labour Stability Bill, under which prior authorization would be required from the competent administrative authority for an employment relationship to be terminated by the employer. In September 2008, the Office sent the Government observations from the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS), which referred to the extension of the decrees of immunity until 31 December 2008. FEDECAMARAS states that the Government does not have any plans to make labour market controls more flexible and is in the process of adopting an act on permanent labour stability. In 2000, the Committee observed that Convention No. 158 seeks to establish a balance between protection of the worker in cases of unfair dismissal and ensuring flexibility in the labour market. The implementation of the Convention must have a positive effect on social peace and productivity at the enterprise level and the reduction of poverty and social exclusion, leading to social stability (general observation of 2000 on Convention No. 158). The Committee notes that the effectiveness of labour law and institutions is closely linked to the promotion of social dialogue and tripartism (Part I.A(iii) of the 2008 ILO Declaration on Social Justice for a Fair Globalization). ***The Committee repeats its conviction that, also with regard to the important issues covered by Convention No. 158, the Government and the social partners should make a commitment to promoting and reinforcing tripartism and social dialogue.***

The Committee requests the Government to send it copies of any legislative texts adopted in relation to the termination of employment. The Committee also requests the Government to include relevant and updated information on the activities of the bodies of appeal (such as the number of appeals against unjustified termination, the outcome of such appeals, the nature of the remedy awarded and the average time taken for an appeal to be decided) and on the number of terminations for economic or similar reasons (Part V of the report form). The Committee hopes that the Government's next report will also contain examples of recent court decisions issued in connection with the definition of what constitutes a fair dismissal (Part IV of the report form).

[The Government is asked to reply in detail to the present comments in 2009.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 158** (*Antigua and Barbuda, Central African Republic, Cyprus, Republic of Moldova, Morocco, Saint Lucia, Yemen*).

Wages

Argentina

Protection of Wages Convention, 1949 (No. 95) (ratification: 1956)

Articles 1 and 12 of the Convention. Definition of the term “wages” and regular payment of wages. The Committee notes that, in its reply to the observations made by the Federation of Professionals of the Government of the Autonomous City of Buenos Aires, the Government merely provides some information on the legal status of the federation but does not respond to the complaints concerning the bonuses which are not classified as wages. The Committee notes that a similar question was raised by the Confederation of Argentinian Workers (CTA), whose latest observations have so far received no reply. Specifically, the question relates to section 103bis of the Act on labour contracts, which does not consider certain benefits as wages and has already given rise to contradictory court rulings. ***The Committee therefore requests the Government once again to respond to the observations made by the Federation of Professionals of the Government of the Autonomous City of Buenos Aires and by the CTA, to send copies of any relevant court decisions and to keep the Office informed of the adoption of any draft legislation to partially repeal section 103bis of the Act on labour contracts.***

Furthermore, the Committee would like to receive more detailed information on the other points raised in its previous comment, namely: (i) any changes in the situation concerning the payment of wages in the form of locally issued vouchers; (ii) the current situation regarding wage arrears or other difficulties in the regular payment of wages which would persist in certain sectors or provinces; (iii) the application of the Convention in practice, including, for example, official reports of the labour inspection services containing statistics on the number and nature of infringements reported with regard to wage protection.

Bolivia

Protection of Wages Convention, 1949 (No. 95) (ratification: 1977)

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

The Committee recalls that it has been making comments since 1983 on the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), and the present Convention regarding alleged abuses in the payment of wages to agricultural workers. It notes with regret that the Government confined itself in its last report to indicating that there had been no follow-up on the matter raised in the Committee’s previous observations and that investigations had not been carried out on the subject. The Government added that, in the context of its policy, it was seeking, among other aims, to resolve the problems encountered by all salaried workers not covered by the General Labour Act.

In this respect, the Committee notes the study entitled *Enganche y Servidumbre por Deudas en Bolivia* (“The trap of debt bondage in Bolivia”), prepared in 2004 and published by the Office in January 2005, which reports practices resulting in tens of thousands of indigenous agricultural workers being in a situation of debt bondage, with some of them being subject to conditions of permanent or semi-permanent forced labour. According to this study, the methods used include systems of advances on wages, stores located in camps which charge excessive rates in relation to market prices, compulsory deductions from wages for savings schemes, payments in kind and the deferred payment of wages. These practices are found, in one form or another, in the regions of Santa Cruz and Tarija (sugar cane harvest), in the north of Amazonia (chestnut picking) and in the region of Chaco (work in ranches), with this latter region experiencing the worst cases of forced labour in the Andean region. The Committee also notes that the conclusions and recommendations of this study were validated at a tripartite seminar held in La Paz in August 2004. The recommendations of the study included the ratification of the Forced Labour Convention, 1930 (No. 29), and the formulation of a national plan of action to eradicate and combat forced labour in all its forms. The Committee draws the Government’s attention to the fact that the practices referred to in the study raise problems relating to the application of *Article 4* (payment in kind), *Article 6* (freedom of the worker to dispose of his or her wages), *Article 7* (works stores), *Article 8* (deductions from wages) and *Article 12* (regular payment of wages) of *Convention No. 95*. ***It therefore requests the Government to provide detailed information on the measures adopted for the formulation and implementation of a national plan of action to bring these practices to an end.***

The Committee is addressing other points, including the scope of application of the General Labour Act and its extension to agricultural workers, in a request addressed directly to the Government.

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

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1977)

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

Article 1, paragraphs 2 and 3, of the Convention. Further to its previous comments on the exclusion of certain categories of workers from the coverage of the minimum wage legislation, the Committee notes the Government’s statement in its 2004 report that by Act No. 1715 of 18 October 1996 on agrarian reform, agricultural wage workers had come within the scope of application of the General Labour Act and that a draft Supreme Decree was expected to regulate agricultural wage work and guarantee the general application of the national minimum wage to those workers. The Committee recalls, however, that in some earlier reports the Government had stated that only sugar cane and cotton workers were not excluded from the minimum wage system and that efforts were being made to extend its application to rubber, forestry and Brazil nut workers. ***The Committee***

therefore requests the Government to clarify the situation in this regard, and to transmit a copy of the Decree on agricultural wage workers as soon as it is formally adopted.

Article 3. The Committee notes that the minimum wage was last revised in 2003 by Supreme Decree No. 27048 and is presently fixed at 440 bolivianos. According to the information supplied by the Government in its last report, this amount is renegotiated every year and increases proportionately to the evolution of the consumer price index. The Government added that the national minimum wage was used for the calculation of various pay supplements and social security benefits, for instance seniority bonus and maternity allowance, and therefore had an impact on the income of most workers. In this connection, the Committee reminds the Government that the primary function of the minimum wage system envisaged in the Convention is to serve as a measure of social protection and to overcome poverty by ensuring decent minimum levels of wages especially for the low-paid, unskilled workers. Therefore, minimum rates of pay that represent only a fraction of the real needs of workers and their families, whatever their subsidiary importance in calculating certain benefits may be, can hardly fit the concept and the rationale of a minimum wage as this arises from the Convention. ***The Committee requests the Government to indicate the measures it intends to take to ensure that the national minimum wage fulfils a meaningful role in social policy, which implies that it should not be allowed to fall below a socially acceptable "subsistence level" and that it should maintain its purchasing power in relation to a basic basket of essential consumer goods.***

Article 4, paragraph 2. The Committee has been requesting the Government for many years to provide tangible evidence of full consultations held with the social partners with respect to fixing or readjusting minimum wage rates, as required by the provisions of the Convention. In its 2004 report, the Government indicated that no consultations with the Bolivian Labour Federation (COB) had been possible that year due to persistent claims of that organization linked to the participation of the President of the Republic in these consultations. However, negotiations had been held with different organizations at the branch level resulting in wage increases of 3 per cent in several sectors. As regards discussions on minimum wages with employers' representatives, the Government stated that it could not enter into any such discussions with the Confederation of Private Employers of Bolivia (CEPB) since article 8 of the Statutes of this organization prevented it from negotiating matters related to wages. While taking due note of these indications, the Committee wishes to emphasize once again the fundamental character of the principle of full consultation of the social partners at all stages of the minimum wage fixing procedure. According to the letter and the spirit of the Convention, the process of consultation must precede any decision-making and must be effective, that is to say it must afford the social partners a genuine opportunity to express their views and have some influence on the decisions pertaining to the matters that are the subject of consultation. ***While recalling that "consultation" should be kept distinct from "co-determination" or mere "information", the Committee considers that the Government is under the obligation to create and maintain conditions permitting the full consultation and direct participation of the most representative employers' and workers' organizations in all circumstances, and therefore urges the Government to take appropriate action to ensure that the requirement for meaningful consultations set forth in this Article of the Convention is effectively applied, preferably in a well-defined, commonly agreed and institutionalized form. It accordingly asks the Government to provide information on any developments concerning the establishment of the National Council on Labour Relations.***

Article 5 of the Convention and Part V of the report form. The Committee notes that, according to the Government's indications in its report of 2004, it intended to amend section 121 of the General Labour Act to provide for the periodic readjustment of the amount of fine to be imposed in the event of infringement of the minimum wage rates in force. ***The Committee would be grateful to the Government for supplying all available information on the application of the Convention in practice.***

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

Brazil

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1965)

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

The Committee notes that the Government referred to Technical Note No. 0138/2002 and reiterated the view that there was no need to insert labour clauses into public contracts because the workers' rights were protected by the general labour legislation, by the terms of the individual contracts and by the monitoring activities of the labour inspection services. ***The Committee would appreciate receiving a copy of the above technical note.***

In view of the Government's continued failure to implement the basic requirements of the Convention, the Committee wishes once again to draw attention to the following: (i) the rationale of the Convention is to ensure – through the insertion of specific labour clauses in all public contracts – that workers engaged in the execution of public contracts enjoy wage and other working conditions not less favourable than those established by law, collective agreement or arbitration award for work of the same nature in the same district; (ii) since labour laws and regulations normally set out minimum standards which are susceptible to being improved through collective bargaining, it is evident that the mere fact that the general labour legislation applies also to public contracts is not sufficient in itself to ensure the most advantageous pay and working conditions to the workers concerned; and (iii) to ensure compliance with the terms of labour clauses, the Convention requires concrete measures for adequate publicity (posting of notices) and an adequate system of sanctions (withholding of contracts or withholding of payments) that go beyond the enforcement measures often provided for in the general labour legislation.

The Committee has been pointing out that, even though the public procurement legislation, especially section 44 of Act No. 8666 of 1993 on public tendering and Normative Instruction No. 8 of 1994, may be considered to give partial effect to the requirements of the Convention, i.e. as regards the level of wages of the workers employed by public contractors, additional measures are needed in order to attain full legislative conformity with all the provisions of the Convention. The Committee recalls that the Government may avail itself of the technical assistance and expert advice of the Office should it so wish with a view to addressing the concerns outlined above.

Moreover, the Committee notes that the Government has not supplied in recent years any information of a practical nature concerning the application of the Convention. ***It therefore asks the Government to make every possible effort to collect and***

transmit, in accordance with Part V of the report form, up to date information on the average number of public contracts granted annually and the approximate number of workers engaged in their execution, inspection results showing the number and nature of contraventions observed, extracts from official documents or studies – such as activity reports of the Department of Logistics and General Services or of the Inspector of Contracts (fiscal de contrato) – addressing issues connected with the social dimensions of public procurement, 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.

Finally, the Committee takes this opportunity to refer to its 2008 General Survey on labour clauses in public contracts which contains an overview of public procurement practices and procedures in so far as labour conditions are concerned and makes a global assessment of the impact and present-day relevance of Convention No. 94.

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

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

Burundi

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1963)

Article 2 of the Convention. Insertion of labour clauses in public contracts. Further to its previous observation, the Committee notes the adoption of Act No. 1/01 of 4 February 2008 concerning the Code on Public Procurement. The new public procurement legislation regulates the award, execution and supervision of all public contracts on the basis of equality of treatment and transparency. It also establishes two organs, the National Directorate for oversight of public procurement operations (DNCMP) and the Regulatory Authority of public procurement (ARMP) which are responsible for ensuring compliance with laws and regulations in respect of public contracting. The Committee regrets to note, however, that the Code on Public Procurement does not provide for the insertion of labour clauses as prescribed by this Article of the Convention. In fact, the only provision which appears to address labour matters in relation to the public procurement process is section 55(1)(a) of the Code which excludes from public tendering persons who have not been regular in the payment of taxes, contributions and other dues of all kinds and who cannot produce a certificate of the administrative authority concerned showing compliance with those obligations. The Committee refers, in this respect, to paragraphs 117–118 of the General Survey of 2008 on labour clauses in public contracts in which it pointed out that the Convention does not relate to some general eligibility criteria of individuals or enterprises bidding for public contracts but requires a labour clause to be expressly included in the actual contract that is finally signed by the procuring entity and the selected contractor. Similarly, certification may offer some proof about tenderers' past performance including respect for social obligations but carries no binding commitment with regard to prospective operations as labour clauses do. **Noting that the Government in its last report had announced its intention to take appropriate action in order to bring its legislation into full conformity with the Convention, the Committee hopes that the necessary steps will be taken without further delay. Noting also that Decree No. 100/120 of 18 August 1990 on general conditions of contract will cease to apply upon the entry into force of the new Code on Public Procurement, the Committee requests the Government to transmit the text of the new general conditions of contract once they have been adopted. Moreover, the Committee requests the Government to clarify whether Presidential Decree No. 100/49 of 11 July 1986 on specific measures to guarantee minimum conditions to workers employed by a public contractor – which reproduces in essence the provisions of Article 2 of the Convention without, however, referring expressly to labour clauses – is still in force and, if so, how it is ensured the application of section 2 of that Decree in practice.**

Finally, the Committee attaches herewith a copy of a Practical Guide on Convention No. 94 which was prepared by the Office based on the conclusions of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve their application in law and practice.

Cameroon

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)

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

The Committee notes that, in reply to the comments made in 2006 by the General Union of Cameroon Workers (UGTC), the Government merely states the procedure followed by the inspection services when a dispute is brought before them. It also notes that, according to the Government, the inspectors can only act if they are informed of a dispute of this type and that the workers must act as the link to the labour inspectorate in enterprises. The Committee is bound to observe that this extremely brief report of the Government does not reply to the UGTC allegations, according to which, in most cases, the employers do not pay the wages provided for by the collective agreement of the sector concerned, and workers engaged in the execution of public contracts do not have any social security protection. **The Committee requests the Government to reply in detail to its previous comment on this point and on the other issues raised.**

The Committee also draws the Government's attention to its 2008 General Survey on labour clauses in public contracts, which gives an overview of law and practice in this field in the member States and provides an evaluation of the impact and current relevance of Convention No. 94.

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

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Article 12, paragraph 1, of the Convention. Payment of wages at regular intervals. The Committee notes the observations made by the General Union of Cameroon Workers (UGTC) concerning specific problems of accumulated wage arrears and the protection of workers' claims following the privatization of certain enterprises. More concretely, the UGTC indicates that the workers of the companies LABOGENIE and MATGENIE and those employed by the Chamber of Agriculture, Fishing and Stock Raising have not received their wages for several months while the pay claims of the workers of CAMPOST, CAMTEL and FEICOM, which are being wound up, have not been settled. The Committee also notes similar observations made by the General Confederation of Labour – Liberty of Cameroon (CGTL) according to which wage arrears have been accumulated for more than ten years. In its reply, the Government merely states that it currently examines the settlement of any wage debts owed to former employees of state enterprises and that it has established for this purpose a special commission presided by the Finance Minister. *The Committee asks the Government to provide full particulars on the operation and the results obtained by that commission. It also hopes that the Government will be in a position to supply in its next report up to date information on the nature and extent of any persistent difficulties concerning the timely payment of wages, especially in the public sector, and the measures or initiatives taken in order to settle all outstanding payments and prevent the recurrence of similar problems in the future. Recalling that the Government has still to reply to previous comments in connection with the wage arrears situation in the education sector, the Committee would appreciate receiving detailed information on the total amount of wage arrears, the sectors of economic activity and number of workers affected, the average delay in the payment of wages and any negotiated timetable for the reimbursement of the wage debt in question.*

Central African Republic

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1964)

Article 2 of the Convention. Insertion of labour clauses into public contracts. Further to its previous observation, the Committee notes the Government's statement that the terms of the clauses to be inserted into public contracts have not yet been determined and that there still remains much to be done to bring the national law and practice into conformity with the requirements of the Convention.

The Committee regrets that the Government is still unable to report any tangible results in implementing the Convention, despite repeated reassurances given in the last two decades. In this connection, the Committee refers to paragraphs 176 and 177 of its General Survey of 2008 on labour clauses in public contracts, in which it noted that the Convention has a very simple structure, all its provisions being articulated around and directly linked to the core requirement of *Article 2, paragraph 1*, i.e. the insertion of labour clauses ensuring the most advantageous wages and other working conditions established locally to the workers concerned. The Committee also considered that the Convention proposes a clear, concrete and effective solution to the problem of how to ensure that workers' rights remain protected. By aligning contract standards to the highest prevailing standards, by excluding the lowering of those standards through subcontracting, and by incorporating those principles into the standard clauses of each and every public contract falling within its scope, the Convention guarantees that public procurement is not a terrain for socially unhealthy competition and can never be associated with poor working and wage conditions. *The Committee therefore urges the Government to take all necessary action without further delay to apply the Convention in law and practice, and recalls that it may also draw upon the Office's technical assistance should it so wish. The Committee also repeats its previous requests concerning: (i) a copy of the draft new Labour Code which, according to the Government, provides for the insertion of labour clauses into public contracts; (ii) information on the revision of the public procurement legislation which is currently in progress with the assistance of the World Bank and the African Development Bank under the Emergency Management and Governance Reform Program (EMGRG); and (iii) the amendment of Decrees Nos 61/135 and 61/137 of 1961 on public contracts for the supply of goods and services – to the extent they are still in force – so as to include clauses similar to that of section 16(3) of Decree No. 61/136 as well as references to the appropriate collective agreements.*

Finally, with a view to assisting the Government in its efforts to give effect to the Convention, the Committee attaches herewith a Practical Guide prepared by the Office and based principally on the findings of the abovementioned General Survey. *It hopes that the Government will make good use of this guide and will take the necessary action in the very near future.*

Comoros

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1978)

Article 1, paragraph 1, of the Convention. Minimum wage fixing machinery. The Committee notes with regret that no minimum wage has yet been established for workers employed in agricultural undertakings and therefore the Convention is presently not implemented in either law or practice. The Committee recalls that based on information provided by the Government under Convention No. 26 in 2003, the Higher Council of Labour and Employment (CSTE) had agreed on a draft text setting the guaranteed interoccupational minimum wage (SMIG) at 35,000 KMF (approximately US\$110) per month. To date, however, no decree seems to have been adopted formally determining the SMIG rate. Moreover, the Committee has been requesting detailed information on the terms of reference and rules of procedure of the CSTE, as well as on the coverage and possible periodic review of the minimum wage, but no such information has so far been communicated. **Recalling the Government's earlier statement that the system of remuneration of agricultural workers needs to be reviewed to take account of the evolving social conditions, the Committee hopes that the Government will take appropriate steps in order to effectively discharge its obligations under the Convention by reactivating tripartite consultations within the CSTE and determining decent minimum wage levels for agricultural workers.**

[The Government is asked to reply in detail to the present comments in 2009.]

Congo

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Article 12, paragraph 1, of the Convention. Payment of wages at regular intervals. The Committee has been commenting for some time on the problem of accumulated wage arrears in the public sector and the need to put an end to practices of delayed payment of wages that clearly contravene the letter and the spirit of the Convention. According to information provided in 2004, the wage debt was estimated at 187.6 billion Communauté Financière Africaine francs (approximately US\$440 million) corresponding to the wage bill of 23 months. The Committee subsequently asked for detailed and documented information on the evolution of the situation but no report was submitted for three consecutive years. Regrettably, in its last report, the Government does not communicate any updated figures on the progress made regarding the settlement of outstanding payments but limits itself to enumerating the provisions of the Labour Code that ensure legislative conformity with the Convention. The Committee understands that problems of unpaid wages persist, for instance in public education, and that in certain cases wage arrears hinder the Government's privatization programme in the energy, oil, banking, agricultural, forestry, transport and hotel sectors. **The Committee therefore once again asks the Government to give a detailed account of the current situation regarding the payment of wages to public employees on time and in full and also to describe any new measures taken with a view to resolving the wage crisis that continues to affect a large number of them.**

[The Government is asked to reply in detail to the present comments in 2009.]

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 must therefore repeat its previous observation which read as follows:

The Committee notes the Government's indication in its 2002 report that it had made efforts to harmonize its legislation with the provisions of the Convention by establishing a follow-up committee for the agreements ratified by the Ministry of Human Rights. The Committee notes with regret that, despite the observations that it has been making on this matter since 1991, legislation has still not been adopted to give full effect to the Convention.

The Committee recalls in this respect 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. Such protection is deemed to be necessary because this category of workers may not be covered by collective agreements and other measures regulating wages, and is often more exposed than others because of the competition between firms tendering for public contracts. Furthermore, the Committee deems it important to emphasize that the protection provided through labour clauses in public contracts cannot normally be ensured through the application of the general labour legislation only. This is due first of all to the fact that there are many countries in which the minimum standards fixed by law are improved upon by means of collective bargaining or otherwise. Thus, even where fairly extensive labour legislation exists and is properly applied, the inclusion of labour clauses in public contracts can serve a very useful purpose in ensuring fair wages and conditions of labour for the workers concerned. Secondly, it is due to the fact that the provision of penalties, such as the withholding of contracts, as envisaged in the Convention, makes it possible to impose sanctions in case of violations of the labour clauses in the public contracts which may be more directly effective than those applicable for infringements of the general labour legislation.

The Committee therefore urges the Government to take all the necessary measures to bring the national legislation into conformity with the provisions of the Convention and reminds it of the possibility of seeking the technical assistance of the International Labour Office for this purpose.

Finally, the Committee takes this opportunity to refer to its 2008 General Survey on labour clauses in public contracts which contains an overview of public procurement practices and procedures in so far as labour conditions are concerned and makes a global assessment of the impact and present-day relevance of Convention No. 94.

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

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

Djibouti

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1978)

Article 1 of the Convention. Establishment of minimum wage-fixing machinery. Further to its previous comments on the abolition of the system of the guaranteed interoccupational minimum wage (SMIG), the Committee notes the Government's explanations to the effect that this decision was taken under pressure from the International Monetary Fund (IMF), which required the Government to adopt a raft of measures, including liberalization of the labour market, to be the beneficiary of a Structural Adjustment Programme (SAP). The Government adds that it made the choice of deregulation rather than leave the SMIG in place, since the balance of public finances would have been seriously jeopardized and wages would not have been guaranteed, thereby threatening the social peace and stability of the country. In this regard, the Committee recalls that the establishment of minimum wage-fixing machinery outside the system of collective bargaining is essential for ensuring effective social protection for workers who are not covered by the rules of collective agreements, and that the Government must take the necessary steps to ensure that collectively agreed minimum wage rates are binding and the application thereof is linked to a system of supervision and effective penalties.

The Committee therefore concludes that the situation remains unchanged. Apart from the Government's indication that the matter would be studied by the new National Council for Labour, Employment and Vocational Training (CNT), the Convention is no longer applied either in law or in practice. The CNT was set up pursuant to Decree No. 2008-0023/PR/MESN of 20 January 2008 as a tripartite structure to enable the Government and the social partners to exchange ideas in a free and open manner. In this regard, the Government points out that there is increasing talk of the possibility of reintroducing the SMIG for each branch of economic activity. *The Committee requests the Government to supply detailed information on the planned meeting of the CNT and any decisions regarding the reintroduction of the national minimum wage rate. It also requests the Government to send its comments in reply to the observations made by the General Union of Djibouti Workers (UGTD) sent to the Government in September 2007.*

[The Government is asked to reply in detail to the present comments in 2009.]

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1978)

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

Further to its previous observations, the Committee regrets that the Government is still not in a position to report any meaningful progress in putting in place the appropriate legal framework for the implementation of the Convention. The Committee notes that for over ten years, the Government has been stating that it is planning to examine the necessary measures to give effect to the Convention in the overall context of the forthcoming revision of labour laws and regulations which it hopes to undertake with the Office's assistance as soon as the conditions have been fulfilled for the organization of a national tripartite consultation. Despite those reassurances, however, the Committee observes that major legislative exercises, such as the adoption of the new Labour Code of 2006, have been completed without any effort having been made to address the issue of labour clauses in public contracts. Moreover, the Committee understands that the Government is involved in a public procurement reform project initiated by the Common Market for Eastern and Southern Africa (COMESA) with a view to improving public procurement practices and harmonizing rules and procedures at the regional level.

The Committee recalls that the Government may draw upon the advisory services of the Office, should it so wish, for the purpose of revising its public procurement legislation and aligning it with the requirements of the Convention, and urges the Government to take long overdue action in order to ensure conformity with the provisions of the Convention. The Committee also asks the Government to keep it informed of any progress made in the preparation of new procurement laws and regulations under COMESA's public procurement reform project and transmit copies of any new texts as soon as they are adopted.

The Committee also notes the observations made in 2007 by the General Union of Djibouti Workers (UGTD) concerning the application of the Convention. According to the UGTD, the absence of legislation implementing the Convention creates a legal vacuum which is prejudicial to the workers employed under public contracts. In this connection, the UGTD hopes that the National Commission of Labour, Employment and Vocational Training will soon be established so that it can take measures to bring the national legislation into conformity with the Convention. *The Committee requests the Government to transmit its comments in reply to the points raised by the UGTD.*

Finally, the Committee takes this opportunity to refer to its 2008 General Survey on labour clauses in public contracts which contains an overview of national laws and practice concerning the social dimensions of public procurement and a global assessment of the impact and present-day relevance of Convention No. 94.

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

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

Protection of Wages Convention, 1949 (No. 95) (ratification: 1978)

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

The Committee notes the communication of the General Union of Djibouti Workers (UGTD) received on 23 August 2007 concerning the application of the Convention. The UGTD states that whereas Chapter IV of the Labour Code (Act No. 133/AN/05/5ème L), in particular section 152, provides for the protection of wages in the strict sense of the word, the absence of wage guarantees such as the guaranteed minimum inter-professional wage (SMIG), which was abolished in September 1997, has deprived the workforce of real income protection. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the UGTD. It also asks the Government to transmit its observations on the issues raised in its previous comment concerning the application of Articles 8 (wage deductions for deposits prescribed by individual contracts of employment) and 12 (nature and scale of the problem of wage arrears in the public sector) of the Convention.*

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

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1978)

Articles 1 and 3 of the Convention. Minimum wage fixing machinery. Further to its previous observation in which it noted that the Convention has for all practical purposes ceased to apply following the Government's decision to abolish the system of guaranteed interoccupational minimum wage (SMIG), the Committee notes the Government's statement that Djibouti is not an agricultural country. It also notes that the Government's report does not reply to the observations made by the General Union of Djibouti Workers (UGTD) and transmitted to the Government in September 2007 concerning the application of the Convention. The Committee asks the Government to refer to its comments made under Convention No. 26.

Dominica

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1983)

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

The Committee has been commenting for a number of years on the Government's failure to amend section 6(3) of the Labour Standards Act No. 2 of 1977 in order to give full effect to the requirements of the Convention with regard to the equal representation of employers' and workers' organizations in the operation of the minimum wage fixing machinery. The Committee has also been raising the question of the possible increase of the minimum wage which has not been revised since 1989.

In its last report, the Government merely indicated that, as regards the proposed legislative amendment, the Industrial Relations Advisory Committee (IRAC) would discuss this long outstanding issue and bring it to the attention of the Minister of Foreign Affairs, Trade and Labour. With regard to the readjustment of minimum wage levels, the Government contented itself to referring to the IRAC meeting of 9 March 2006 in which it was decided that a letter be written to the Minister requesting the immediate appointment of a minimum wage advisory board for the revision of the minimum wage, following, especially, the abortive attempt to have the minimum wage reviewed in 1997.

The Committee regrets that the Government has not so far taken any concrete action to follow up on the Committee's recommendations. The participation of employers and workers concerned in equal numbers and on equal terms is an essential prerequisite for the functioning of a minimum wage system based on full and genuine consultations with the social partners as prescribed by the Convention. In addition, the Committee insists that the minimum wage has to maintain its purchasing power in relation to a basic basket of essential consumer goods if it is to serve a useful purpose in terms of social protection and poverty reduction. This, in turn, can only be attained by periodically revising minimum wage levels in the light of the evolving economic and social realities. *The Committee therefore urges the Government to take appropriate action without further delay in order to bring the national law and practice into line with the provisions of the Convention.*

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

France

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1951)

Articles 2 and 5 of the Convention. Inclusion of labour clauses in public contracts and sanctions for failure to comply with such clauses. In its previous comments, the Committee noted that the new Public Procurement Code, adopted by Decree No. 2006-975 of 1 August 2006, no longer gives effect to the Convention, in contrast with the Public Procurement Code of 1964. It notes the indications provided in the Government's latest report according to which the text giving effect to the Convention in France is not and has never been the Public Procurement Code. It observes however that, in its first reports following the ratification of the Convention, the Government referred solely to the amended Decree of 10 April 1937 respecting labour conditions in contracts concluded on behalf of the State. It further notes that, in its report in 1965, the Government indicated that the above Decree had been codified in sections 117–121 of the Public Procurement Code issued by Decree No. 64-729 of 17 July 1964. The Committee considered that the Convention was fully implemented by these provisions until the adoption of the new Public Procurement Code in 2006.

The Committee notes that the Government refers in its latest report to Decree No. 51-1212 of 16 October 1951 publishing the Convention. However, it draws the Government's attention to the fact that the mere publication of the Convention in the *Official Gazette* is not sufficient to give effect to its provisions. Specific measures have to be taken, particularly to require the effective inclusion of labour clauses in all public contracts to which the Convention applies, to inform those tendering for contracts and the workers concerned and to establish adequate sanctions in the event of failure to comply with these labour clauses. The Committee also wishes to point out that it never asserted that the repeal of the former Public Procurement Code had had the effect of withdrawing the Convention from the French legal order and that it merely noted that the French legislation that is currently in force no longer gives effect to the provisions of this instrument.

In this respect, the Committee notes the Government's confirmation in its report that no specific legislation provides for the inclusion of the labour clauses required by the Convention in the public contracts to which it applies and its indication that labour legislation is binding for all employers, including those that have concluded a public contract. However, as the Committee emphasized in its observation of 2006, the fact that labour legislation is applicable to all employers and all workers, including those involved in public contracts, does not release the Government from the obligation to require the inclusion of labour clauses in such contracts. Indeed, as the Committee indicated in its General Survey of 2008 on the Convention (paragraph 41), "there would be very little meaning in adopting a Convention that would simply affirm that work for public contracts must comply with relevant labour legislation".

The essential objective of the Convention is to ensure that workers employed in the implementation of public contracts benefit from wages, hours of work and other labour conditions that are at least as favourable as the most advantageous conditions established by collective agreement, arbitration award or national laws or regulations for work of the same character in the same region. The inclusion of labour clauses for this purpose therefore retains its full value in cases in which the legislation only establishes minimum labour conditions which may be exceeded by general or sectoral collective agreements. In this respect, the Committee recalled in the above General Survey (paragraph 104) that it was recognized when adopting the Convention "that by requiring conditions 'not less favourable' than those established by the three sources [namely, collective agreements, arbitration award or national laws or regulations], the automatic result would be requiring the best conditions out of the three". In this respect, the Committee notes the Government's indications that employers also have to take into account the wage agreements concluded at the level of occupational branches where the application of these agreements has been extended by order of the Minister of Labour under the terms of section L2261-15 of the Labour Code. The Committee however wishes to emphasize that *Article 2, paragraph 1(a)*, of the Convention refers to collective agreements negotiated "between organizations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned", and not only those that have been declared generally applicable through the adoption of an extension order.

Finally, the Committee recalls that *Article 5* of the Convention requires the application of adequate sanctions, such as the withholding of contracts with the contractor at fault or the withholding of payments due under the contract in the event of failure to comply with the labour clauses included in the public contract. The labour legislation does not establish sanctions of this type, which can be particularly effective and dissuasive, and does not therefore give effect to the Convention on this point.

The Committee is accordingly bound to note once again that the national legislation no longer gives effect to the Convention. ***It hopes that the Government will take the necessary measures in the near future to ensure the inclusion of labour clauses in all public contracts to which the Convention is applicable in accordance with the requirements of the latter and to require the application of adequate sanctions in the event of failure to comply with these clauses.*** In general, the Committee recalls the conclusions of its General Survey of 2008 on the Convention, in which it considered that (paragraphs 307 and 308) "labour clauses that actually set as minimum standards the most advantageous conditions where the work is being done, consistent with the notion of the State as a model employer, continue to be a valid means of ensuring fair wages and conditions of work" and 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”.

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide on the Convention that was recently published by the Office, which provides clarifications on the scope of its provisions, and particularly on the inadequacy of the mere application of general labour legislation to employers parties to public contracts.

Part V of the report form. The Committee notes the Government’s indications concerning the annual programming of the activities of labour inspectors and controllers focusing on a number of priorities, including conditions of work and remuneration, which implies focusing on professional sectors and enterprises involved in public contracts. It also notes the establishment in 2007, by the General Directorate of Labour, of the Observatory of prosecutions to follow up action by the labour inspectorate. Finally, it notes the report on labour inspection in France in 2006, which the Government attached to its report on the Labour Inspection Convention, 1947 (No. 81). The Committee notes in particular that 24 per cent of enterprise inspections were carried out on construction and public works sites and that, in all sectors, 81,380 violations were reported of the legal provisions relating to the employment contract, including hours of work and wages. ***The Committee requests the Government to continue providing information on the results of inspections carried out in enterprises participating in public contracts, including the number and nature of the violations of labour legislation reported and the measures taken to resolve them. The Government is also requested to provide a copy of any activity report that may be published by the Observatory of prosecutions to follow up action by the labour inspectorate.***

[The Government is asked to reply in detail to the present comments in 2009.]

Martinique

Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Article 2, paragraph 1, of the Convention. Inclusion of labour clauses in public contracts. The Committee notes that, in reply to its previous comment, the Government merely states that the legislation in force in Metropolitan France also applies in the territory of Martinique. ***The Committee therefore requests the Government to refer to the observations which it has been formulating since 2006 concerning the application of the Convention by Metropolitan France.*** In these comments, the Committee emphasizes the fact that the Public Procurement Code adopted in 2006 no longer contains provisions, contrary to those previously applicable, for the inclusion of labour clauses in public contracts and therefore no longer gives effect to the Convention. The Committee also points out that the provisions of the general administrative terms for various types of public contracts do not ensure the application of the Convention either, since they merely state that the contractor is subject to obligations, resulting from laws and regulations, regarding the protection of workers and conditions of work.

In this regard, the Committee draws the Government’s attention to the General Survey of 2008 on labour clauses in public contracts, particularly paragraphs 98–121, describing in detail the nature and content of the fundamental obligation imposed by *Article 2, paragraph 1*, of the Convention. In particular, the Committee recalled its general observation of 1957 in paragraph 113, in which it declared that it “finds itself unable to accept the view that, where legislation and collective agreement apply to all workers, a government is freed from the obligation to insert labour clauses in public contracts in accordance with the Convention. The insertion of such clauses constitutes the basic requirement of the Convention, and the Committee considers that exceptions cannot be permitted.” ***The Committee therefore hopes that the Government will take appropriate measures as soon as possible to ensure once again the full application of the Convention by providing for the inclusion of the labour clauses prescribed by the Convention in all public contracts to which it applies.***

Article 1, paragraph 3, of the Convention and Part V of the report form. ***The Committee once again requests the Government to reply to its previous comments concerning widespread outsourcing practices, particularly in the construction and public works sector, and also the measures taken to give effect to the Convention in relation to subcontractors or assignees of public contracts and the results achieved.***

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the General Survey of 2008 on Convention No. 94, to help better understand the requirements of the Convention and ultimately improve its application in law.

Guinea

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1959)

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

Articles 1 and 3 of the Convention. Introduction of a minimum wage and consultation of the social partners. The Committee notes with regret that, according to the information contained in its last report, the Government is maintaining its decision not to introduce the guaranteed interoccupational minimum wage (SMIG) at the present time in view of the economic

situation of the country. It also notes that, as acknowledged by the Government, the introduction of a minimum wage is an important claim of national trade union organizations. The Committee notes in this respect that in November 2005 a 48-hour general strike was called by the National Confederation of Workers of Guinea (CNTG), and that the claims included the establishment of a minimum wage. In this context, it notes with concern that the inflation rate in Guinea appears to be particularly high (in the order of 30 per cent in the second half of 2005), which makes it all the more necessary to ensure workers a minimum wage permitting them and their families to benefit from a satisfactory standard of living.

The Committee deplores the fact that, despite its repeated comments on the subject, the Government has still not been able to adopt the decree determining the minimum guaranteed wage rate for one hour of work, as provided for in section 211 of the Labour Code. *The Committee therefore urges the Government to take the necessary measures without further delay to give effect to the provisions of the Convention by adopting the implementing decree for section 211 of the Labour Code. The Committee would also be grateful to be provided with more detailed information on the measures adopted or envisaged to ensure effective consultations with the social partners on equal terms in all the stages of the process of fixing minimum wages, as required by the Convention.*

Collective agreements. The Committee notes that, according to the information provided by the Government in its last report, the minimum wage rates in the various sectors are determined in collective agreements. In this respect, it is bound to recall that the fixing of minimum wages by collective agreements is only permitted under certain conditions: the minimum wages must have the force of law, not be subject to abatement and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions (see paragraphs 99–101 of the 1992 General Survey on minimum wages). *The Committee therefore requests the Government to indicate the manner in which compliance with these principles is ensured in the context of the system for fixing minimum wages by collective bargaining. It requests the Government to provide copies of these sectoral collective agreements containing provisions relating to the minimum wage and to indicate the number of men and women, and of adults and young persons, covered by such provisions.*

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

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1966)

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

The Committee regrets that the Government's report of 2006 contained no reply to its previous comments but essentially reproduced information already submitted in earlier reports which the Committee had considered to be strictly irrelevant to the scope and content of the Convention. The Committee is once again led to conclude that for the last 40 years there has been practically no progress in implementing the provisions of the Convention in either law or practice. The Committee expresses its deep disappointment about the Government's continued failure to apply the Convention despite the technical assistance provided by the Office in 1981 and the numerous commitments made by the Government, ever since, as regards the drafting and adoption of specific regulations or legislation concerning public contracts. *Under the circumstances, the Committee hopes that the Government will make a sincere effort to maintain a meaningful dialogue with the ILO supervisory bodies and once more urges the Government to take all necessary measures without further delay in order to bring its national law and practice into conformity with the clear terms and objectives of the Convention.*

Finally, the Committee takes this opportunity to refer to its 2008 General Survey on labour clauses in public contracts which contains an overview of public procurement practices and procedures in so far as labour conditions are concerned and makes a global assessment of the impact and present-day relevance of Convention No. 94.

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

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1966)

The Committee notes with regret that the Government's report has not been received. *It therefore once more asks the Government to refer to the comments made under Convention No. 26, and hopes that the Government will make every effort to take the necessary action in the very near future.*

Islamic Republic of Iran

Protection of Wages Convention, 1949 (No. 95) (ratification: 1972)

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

Further to its previous comments, the Committee notes the Office report following the mission to the Islamic Republic of Iran undertaken from 26 October to 1 November 2007. The six-day mission was scheduled as a follow-up to the discussion concerning the application of the Convention that took place in the Conference Committee on the Application of Standards in June 2007. As requested by the Conference Committee, the conclusions of the ILO mission relating to the application of Convention No. 95 are reproduced below.

The Committee notes that the main purpose of the ILO mission was to obtain a better sense of the nature and extent of the problem of wage arrears, principally by collecting concrete figures on wage arrears and the number of affected workers as well as up to date information on measures taken by the Government in order to tackle the problem of delayed payment of wages. It also

notes that the mission included a senior statistician from the ILO Bureau of Statistics with a view to evaluating any available statistical data relating to the non-payment of wages and advising the Government on how to improve the collection of such data.

The Committee takes note of the main findings and conclusions of the ILO mission concerning the problem of wage arrears which read as follows:

IV. Main findings

117. The mission had a full range of intense and instructive meetings with government officials and representatives of other public institutions, employers' and workers' organizations, and civil society associations. Three major issues were addressed in a series of joint or separate group meetings: (i) the application of Convention No. 95 with special reference to wage arrears; (ii) the application of Convention No. 111 with special focus on gender equality and the protection of ethnic and religious minorities; (iii) freedom of association issues including the situation of employers' and workers' organizations in the country. The Government once again fully cooperated with the mission enabling it to complete its work. The dialogue was frank and information was forthcoming.

1. *The problem of wage arrears*

118. The principal purpose of the mission was the collection of statistical information on the problems of non-payment or delayed payment of wages in industries experiencing financial difficulties. In this regard, the mission obtained a significant amount of information and data allowing a better understanding of the socio-economic context in which the phenomenon of wage arrears persists. The Islamic Republic of Iran has embarked on an extensive programme of privatization and therefore its national economy is clearly in transition. Most of the problems it is currently facing are structural and are not expected to disappear in the immediate future. International competition and the country's current political context heavily impact on its export trade and further deepen the crisis in the textile industry. The Government has continued to inject billions of dollars in the form of financial aid to enterprises in difficulty due to the social implications for employment and unemployment as well as the increasing demographic growth rate.

119. At present, statistical standard forms or labour inspection procedures are not designed to capture specific information on wage arrears (e.g. sectors or regions affected, delay in weeks or months, etc.) and the only available data that can provide a rough idea of the extent of the problem come from the number of individual or collective complaints filed with the dispute settlement boards. Concrete proposals were made in this respect to the officials of the Statistical Centre and of the Labour Market Information and Statistics Centre of the Ministry of Labour and Social Affairs and reassurances were given that wage arrears would be better monitored in the future.

Statistics concerning the situation of wage arrears in the Islamic Republic of Iran

Scale of wage arrears

Estimated 85,000 workers (out of total workforce of 7 million) experiencing delay in the payment of their wages in the last 12 months

Labour inspection activities (results between March–September 2007)

Number of total inspection visits	179 584
Number of inspections on wage issues (10 per cent of all inspection activities)	18 450

Available remedies

Legal decisions	No. of cases	No. of workers concerned
Inquiry boards	28 240	32 777
Dispute settlement boards (following the appeal of 10,206 inquiry board decisions)	7 870	9 700

Financial assistance provided to enterprises in difficulty

Amount of subsidies	7 037 831 million rials (approx. US\$755 million)
Number of jobs saved	422 360

120. Based on the number of cases filed with and settled by the inquiry boards and dispute settlement boards, it is estimated that approximately 85,000 workers were affected by wage arrears in the last 12 months. The largest number of complaints (4,936) were filed in Esfahan province and the lowest number (83) in North Khosaran province. The 2007 statistics represented a 23 per cent decrease as compared to the number of complaints filed in 2006 and a further 11 per cent decrease as compared to those filed in 2005. With respect to enforcement, 10 per cent of all labour inspection activities concerned wage issues, mostly cases referred by the dispute settlement boards for follow-up action. Out of a total 10,200 plants in the textile sector, around 100 plants reported occasional difficulties with the payment of wages. In the last 12 months, the situation improved in certain provinces, such as the Qazvin province, but problems persisted elsewhere. The mission was provided with general information that other branches of economic activity, such as the sugar cane industry, are experiencing pay problems, but it was not possible in the time available to obtain any concrete information on the situation in sugar cane factories.

...

V. Conclusions

Protection of wages

137. Based on the oral and written information obtained, the mission concludes that, although the Government is continuing to take action to support enterprises experiencing difficulties with wage arrears, the problem continues to affect large numbers of textile workers. Other industrial sectors, such as the sugar industry, are most probably experiencing similar problems. The Government admits the existence of the problem but maintains that it is a limited and unfortunate side-effect of expanding privatization, low productivity and competitiveness of the domestic textile sector and negative external factors. The mission is

mindful of the continued efforts of the Government to keep enterprises afloat and save jobs by massively subsidizing enterprises that are experiencing difficulties. The mission believes, however, that the Government must address the structural deficiencies of the national economy with a long-term strategy for strengthening the productivity and sustainability of private enterprises. It must bolster and speed up the current privatization efforts on the way, providing economic space for enterprises and continue to strengthen democratic institutions, in accordance with article 44 of the Constitution of the Islamic Republic of Iran and article 145 of the Law of the Fourth Economic, Social and Cultural Development Plan, 2005–09, which was enacted on 1 September 2004. The mission reaffirms the importance of closely monitoring the evolving of the situation with respect to wage arrears, and, in this connection, emphasizes the need for reliable statistics. The mission therefore encourages the Government to continue to avail itself of the technical assistance of the Office in relation to data collection.

Having duly examined the Office report, the Committee notes that the discussions with government officials, public institutions and employers' and workers' organizations were once more open, direct and constructive and helped to further clarify the situation with regard to wage arrears experienced in certain sectors of the economy of the Islamic Republic of Iran. While noting that action is being taken by the Government to address problems faced by enterprises experiencing wage arrears, the Committee remains concerned about the fact that the problem of unpaid wages continues to affect tens of thousands of textile workers. It also notes that the problem would appear to occur in other branches of economic activity such as the sugar cane industry. *Noting that the situation is at present inadequately monitored as standard documents used by the labour inspection services are not designed to capture information on wage arrears, the Committee requests the Government to take the necessary steps to ensure that the ongoing situation of unpaid wages is kept under close supervision and constant assessment through the systematic collection of relevant information. The Committee also requests the Government to continue to provide detailed information on the evolving of the situation as well as on any new measures taken or planned with a view to settling all outstanding payments and preventing the recurrence or expansion of the problem that clearly contravenes the letter and the spirit of Convention No. 95.*

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

Iraq

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1986)

Article 2 of the Convention. Insertion of labour clauses into public contracts. The Committee notes that the Government admits that no labour clauses are inserted into public contracts, as required under this Article of the Convention, and recognizes the need to rectify this situation. In this regard, the Government indicates that the recently established Tripartite Consultation Committee has recommended the amendment of the provisions of the Labour Code relating to collective agreements. The Committee recalls that the Convention requires the insertion of labour clauses into public contracts to ensure that workers are entitled to wages, hours of work and other labour conditions at least as good as those normally observed for the kind of work in question in the area where the contract is executed, as well as to ensure that higher local standards, if any, apply. *The Committee accordingly requests the Government to keep the Office informed of any progress made by the Tripartite Consultation Committee in supporting the amendment process of the Labour Code and to transmit a copy of the revised text as soon as it is adopted.*

The Committee understands that Coalition Provisional Authority Order No. 87 of 14 May 2004 on public contracts regulates the bidding and award procedures of all procurement of goods, services and construction services, on the basis of transparency, predictability, fairness of treatment, anti-corruption and open competition. According to section 1 of the Order, public funds are to be committed, to the maximum extent practicable, in accordance with full, fair and open competitive public bidding procedures, including, effective tender publication, objective bid evaluation criteria, public bid opening and the use of electronic commerce methods. Under section 2(1) of the same Order, an Office of Government Public Contract Policy is established for the coordination of government public contract policy and the development and adoption of standard government public contract provisions. In addition, section 6(2) specifies that in preparing the implementing regulations, the Office of Government Public Contract Policy will be guided by recognized and accepted international standards and best practices, such as those contained in the United Nations Commission on International Trade Law (UNCITRAL), Model Law for Procurement of Goods, Construction, and Services, Directives of the European Union, and the World Trade Organization (WTO) Agreement on Government Procurement.

In this respect, the Committee regrets to note that both Order No. 87 of 2004 and the Coalition Provisional Authority Memorandum No. 4 of 19 August 2003 on contract grant procedures, are completely silent on social and labour matters related to the execution of public contracts. *Therefore, the Committee asks the Government to re-examine its procurement practices and regulations with a view to giving full effect to the requirements of the Convention. The Committee hopes that more than 20 years after ratification, the Government will at last take appropriate action in order to bring the national legislation into conformity with the Convention. The Committee further requests the Government to specify whether the administrative instructions and regulations referred to in section 14(1) of Order No. 87 of 2004 have been adopted and, if so, to provide a copy of those instructions as well as copies of any standard public contract provisions, forms or documents which may have been issued by the Office of Government Public Contract Policy.*

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the General Survey of 2008 on Convention No. 94, to help better understand the requirements of the Convention and ultimately improve its application in law.

Mauritania

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1961)

Articles 1 and 3 of the Convention. Adjustment of minimum wages and consultations with social partners. The Committee notes the Government's explanations in response to the observations made by the General Confederation of Workers of Mauritania (CGTM). More concretely, the Government indicates that negotiations aiming at harmonizing the existing collective agreements with the rise in the minimum guaranteed interoccupational wage (SMIG) are expected to resume in the course of 2008 and that the concerns expressed by the CGTM and other social partners will be duly taken into account. ***The Committee hopes that those negotiations will resume in a timely fashion and requests the Government to provide copies of the new collective agreements once they have been concluded.***

The Committee notes, however, that the Government has not expressed any views on two other points raised by the CGTM, namely the fact that the minimum wage-fixing process is not based on any periodical survey of the economic and social conditions prevailing in the country and also that compliance with the SMIG rate and its extension to all enterprises is not yet ensured. In this connection, the Committee wishes to refer to Paragraphs 11–13 of the Minimum Wage Fixing Recommendation, 1970 (No. 135), which give guidance as to the need to correlate the adjustment of minimum wage rates with variations in the cost-of-living index and other economic indicators, such as trends in income per head, in productivity and in employment, unemployment and underemployment, based on periodical surveys to be undertaken to the extent that national resources permit. The Committee further recalls that to enable minimum wages to play a role in social protection and poverty reduction, they should maintain their purchasing power in relation to a basic basket of essential consumer goods. As it was pointed in paragraph 428 of the General Survey of 1992 on minimum wages, the fundamental and ultimate objective of the Convention is to ensure to workers a minimum wage that will provide a satisfactory standard of living for them and their families; allowing for the erosion of the value of money caused by inflation necessarily results in minimum wages representing only a percentage of what workers really need. ***The Committee trusts that the Government will make every effort to ensure that any future review and possible adjustment of the SMIG level is carried out on the basis of reliable and up to date surveys and studies of the national economic conditions in a manner that allows the minimum wage to keep pace with changes in the consumer price index.***

Finally, the Committee wishes to draw the Government's attention to the conclusions of the ILO Governing Body as regards the relevance of the Convention following the recommendations of the Working Party on Policy regarding the Revision of Standards (GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). In fact, the Governing Body has decided that Convention No. 26 is among those instruments which may no longer be fully up to date but remain relevant in certain respects. The Committee therefore suggests that the Government should consider the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131), which contains certain improvements compared to older instruments on minimum wage fixing, for instance, as regards its broader scope of application, the requirement for a comprehensive minimum wage system, and the enumeration of the criteria for the determination of minimum wage levels. The Committee considers that the ratification of Convention No. 131 is all the more advisable as Mauritania has already a statutory minimum wage of general application (and not only minimum wages for those workers employed in exceptionally low-paid trades where no arrangements for collectively negotiated wages exist, as prescribed by Convention No. 26) and its legislation appears to broadly reflect the requirements of that Convention. ***The Committee requests the Government to keep the Office informed of any decision taken or envisaged in this regard.***

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

Article 12, paragraph 1, of the Convention. Payment of wages at regular intervals. The Committee notes the Government's explanations in response to the observations made by the General Confederation of Workers of Mauritania (CGTM). More concretely, the Government indicates that rising prices are difficult to control because of the adverse international conjuncture, in particular the oil and cereal price increases. It announces its intention to deal with the crisis in a proactive manner, for instance by reviewing wage taxation scales, especially for low incomes, and by offering subsidies in order to stabilize the price of bread. ***The Committee requests the Government to continue to provide information on any measures designed to contain prices of basic consumer goods and accordingly protect workers' income. In this connection, the Committee also asks the Government to refer to its comments made under Convention No. 26.***

In addition, the Committee recalls its previous comment in which it had requested the Government to examine any situation which would be inconsistent with the principle of regular payment of wages with the necessary rigour and efficiency so as to ensure the application of the Convention. ***The Committee requests the Government to be particularly attentive to any problems of accumulated wage arrears, like those experienced in the past, and to take serious and meaningful steps in order to prevent their recurrence.***

Mauritius

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1969)

The Committee notes the observations of the Front of Workers from the Private Sector (FTSP), received on 29 January 2008 and transmitted to the Government on 28 February 2008, concerning the application of the Convention.

The FTSP states that while there are 29 wage orders covering different branches in the private sector, there are four new economic sectors which are not yet covered either by a wage order or by a collective agreement. These sectors are the information and communication technology sector, the financial and other services sector, the seafood sector which is currently regulated under the legislation on export processing zones and the travel agents and tour operators sector. According to the FTSP, employees in these four sectors are subjected to abuses and over-exploitation. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the FTSP.*

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1969)

Article 2, paragraphs 1 and 2, of the Convention. Inclusion of labour clauses in public contracts. The Committee notes with *satisfaction* that section 46 of the Public Procurement Act 2006, as amended by the Employment Rights Act 2008, gives effect to the provisions of *Article 2, paragraphs 1 and 2, of the Convention*, which require the inclusion of labour clauses in public contracts to which the Convention is applicable.

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

Nepal

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1974)

The Committee notes the observations made by the General Federation of Nepalese Trade Unions (GEFONT) concerning the application of the Convention. While acknowledging the consultative processes followed by the Government in determining the minimum wages for the private sector, tea estates and the agricultural sector, GEFONT considers that during the same period the Government has taken legislative action that directly violates the letter and the spirit of the Convention. More concretely, GEFONT refers to the Civil Service Act of 1993, as amended by its Second Amendment Ordinance of 2005, section 7(3) of which provides for the abolition of any permanent posts in the civil service falling vacant and their replacement by service contracts which often carry wages lower than the minimum pay rates. According to the workers' organization, the Government, under the pretext that the minimum wage does not apply to public employees, resorts to labour-only contracting which permits it to offer remuneration at less than the minimum wage rate to workers recruited through manpower agencies. In addition, many workers in the civil service allegedly work without any holidays and social security coverage. GEFONT further states that it had suggested the establishment of a tripartite minimum wage committee when the first amendment to the Journalists Labour Act of 1995 was discussed, but the proposal was rejected. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of GEFONT. It would also appreciate receiving the Government's reply on the points raised in the Committee's previous direct request.*

Netherlands

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1952)

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes the explanations provided by the Government in its report that by virtue of the Collective Labour Agreements (Declaration of Generally Binding and Non-binding Status) Act of 1936 (AVV Act), the Government can decide that a collective agreement is of general applicability for a whole economic sector, which means that employers who are not members of the employers' organization that negotiated the collective agreement are also bound by it, and that by virtue of the Employment Conditions Cross-border Employment Act of 1999 (WAGA Act), foreign workers working in the Netherlands must be paid according to the applicable collective agreement. The Government states that the AVV and WAGA Acts minimize the risk of competition among bidders for public contracts and provide adequate protection to workers. It recognizes, however, that the Convention is not fully implemented and that it is currently examining means for improving implementation and compliance with the Convention. *The Committee welcomes the Government's statement that it intends to take action to give full effect to the requirements of the Convention. It asks the Government to keep the Office informed of any progress made in this regard.*

The Committee notes the observations made by the Netherlands Trade Union Confederation (FNV) with regard to the Government's position on the application of the Convention. The FNV disagrees with the view that the existing legislation offers the type of protection envisaged by the Convention and calls upon the Government to accelerate the

process in order to ensure compliance. The FNV indicates, first, that section 26 of the Order of 16 July 2005, authorizing the contracting authority to require the contractor to observe certain conditions, is purely permissive, and therefore not consistent with the clear requirement of *Article 2* of the Convention, which provides that labour clauses must be included in public contracts. Secondly, according to the AVV Act, only collective agreements declared universally binding by the Minister of Social Affairs and Employment apply to all workers engaged in the execution of public contracts, which implies that unless all sectoral collective agreements are declared universally binding, the requirements of the Convention cannot be fully met. In this regard, the FNV refers to the collective agreement for the construction sector which, in the period from 2000 to date, has been declared universally binding for only one and a half years. As regards the coverage of collective agreements, the FNV expresses particular concern about the situation of posted workers whose status is further weakened following the judgement of the Court of Justice of the European Communities in the *Rüffert* case (upholding that the legislation of a German Länder which required bidders to commit themselves to pay collectively-agreed wages to all workers, including posted workers, was not compatible with EU law). The FNV emphasizes that, contrary to Germany which has not ratified Convention No. 94, the Netherlands is bound by the Convention and therefore the Court's narrow interpretation of the Posting of Workers Directive cannot affect its obligations arising out of the Convention. Thirdly, the FNV raises the question of the applicability of the Convention to contracts awarded by local authorities that the Government has not yet addressed since it has never fully implemented the Convention. In the FNV's opinion, the Convention applies to local government in the same manner and to the same extent as to central government, as they both exercise public authority. ***The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the FNV.***

The Committee is also addressing a direct request to the Government concerning certain other points.

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1973)

Articles 1 and 2 of the Convention. Lower minimum wages for young workers. The Committee notes the observations of the Netherlands Trade Union Confederation (FNV), which were received on 22 November 2007 and were transmitted to the Government on 17 December 2007, concerning the application of the Convention. More concretely, the FNV objects to the fact that young workers of 21 and 22 years of age are not entitled to the full adult minimum wage. In fact, at the age of 21 a worker earns only 72.5 per cent of the statutory minimum wage and by the age of 22 only 85 per cent. According to the FNV, the Council of Europe's Committee of Social Rights has already ruled that this situation is not in conformity with section 4(1) of the European Social Charter. The FNV considers there is no justification for the distinction, all the more so as the required age to receive the full minimum wage (23 years) is neither related to the legal adult age (18 years) nor to the definition of adulthood for financial matters or for the expiration of parents' duty of maintenance (21 years). Referring to the Government's arguments regarding employment opportunities for young persons and preventing children from dropping out of school, FNV believes there are not objective reasons for denying 21–22-year-old workers the full adult minimum wage. ***The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the FNV. Recalling that the question of differentiated minimum wage rates on account of workers' age has been raised previously in two direct requests, especially in the light of the overriding principle of "equal remuneration for work of equal value", the Committee would appreciate receiving the Government's reply in this regard.***

Aruba

Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

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

The Committee has been drawing the Government's attention for several years to the need to adopt implementing legislation since the general applicability of the labour legislation to all public contracts is not sufficient in itself to give effect to the specific requirements of the Convention. In its reply, the Government indicates that at present some preliminary discussions have been undertaken between the Departments of Labour and Public Works with a view to harmonizing the national legislation with the Convention. ***The Committee hopes that concrete progress will be made shortly and requests the Government to keep the Office informed of all future developments in this respect.***

Further to its previous comments, the Committee once again requests the Government to make an effort and collect relevant and up to date information concerning the matters dealt with in the Convention including, for instance, the approximate number of public contracts awarded and the number of workers engaged in their execution, extracts from labour inspection reports showing the number and nature of infringements of the labour legislation observed in the area of public procurement, copies of any official studies concerning the social aspects of public contracting, etc.

Finally, the Committee takes this opportunity to refer to its 2008 General Survey on labour clauses in public contracts, which contains an overview of national laws and practice concerning the social dimensions of public procurement and a global assessment of the impact and present-day relevance of Convention No. 94.

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

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

Nicaragua

Protection of Wages Convention, 1949 (No. 95) (ratification: 1976)

Article 12, paragraph 1, and Article 15(c) of the Convention. Payment of wages at regular intervals. The Committee notes with regret that the Government has not, as the Committee asked in its previous comments, provided information on the situation concerning the problem of non-payment or late payment of wages and on the practical measures taken to ensure that wages are paid at regular intervals, including information on inspection carried out, breaches of the provisions of the Labour Code regarding wage protection, and the measures taken to resolve them. The Committee understands that there have been delays in the payment of wages in certain instances, for example at the Ministry of Transport and Infrastructure. The Committee reminds the Government that, as it pointed out in its General Survey of 2003 on the protection of wages (paragraph 355), “the quintessence of wage protection is the assurance of a periodic payment allowing the worker to organize his everyday life with a reasonable degree of certainty and security”, and that consequently, “the delayed payment of wages or the accumulation of wage debts clearly contravene the letter and the spirit of the Convention”. **The Committee again asks the Government to provide detailed information on the measures taken to eliminate delays in the payment of wages.**

Article 12, paragraph 2. Settlement of wages due upon termination of a contract of employment. The Committee notes that, according to section 68 of Decree No. 50-2005 of 8 August 2005 regulating industrial export processing zones, labour relations in the zones are governed by the Labour Code or by the legislation on the public service, as the case may be. It notes, however, the report on the human rights situation in Nicaragua in 2007 issued by the Nicaraguan Human Rights Centre, which refers to serious breaches of workers’ rights in the export processing zones. This report refers to several enterprises in the zones which have dismissed workers – and in some cases have closed down – without settling the wages owed to the workers concerned. The Committee reminds the Government that “the principle of the regular payment of wages, as set out in *Article 12* of the Convention, finds its full expression not only in the periodicity of wage payments, as may be regulated by national laws and regulations or collective agreements, but also in the complementary obligation to settle swiftly and in full all outstanding payments upon the termination of the contract of employment” (General Survey of 2003 on the protection of wages, paragraph 398). **Given the seriousness of the situation described in the report of the Nicaraguan Human Rights Centre, the Committee asks the Government to provide all available information on the abovementioned practices and to indicate the measures taken to enforce the legislation on wage protection in the enterprises concerned.**

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

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1976)

Articles 1 and 3 of the Convention. System of minimum wages and the workers’ basic needs. The Committee notes the detailed information provided by the Government in reply to the comments made by the Trade Union Workers Confederation—“José Benito Escobar” (CST–JBE), the National Union of Employees and the Sandinista Workers’ Confederation with regard to the implementation of the Minimum Wage Act No. 129 of 1991 and the falling purchasing power of minimum pay rates. The Government explains the structure and function of the system of sectoral minimum wages based on the concept of a “basic family basket” consisting of 53 consumer goods (food, household goods and clothing), which was first established in 1988, and is now reflected in section 7 of the Minimum Wage Act. According to the statistical information provided by the Government, minimum monthly wages for key economic sectors were last revised in June 2007 and range from 1,025 cordobas (NIO) (approximately US\$56) in agriculture to NIO2,381 (approximately US\$130) in finance and the construction industry, whereas the monthly needs of an urban family for a basic basket of goods were estimated in April 2007 at NIO3,569 (approximately US\$190). According to the same figures, current minimum wage rates cover between 28 and 66 per cent of the cost of the “basic family basket”. **Recalling section 2 of the Minimum Wage Act which defines the minimum wage as the regular remuneration that satisfies the worker’s basic material, moral and cultural needs, and also recalling that the fundamental purpose of minimum wage fixing is to overcome poverty and to ensure a decent standard of living for low-paid workers, the Committee hopes that the Government will take the necessary measures to fully apply the national minimum wage legislation and to ensure that minimum wages maintain an acceptable purchasing power in relation to a basic basket of essential consumer goods.**

Article 4. Consultation and participation of employers’ and workers’ organizations. The Committee recalls that in their joint communication, the National Union of Employees and the Sandinista Workers’ Confederation denounced the absence of any real and effective participation of workers’ representatives in the consultation process while the CST–JBE pointed out that contrary to the clear requirement of the national legislation, minimum wage levels were not readjusted once every six months. In its reply, the Government merely indicates that in the last ten years minimum wages had been reviewed annually without providing any further particulars on the institutional and practical arrangements guaranteeing the genuine participation of the social partners in the operation of the minimum wage fixing machinery. **Recalling that under section 4 of the Minimum Wage Act, minimum wages have to be adjusted at least once every six months, taking**

into account the special characteristics of each professional category, region and economic sector, the Committee hopes that the Government will take appropriate action so that there is no inconsistency in national law and practice as regards the periodicity of the revision of minimum wage rates. In addition, the Committee asks the Government to provide additional explanations on the function, composition and rules of procedure of the National Minimum Wage Commission in the light of the observations made by the workers' organizations mentioned above.

Niger

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

Article 12, paragraph 1, of the Convention. Payment of wages at regular intervals. The Committee has been commenting for a number of years on the need to amend section 206 of Decree No. 67-126/MFP/T of 1967 which exempts all agricultural, industrial and commercial undertakings from the obligation to pay at regular intervals not exceeding 15 days the wages of workers employed on a daily or weekly basis. Regrettably, the Government's last report does not provide any further explanations on this point. The Committee wishes to refer, in this connection, to Paragraph 4 of the Protection of Wages Recommendation, 1949 (No. 85), which specifies that the maximum intervals for the payment of wages should ensure that wages are paid not less than twice a month at intervals not exceeding 16 days in the case of workers whose wages are calculated by the hour, day or week, and not less than once a month in the case of employed persons whose remuneration is fixed on a monthly or annual basis. Moreover, the Committee recalls paragraph 355 of its General Survey of 2003 on protection of wages in which it pointed out that "the rationale underlying [this Article of the Convention] is to discourage long wage payment intervals and thus to minimize the likelihood of indebtedness among the workers [since] the quintessence of wage protection is the assurance of a periodic payment allowing the worker to organize his everyday life with a reasonable degree of certainty and security". ***The Committee therefore once again urges the Government to take appropriate steps to ensure that all workers without exception to whom wages are paid or payable receive their wages at regular intervals thus giving full effect to section 160 of the Labour Code which provides that wages must be paid every 15 days for those employed by the day or week and once a month for those employed by fortnight or month.***

In addition, the Committee recalls its previous comment in which it had requested the Government to supply detailed information on the situation of accumulated wage arrears to which the ILO Committee on Freedom of Association had alluded on an earlier occasion. The Committee understands that, in 2002, the estimated amount of public pay arrears, including wage arrears, stood at 132 billion Communauté Financière Africaine (CFA) francs and that, since the establishment of the Autonomous Centre for the State-owed Arrears Settlement (CADIE) in 2000, the Government has been pursuing a strict arrears audit policy. As a result, in 2006, the total amount of arrears was reduced by CFA14 billion. The Committee of Experts has consistently taken the view that the delayed payment of wages or the accumulation of wage debts clearly contravenes the letter and the spirit of the Convention and render the application of most of its other provisions simply meaningless. ***In the absence of any concrete information provided by the Government on this point, the Committee is obliged to once more ask the Government to provide full particulars about the nature and extent of the persistent difficulties concerning the timely payment of wages, especially in the public sector, and the measures or initiatives taken in order to settle all outstanding payments and prevent the recurrence of similar problems in the future.***

[The Government is asked to reply in detail to the present comments in 2009.]

Panama

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1971)

Article 2, paragraph 1, of the Convention. Inclusion of labour clauses in public contracts. The Committee notes that in reply to its repeated observations the Government refers to two communications Nos DM.359.2008 of 5 May 2008 and DM.374.2008 of 7 May 2008, transmitted by the Ministry of Work and Labour Development (MITRADEL) to the Ministry of the Economy and Finance (MEF) and the General Directorate of Public Contracts, respectively. Under the terms of these communications, MITRADEL wishes to examine, in consultation with the other authorities that are competent in the field, the possibility of adopting additional legislation to harmonize national law and practice with the provisions of the Convention. The Committee regrets that, despite the numerous comments that it has made over the past 25 years, the Government has still not adopted concrete measures and is still at the stage of mere internal consultations. As the Government indicates itself in the above communications, a Bill, which was to bring the law on public contracts into conformity with the provisions of the Convention, has been under preparation for over 15 years and no firm information is provided concerning the current situation with regard to this Bill. The Committee also notes that at the 97th Session of the International Labour Conference (June 2008), the Minister of Labour affirmed at the Conference Plenary that the Government of Panama has included a clause in tenders for the extension of the Panama Canal requiring the enterprises concerned to comply with the principles of decent work for the 7,000 direct jobs to be created.

In this respect, the Committee wishes to refer to paragraphs 44 and 46 of the General Survey that it prepared in 2008 on labour clauses in public contracts, which clarify the relationship between Convention No. 94 and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. As the Committee emphasized, even though Convention No. 94 does not preclude the insertion of other labour clauses, such as those requiring compliance with core labour standards, as reflected in the ILO's fundamental Conventions, including those aimed, for example, at preventing the use of child labour and anti-union practices, it calls for the insertion of labour clauses of a very specific content. The Convention seeks to ensure that public contracts are executed under conditions of labour which are not less favourable than those established by collective agreement, arbitration award or national laws or regulations for work of the same character in the trade or industry concerned in the district where the work is carried out. This means in effect ensuring the application to the workers concerned of the best locally-established conditions of work. In this manner, the contractor is obliged to apply the most advantageous conditions established in the industrial sector and geographical region in question in relation to wages, including overtime pay, and other working conditions, such as work hour limits and holiday entitlement. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors are to be reflected in a standard contractual clause which has to be effectively enforced, notably through a system of specific sanctions. The Committee also recalls that the Convention applies not only to construction contracts, but also to contracts for supplies and services.

In the light of the above, the Committee urges the Government to take all the necessary measures without further ado to bring national law and practice into conformity with the Convention and requests it to keep the Office informed of any developments in this respect.

With a view to assisting the Government in its efforts to give effect to the Convention, the Committee attaches a copy of a Practical Guide prepared by the Office based principally on the conclusions of the abovementioned General Survey. It also recalls that the Government may, if it so wishes, avail itself of the Office's technical assistance.

Protection of Wages Convention, 1949 (No. 95) (ratification: 1970)

Article 12 of the Convention. Regular payment of wages. The Committee notes the observations of the National Federation of Associations and Organizations of Public Servants (FENASEP), which were received on 29 October 2007 and sent to the Government on 19 November 2007. These observations have received no reply from the Government to date. The comments by FENASEP relate to the payment of the 13th month's wage which was instituted in 1974 in the form of a bonus (US\$400) calculated on the basis of the monthly wage and paid in three instalments (April, August and December each year). The payment of the 13th month's wage was suspended between October 1989 and August 1991. The Federation estimates that US\$88 million are due to hundreds of thousands of employees in the public sector. FENASEP argues that the suppression of the payment of the 13th month's wage to public servants is contrary to the provisions of Act No. 52 of 16 May 1974 and to the principles of Convention No. 95. ***The Committee requests the Government to send its comments in reply to the observations made by FENASEP.***

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

Paraguay

Protection of Wages Convention, 1949 (No. 95) (ratification: 1966)

Articles 3, 4, 6, 7 and 12 of the Convention. Debt bondage. The Committee refers to the comments that it has been making for over ten years under the Forced Labour Convention, 1930 (No. 29), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), concerning the problem of debt bondage affecting indigenous populations, and particularly in the Paraguayan Chaco. It notes that this problem was also examined in 2006 by the Conference Committee on the Application of Standards, which invited the Government, among other things, to seek the Office's technical assistance in this connection. Furthermore, the Committee notes the report *Debt bondage and marginalization in the Paraguayan Chaco*, published by the ILO in September 2006, which was endorsed at seminars held separately with employers' and workers' organizations, and with the labour inspection services. According to this report, in agricultural establishments in the Chaco, many indigenous permanent or temporary workers receive a wage that is lower than the minimum wage or are compelled to buy products at excessive prices in the establishment's store. In certain cases, this results in situations of permanent debt in which the worker concerned is likely to be compelled to stay in the service of the establishment against her or his will, under the menace of imprisonment. The findings of the report show that nearly 8,000 indigenous workers are victims of forced labour or are likely to become so. The report's recommendations include the formulation of a plan of action to eliminate forced labour with a view to eradicating debt bondage in the Chaco, the opening of a regional labour office and the strengthening of inspection activities.

As the Committee emphasized in the observation that it made in 2007 under Convention No. 29, the national legislation contains provisions which, if they were properly applied in practice, would contribute to preventing the chronic indebtedness of indigenous workers.

The Committee is bound to express concern in view of the gravity of the persistent practices of debt bondage in the Paraguayan Chaco, which constitute not only violations of Conventions Nos 29 and 169, but also raise serious problems of application of Articles 3 (payment of wages in legal tender), 4 (partial payment of wages in kind), 6 (freedom of the worker to dispose of her or his wages), 7 (works stores) and 12 (payment of wages regularly) of

Convention No. 95. *It therefore requests the Government to provide detailed information on the measures adopted in the context of the follow-up to the ILO study referred to above, and particularly with a view to the formulation and implementation of a national action plan in order to bring an end to debt bondage in the country.*

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

[The Government is asked to reply in detail to the present comments in 2009.]

Philippines

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1953)

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee regrets that the Government in its last report does not provide any new information in reply to the persistent calls of the Committee for action in order to ensure the implementation of the core requirement of the Convention. The Government admits that there are no provisions in the national legislation specifically requiring the inclusion of labour clauses in public contracts and makes renewed reference to the Labour Code, the Government Procurement Reform Act of 2003 and its implementing rules and regulations as sufficiently safeguarding the rights of workers engaged in the execution of public contracts. In this connection, the Committee refers to paragraphs 41–45, 98–104 and 110–113 of its General Survey of 2008 on labour clauses in public contracts in which it analysed the meaning and purpose of *Article 2* of the Convention and explained why the general applicability of the national labour legislation to work done in the execution of public contracts is not sufficient to meet the requirements of the Convention. ***Under the circumstances, the Committee again urges the Government to take without delay all necessary action to give full effect to the Convention. It also recalls that the Office remains prepared to extend any technical assistance that the Government might wish to receive to this end.***

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

[The Government is asked to reply in detail to the present comments in 2009.]

Rwanda

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1962)

Article 3, paragraph 2(3), and Article 4, paragraph 1, of the Convention. Sanctions for non-compliance with the minimum wage. The Committee refers to its previous comment concerning the lack of provisions in the Labour Code of 2001 establishing penalties for infringements of the legislation relating to the guaranteed minimum interoccupational wage (SMIG). It notes that the Government refers very briefly in its last report to draft amendments to the Labour Code. In this regard, the Government indicates that a section in the draft new Labour Code would provide for fines for any violation of the provisions of the Code relating to the SMIG, and for imprisonment in the case of a repeat offence. ***The Committee recalls the importance of the existence of an effective system of sanctions to ensure compliance with the legislation on the minimum wage and hopes that the Government will soon adopt provisions of the type contained in the abovementioned section of the draft new Labour Code. The Government is requested to provide all relevant information on progress made on the revision of the Labour Code.***

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

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)

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

The Committee notes the adoption of the Public Procurement Act No. 12/2007 of 27 March 2007. With regard to the conditions of work applicable to staff employed within the framework of the execution of public contracts, it notes that under section 96 of this Act, the contractor is required to apply the laws and regulations in force. The Committee also notes that, in the context of services contracts, section 170 of the Act provides that staff placed at the disposal of the contracting authority shall keep to the working hours which apply to the service to which they are attached and benefit from holidays in accordance with the legislation in force, unless the terms of reference provide otherwise. The Committee also notes that Act No. 51/2001 of 30 December 2001 issuing the Labour Code does not contain any provisions on the inclusion of labour clauses in public contracts.

The Committee notes with regret that, despite the recent adoption of new public procurement legislation, the Government is still not able to report on any real progress made in meeting the fundamental requirements of the Convention. In this respect, the Committee recalls once again that the fact that general legislation, including labour law, also applies to workers responsible for the execution of public contracts, as stipulated by section 96 of the Public Procurement Act of 2007, is not enough to ensure the fulfilment of the obligation placed on the Government by *Article 2 of the Convention* to require the inclusion, in all the 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, by arbitration award or by national laws or regulations.

Recalling that it has been commenting for 30 years on the failure to apply the Convention, the Committee trusts that the Government will take, without further delay, all the measures necessary to ensure the inclusion of the labour clauses provided for by the Convention in all public contracts to which the Convention applies. The Committee also requests the Government to indicate whether a ministerial order determining the general conditions of contracts has been adopted pursuant to section 5, paragraph 2, of the Public Procurement Act of 2007 and, if so, to provide a copy.

The Committee takes this opportunity to draw the Government's attention to its 2008 General Survey on labour clauses in public contracts, which reviews the legislation and practices of member States in this respect and makes an assessment of the impact and current relevance of Convention No. 94.

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

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

Turkey

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1975)

Articles 1 and 3 of the Convention. Coverage and determination of minimum wage levels. The Committee notes the comments made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ) concerning the application of the Convention.

TISK continues to consider inadvisable to bring home-based trades within the scope of the minimum wage legislation. Not only is it impossible to determine the minimum wage for piecework, bearing in mind that home working trades are usually engaged in piecework, but it is also not always clear whether those working at home are self-employed or parties to an employment relationship. As regards the periodic readjustment of the minimum wage, TISK maintains that other economic factors apart from the inflation rate should be taken into consideration, such as for instance the economic crisis, market slowdown, decline in productivity, and increased unemployment. TISK suggests that lower minimum wages should apply to young persons as from the age of 20 rather than the age of 16 in an effort to prevent the growing youth unemployment. Finally, TISK considers that the fight against the informal economy would need lower taxation, simplifying bureaucracy and additional incentives for formal employment.

TÜRK-İŞ believes that the level of the minimum wage is far from adequate to provide a humane standard of living and that the country's economic situation is used as an excuse for keeping the minimum wage exceptionally low. The workers' organization also states that while the economy has grown by 35 per cent over the past four years, workers remunerated at the minimum pay rate have not been able to share any concrete benefits. According to statistics of the social security institution, two out of every five formal workers are paid at the minimum wage. Moreover, TÜRK-İŞ alleges that at present the minimum wage can hardly cover 64 per cent of the hunger level and 20 per cent of the poverty level, which means that a working family receiving the minimum wage can eat healthily for just 19 days and can enjoy a decent standard of living for only six days per month. Finally, TÜRK-İŞ draws attention to the homeworking trades which are not protected by minimum wage legislation and also to the important ongoing problem of informal employment. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of TISK and TÜRK-İŞ.*

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

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1961)

Articles 1 and 2 of the Convention. Labour clauses in public contracts. The Committee notes the comments made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ) concerning the application of the Convention. TISK refers to some new provisions introduced in section 2 of Labour Act No. 4857 by virtue of Act No. 5538 of 1 July 2006, according to which workers employed in the execution of a public contract may not be appointed to a position of the contracting public authority or have access to any benefits and entitlements provided to the employees of the contracting public authority. Under the same provisions, public contracts for services may not contain provisions which empower the contracting public authority to recruit or terminate the employment of workers or which guarantee continued employment to workers engaged in the performance of a public contract. In this connection, TISK admits that the new provisions were introduced in order to prevent the malpractices experienced under the previous Labour Act No. 1475, but considers the provisions in question to be unconstitutional and to have rendered the system of public contracting impossible to manage. For its part, TÜRK-İŞ states that the newly added paragraphs in section 2 of the Labour Act contravene the standards set out in the Convention without further elaborating. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of TISK and TÜRK-İŞ.*

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

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

The Committee notes the information contained in the Government's detailed report and its attachments, in particular the comments made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ) on the application of the Convention. It also notes the comments made by the Confederation of Turkish Public Employees Trade Unions (KAMU-SEN), which were appended to the Government's report received in October 2003. The Committee further notes the adoption of the new Labour Law No. 4857 of 22 May 2003 revising the old Labour Law No. 1475 of 25 August 1971.

Article 12, paragraph 1, of the Convention. Non-payment or delayed payment of wages. The Committee notes that employers' and workers' organizations have been commenting for a number of years on problems concerning the non-payment or delayed payment of wages. TÜRK-İŞ indicates that the amounts owed to workers in the form of unpaid or only partially paid wages and social benefits and bonuses are reaching high levels. The situation affects considerable numbers of workers in the private sector but also municipal workers. For KAMU-SEN, the dramatic drop in real wages, mainly because of inflation and increasing production costs, pushes workers to depression. TISK believes that excessive financial obligations, such as high tax and social insurance contributions imposed on registered workers and employers, increase the difference between gross and net wages, and diminish the country's competitiveness. In fact, Turkey has been on top of the OECD list of countries with the highest labour employment costs: 42.8 per cent of average labour costs have consisted of payroll taxes since 2006, as compared to 27.5 per cent for other OECD countries and 11.7 per cent for EU countries. For TISK, the heavy tax and social insurance burden boost the informal sector and render the economy less competitive.

Concerning these points, the Government states that the delays in the payment of wages are caused mainly by the economic crisis affecting all enterprises or organizations, private or public. The Government also refers to sections 33 and 34 of the new Labour Law as measures to address this situation through legislation. Section 33 establishes a Wages Guarantee Fund within the Unemployment Insurance Fund, which is financed by 1 per cent of the contributions to the unemployment insurance by the employers. Section 34 provides that workers may at their discretion decide not to work if the employer does not pay the wage due within 20 days of the pay day, which must not be construed as a strike or be considered as a ground for termination of the worker's employment contract, and that an interest at the highest commercial rate must be applied to the sum of wages due to the worker. As regards the situation of wage payment in the public sector, the Government makes reference to the results of a survey by the Ministry of Interior showing that there are nearly 5,500 public officers affected across 188 municipalities involving an amount of approximately 5,781,147 new Turkish liras (approximately US\$4.6 million). In this connection, the Government indicates that the legislation regulating the finance and personnel affairs in public administration, such as Act No. 5018 concerning the administration of public finance and audit, and Act No. 5620 on the transfer to permanent posts or contractual personnel status of workers temporarily employed in the public administration, ensures that wages of public officers are paid regularly and in full. The Committee recalls in this connection paragraphs 358 and 366 of its General Survey of 2003 on the protection of wages, in which it pointed out that whatever the intricate causes of the problem of wage arrears, the deferred payment of wages is part of a vicious circle that inexorably affects the entire national economy. ***The Committee hopes that the Government will continue its efforts for devising appropriate solutions to the problem of delayed or non-payment of wages through social dialogue and better implementation of the labour legislation. The Committee accordingly requests the Government to closely monitor the situation and continue to provide up to date information on the number of workers and types of enterprises affected by accumulated wage arrears and any progress made in settling outstanding payments in both the public and private sector. Finally, the Committee requests the Government to transmit any comments it may wish to make in reply to the latest observations of TISK and TÜRK-İŞ.***

Article 15. Enforcement and legal remedies. According to TÜRK-İŞ the difficulties experienced in the protection of workers' wages are mainly due to the considerable difference between the legal provisions in place and their practical application, or in other words to the lack of effective penalties. In contrast, TISK considers that legal provisions on penalties are sufficient. It also states that the increase of administrative fines would not safeguard the full respect of the wage legislation, as long as the employers are deprived of their financial strength to secure resources for the payment of wages. In this regard, the Government refers to section 102 of the new Labour Law prescribing an administrative fine of 100 Turkish New Lira (TRY) (approximately US\$83), to be annually readjusted under section 17 of Act No. 5326 of 30 March 2005, for failure to pay the wages in full. The Government explains that based on these provisions, an employer would currently be liable to a fine of TRY167 (approximately US\$138) for each month of non-payment or underpayment of the worker's wage. It also refers to the possibility to file a complaint with the labour courts under section 61 of Act No. 2822 on collective labour agreements which provides for a lawsuit for payment that carries payment of interest at the highest commercial rate. ***The Committee would be thankful to the Government for providing statistical information on the number of wage-related cases heard by labour courts and the amounts of wages recovered.***

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

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1970)

Articles 1 and 4 of the Convention. Scope of application and enforcement of minimum wage in agriculture. The Committee notes the comments made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ), concerning the application of the Convention.

TISK basically reiterates points it has raised in earlier observations, in particular that bringing partially agricultural enterprises and agricultural workers within the scope of the Labour Law creates problems of application and that a separate legislation would be preferable due to the special characteristics of agricultural work and the social structure in the country.

As for TÜRK-İŞ, it considers that the measures for control, inspection, and sanctions in the agricultural sector are completely inadequate and, as a result, large numbers of agricultural workers are remunerated at rates below the minimum wage. TÜRK-İŞ calls, accordingly, for better implementation of *Article 4* of the Convention. ***The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of TISK and TÜRK-İŞ. It would also appreciate receiving a copy of the Statute concerning work regarded as industry, commerce, agriculture and forestry of 28 February 2004 and of the Statute concerning working conditions of workers in agriculture and forestry of 6 April 2004 to which reference was made in TISK's comments.***

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

Uganda

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)

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

The Committee notes the adoption of the Employment Act, 2006. ***The Committee trusts that the Government will supply detailed information in its next report on the application of all the provisions of the Convention. The Committee also requests the Government to reply to its previous observation and in particular to send available data concerning changes in the minimum wage and the rate of inflation, and also the average wage by branch of activity and occupation.***

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

United Kingdom

Bermuda

Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Article 2 of the Convention. Insertion of labour clauses into public contracts. The Committee notes with regret that the Government's report essentially reproduces information which had been previously communicated to the Office. While noting the adoption of the Employment Act 2000, which sets out minimum employment standards and establishes an Employment Tribunal to adjudicate on claims, the Committee observes that the information provided by the Government bears strictly no relevance to the procedure for the award or execution of public contracts. The Committee recalls that it has repeatedly requested the Government to clarify whether the administrative instructions which had been adopted on 29 December 1962 and which gave effect to the requirements of the Convention, still remained in force or whether they had been amended or replaced by new texts. ***In the absence of a clear response on this point, the Committee once again asks the Government to specify how it ensures the application of the Convention both in law and in practice.***

The Committee recalls that the Convention requires the insertion of labour clauses into all public contracts falling within its scope as well as sufficient publicity for the terms of those clauses and appropriate sanctions in case of non-observance. In this respect, the Committee refers to paragraphs 41–45 and 110–113 of the General Survey of 2008 on labour clauses in public contracts in which it pointed out that the applicability of the general labour legislation to the conditions under which public contracts are carried out is insufficient to ensure the implementation of the Convention. Indeed, the Convention aims at ensuring that workers employed in public contracts enjoy working conditions that are not less favourable than those established by collective agreement, arbitration award or by national labour legislation. Even if collective agreements were applicable to workers engaged in the context of the execution of public contracts, the implementation of the Convention would retain its full value in so far as its provisions are designed precisely to ensure the specific protection needed by those workers. For example, the Convention requires the adoption by the competent authorities of measures, such as the advertisement of specifications, to ensure that tenderers have advance knowledge of the terms of the labour clauses (*Article 2, paragraph 4*, of the Convention and paragraph 7 of the 1962 administrative instructions). It also requires notices to be posted in conspicuous places at the workplace to inform workers of the

conditions of work applicable to them (*Article 4(a)* of the Convention and paragraph 9(a)(iii) of the administrative instructions). Finally, it provides for sanctions in the event of non-compliance with the terms of labour clauses, such as the withholding of contracts or the withholding of payments due to contractors (*Article 5* of the Convention, and paragraphs 10 and 11 of the administrative instructions), which may be more directly effective than those available for violations of the general labour legislation.

Part V of the report form. Further to its previous comments, the Committee requests the Government to provide up to date information concerning the matters dealt with in the Convention, including for instance the approximate number of public contracts awarded during the reporting period and the number of workers engaged in their execution, extracts from labour inspection reports showing the number and nature of any infringements of the relevant legislation observed, copies of official studies concerning the social aspects of public contracting, etc.

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the General Survey of 2008 on Convention No. 94, to help better understand the requirements of the Convention and ultimately improve its application in law.

British Virgin Islands

Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

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

The Committee regrets to observe that the Government is still unable to report substantive progress concerning the adoption of legislation giving effect to the provisions of the Convention. While noting the Government's indication that the draft bill to amend the Labour Code Ordinance, Cap. 293 is currently under review and should be resubmitted to the Legislative Council shortly, the Committee recalls that the Government has been stating for the last 28 years that the enactment of appropriate legislation for the insertion of labour clauses in public contracts is under consideration.

The Committee wishes to point out that the principal obligation for a government arising out of the ratification of an international labour Convention is to take such action as may be necessary to make effective the provisions of the ratified Convention, and to continue to ensure its application for as long as it does not decide to denounce it. *The Committee therefore strongly suggests that the new legislation designed to implement the Convention should be adopted without delay and asks the Government to keep the Office informed of any developments in this respect.*

Finally, the Committee takes this opportunity to refer to its 2008 General Survey on labour clauses in public contracts which contains an overview of public procurement practices and procedures in so far as labour conditions are concerned and makes a global assessment of the impact and present-day relevance of Convention No. 94.

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

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law.

Uruguay

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1954)

Article 2, paragraph 1, of the Convention. Inclusion of labour clauses in public contracts. The Committee notes the information provided by the Government on Decree No. 475/005 of 14 November 2005 and Act No. 18.098 of 12 January 2007. It notes that, according to the Government, some of the general conditions of contracts refer simultaneously to both these texts and a legal analysis is required to determine whether Act No. 18.098 repeals Decree No. 475/005. The Committee also notes that the Government intends to examine this matter, taking into account the General Survey concerning the labour clauses in public contracts which the ILO Conference examined in June 2008. It draws the Government's attention to the points raised in its previous comments, when it noted with regret that Act No. 18.098 seemed to restrict the scope of Decree No. 475/005 because it dealt only with the issue of the remuneration of workers and not working hours or other conditions of work, as prescribed by the Convention. The Committee also pointed out that this Act required only the observance of wage rates fixed by the wage councils and not of those, possibly more favourable conditions, established by legislation, collective agreement or arbitration award. It further stressed that section 1 of Act No. 18.098 does not reproduce the text of section 1 of Decree No. 475/005, whereas the latter conforms fully to the provisions of *Article 2* of the Convention with regard to public service contracts. *The Committee requests the Government to provide information on the result of the analysis carried out on the legal relationship between Decree No. 475/005 and Act No. 18.098, and hopes that it will take account, in the context of this analysis of the abovementioned comments concerning the limited scope of this Act compared to that of Decree No. 475/005. Recalling also its previous observation, in which it pointed out that the abovementioned texts only applied to services contracts, it requests the Government to take the necessary measures to ensure that all public contracts covered by the Convention, including service and procurement contracts, incorporate labour clauses guaranteeing to the workers concerned wages*

and other conditions of work which are not less favourable than the most advantageous conditions established for work of the same nature in the same area by collective agreement, arbitration award or national laws or regulations. In this respect, the Committee points out that the general conditions governing service contracts and contracts issued by the National Traffic Department, of which extracts are contained in the Government's report, only contain provisions pertaining to wages of workers employed under public contracts, and do not refer to hours of work or other working conditions.

Article 2, paragraph 3. Consultation of employers' and workers' organizations. The Committee notes the general information provided by the Government concerning the participation of employers' and workers' organizations in collective bargaining, especially in the construction sector. **However, it asks the Government to submit more detailed information on the way in which these organizations are effectively consulted before the labour clauses in general conditions in public contracts are drawn up, and on the consultations that were held before the adoption of Act No. 18.098 of 12 January 2007 and Decree No. 475/005 of 14 November 2005.**

Article 6 of the Convention and Part V of the report form. The Committee notes the Government's information on the provisions applicable in the failure to respect standards, arbitration awards or collective agreements in force. It nevertheless points out that its previous comment specifically referred to the general conditions for public works, mentioned in section III, paragraph 1, of the tender attached to the Government's last report. **The Committee therefore requests the Government once again to indicate whether the text to which reference is made is that of the general conditions for the construction of public works and, if not, to send a copy of the general conditions which are currently applicable.**

For all useful purposes, the Committee attaches herewith a copy of a Practical Guide on Convention No. 94, recently published by the Office, which sheds light on the scope of the provisions of the Convention.

Yemen

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1976)

Article 4, paragraph 2, of the Convention. Full consultations with the social partners. The Committee has been commenting for a number of years on the absence of a machinery responsible for fixing and revising minimum wages through a consultative process sufficiently representative of the employers' and workers' interests, as prescribed by *Article 4, paragraph 2, of the Convention.*

The Committee notes the Government's indication that by Act No. 43 of 2005 on wages and salaries, the Civil Service Ministry set the minimum wage for over 1 million public employees to 20,000 rials (approximately US\$100) per month and that in accordance with section 55 of the Labour Code of 1995, the same minimum wage floor applies to workers of the private sector. However, the Committee also notes the Government's statement that there is no institutionalized mechanism which establishes or amends minimum wage rates and that consequently there are no consultations held with the social partners in this regard.

Under the circumstances, the Committee feels obliged to recall, that by ratifying the Convention the Government has committed itself to establishing a system of minimum wages covering all groups of wage earners through procedures or practices guaranteeing the full consultation with, and the direct participation of, representative organizations of employers and workers and ensuring the periodic review and adjustment of the level of minimum wages in light of the prevailing social and economic conditions. **The Committee accordingly asks the Government to indicate the measures it intends to take in order to fully implement the requirements of the Convention. The Committee further requests the Government to transmit full information on the implementation of the national strategy on wages set out in Act No. 43 of 2005 and scheduled for completion in 2010.**

In addition, the Committee recalls that the Government has still to provide concrete information as to how decent wage levels are determined for those categories of workers who are currently excluded from the scope of the Labour Code, including agricultural, domestic and casual workers. In some earlier reports, the Government had been referring to ministerial orders under preparation but no real progress has since been made. Moreover, the Committee has been asking for the last ten years whether any steps have been taken for the establishment of the tripartite Labour Council, which according to section 11 of the Labour Code will be responsible among other matters, for formulating recommendations on wage policy, incentives and benefits. **The Committee once again asks the Government to provide full particulars on any measures taken or envisaged with a view to setting up the tripartite Labour Council and determining decent minimum wage levels for those workers falling outside the scope of the Labour Code.**

[The Government is asked to reply in detail to the present comments in 2009.]

Zambia

Protection of Wages Convention, 1949 (No. 95) (ratification: 1979)

Article 12 of the Convention. Regular payment of wages. The Committee notes the information provided by the Government in reply to its previous comments. According to the Government, the total amount of wage arrears owed to

public officers in local councils currently stands at 200 billion kwacha (over US\$53 million) affecting 14,500 members of the Zambia Local Authorities Workers' Union (ZALAWU). The Government adds that 50 billion kwacha have so far been earmarked for the partial settlement of the outstanding wage debt. However, no time schedule for the complete elimination of the debt has been established. *While noting the Government's continuous efforts for the comprehensive reform of the public sector in various aspects such as staff structure and pay scales, the Committee hopes that the Government will accelerate its efforts in order to eliminate the wage debt as soon as possible and to prevent the recurrence of similar practices in the future. It asks the Government to communicate detailed information on any progress made in this regard. It also requests the Government to provide additional explanations regarding the number of affected employees – other than members of the ZALAWU – or other sectors of economic activity experiencing problems of accumulated wage arrears. Furthermore, the Committee would appreciate receiving copies of any decisions the High Court might render concerning the cases filed by the ZALAWU.*

Zimbabwe

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1993)

Article 1 of the Convention. Minimum wage fixing machinery for the agricultural sector. The Committee notes the observations made by the Zimbabwe Congress of Trade Unions (ZCTU) on the application of the Convention. According to the ZCTU, the Government has failed to ensure that workers' income is adequately protected in terms of guaranteeing a fair remuneration sufficient to provide a decent living. The ZCTU indicates that, in the context of the current hyper-inflationary economy, prices of basic commodities change at an hourly rate and minimum wage rates become rapidly irrelevant, thus calling into question the practicality of maintaining a system where an amount fixed today would be next to nothing by the end of the week. The Committee understands that, according to official data published by the Central Statistical Office, the inflation rate in June 2008 stood at 11 million per cent per year, or 839 per cent per month. It also notes that, in recent months, the Zimbabwe dollar has been losing 13 per cent of its value per day. *In light of the aggravating socio-economic situation, the Committee asks the Government to clarify the role and function of the National Employment Council for the Agricultural Industry (NEC) and, in particular, the practical significance of the annual review of minimum pay rates by NEC subcommittees responsible for cost of living adjustment. It also requests the Government to transmit any comments it may wish to make in reply to the observations of the ZCTU.*

[The Government is asked to reply in detail to the present comments in 2009.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 26** (Bahamas, Congo, Democratic Republic of the Congo, Fiji, Luxembourg, Madagascar, Malawi, Mali, Nigeria, Norway, Panama, Papua New Guinea, Peru, Rwanda, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, Solomon Islands, Switzerland, Togo, Tunisia, Turkey, United Kingdom: Anguilla, United Kingdom: British Virgin Islands); **Convention No. 94** (Antigua and Barbuda, Armenia, Bahamas, Barbados, Belize, Denmark, Malaysia: Sabah, Malaysia: Sarawak, Mauritania, Mauritius, Netherlands, Netherlands: Netherlands Antilles, Nigeria, Norway, Saint Vincent and the Grenadines, Sierra Leone, Solomon Islands, Spain, United Republic of Tanzania, Turkey, Uganda, United Kingdom: Anguilla); **Convention No. 95** (Belize, Bolivia, Dominica, France: French Guiana, Guinea, Kyrgyzstan, Lebanon, Madagascar, Malaysia, Mali, Malta, Mexico, Netherlands: Netherlands Antilles, Nicaragua, Nigeria, Norway, Panama, Paraguay, Philippines, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, United Republic of Tanzania, Tunisia, Turkey, Uganda); **Convention No. 99** (Malawi, Papua New Guinea, Paraguay, Peru, Senegal, Seychelles, Sierra Leone, Tunisia, Turkey, United Kingdom: Anguilla); **Convention No. 131** (Antigua and Barbuda, Armenia, Cameroon, Central African Republic, France: Martinique, Republic of Korea, Lebanon, Malta, Niger, Serbia, Slovenia, Zambia); **Convention No. 173** (Burkina Faso, Madagascar, Slovakia, Slovenia, Switzerland).

Working time

Algeria

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1962)

Article 2 of the Convention. Duration of minimum compulsory night rest. The Committee notes with regret that the Government's report does not reply to the points that the Committee has been raising for many years concerning the definition of the term "night work" and the exemption possibilities under sections 27 and 29 of Act No. 90-11 of 21 April 1990 respecting labour relations. Whereas in its previous report submitted in 2003, the Government had indicated that draft amendments bringing the relevant provisions into conformity with *Article 2* of the Convention were under preparation and that the revised text would be transmitted once it had been adopted, in its last report the Government limits itself to reiterating the main provisions of the 1990 legislation which are clearly inconsistent with the requirements of the Convention.

The Committee recalls once more that the Protocol of 1990 to Convention No. 89 was drafted with a view to offering greater flexibility in terms of variations in the duration of the night period and broader exemptions from the prohibition of night work, and therefore its ratification and proper implementation would permit to eliminate the current divergence between the national legislation and the Convention. ***The Committee therefore invites the Government to give favourable consideration to the ratification of the 1990 Protocol to Convention No. 89 and to report on any progress made regarding the amendment of the 1990 Act on labour relations.***

Benin

Night Work (Women) Convention (Revised), 1934 (No. 41) (ratification: 1960)

Article 3 of the Convention. General prohibition of night work for women. The Committee has been drawing the Government's attention to the need to take appropriate action with respect to obsolete Conventions Nos 4 and 41 and has been recalling the conclusions of the 2001 General Survey on the night work of women in industry, according to which those Conventions are ill-suited to present-day realities, and the decision of the Governing Body to shelve both Conventions, which means that ratification is no longer encouraged and detailed reports on their application are no longer requested on a regular basis. The Committee has accordingly invited the Government to consider the ratification of the Night Work Convention, 1990 (No. 171), which sets out up to date standards applying to all night workers and to all occupations without distinction. In its last report, the Government makes renewed reference to its intention to facilitate women's access to employment in general but gives no indication of any concrete steps taken towards the ratification of Convention No. 171 and the denunciation of Convention No. 41.

In this respect, the Committee once again recalls that the ratification of Convention No. 171 does not *ipso jure* involve the immediate denunciation of Convention No. 41 and, therefore, the denunciation of Convention No. 41 will have to be undertaken separately. According to established practice, this Convention may be denounced every ten years but only during an interval of one year and will again be open to denunciation from 22 November 2016 to 22 November 2017. On the contrary, Convention No. 4 may be denounced at any time provided that the representative organizations of employers and workers are fully consulted in advance.

The Committee expresses the hope that the Government will take the appropriate action in order to terminate its obligations under obsolete Conventions Nos 4 and 41 in keeping with the procedural requirements indicated above, and asks the Government to keep the Office informed of any progress made concerning the ratification of Convention No. 171.

Bolivia

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1973)

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

Article 6, paragraph 1(a), of the Convention. Permanent exceptions – intermittent work. The Committee notes that under section 46 of the General Labour Act of 8 December 1942, the rules on working hours laid down by the Act do not apply to wage earners who engage in discontinuous work. ***The Committee requests the Government to indicate the types of work covered by this exception.***

Articles 3 and 6, paragraph 1(b). Additional hours of work. The Committee notes that the labour inspectorate is not, as the Committee said in its previous comments, authorized by section 50 of the General Labour Act to allow up to two additional hours of work a day under any circumstances. It also notes that in support of that assertion, the Government refers to section 37 of Decree No. 244 of 1943 issuing implementing regulations for the General Labour Act, under which additional hours of work may be authorized only "in unforeseeable circumstances, to the extent necessary to avoid hindrance of the normal running of the establishment and to prevent accidents or carry out unpostponable repairs or adjustments on the machinery or plant". The Committee notes that the exception in section 37 is covered by the exceptions allowed under *Article 3* of the Convention. However, the Committee also notes that according to the Government's report the internal rules of enterprises specify the hours

of work and the circumstances in which additional hours of work may exceptionally be authorized. The Committee accordingly understands that the instances in which additional hours of work may be allowed are not limited to those set forth in section 37 of Decree No. 244. It again recalls that *Article 6, paragraph 1(b)*, of the Convention allows the granting of temporary exceptions to the rules on hours of work only in order to enable establishments to deal with cases of abnormal pressure of work. **While noting the Government's statement that because of the present political and social crisis it is unable to ensure that new labour legislation will be enacted in the near future, but that it will make every effort gradually to amend the existing legislation on an ad hoc basis, the Committee again expresses the hope that the Government will take the necessary steps as soon as possible to give full effect to the Convention on this point. It strongly encourages the Government to contact the International Labour Office, and more particularly its regional office in Lima, in order to set up a specific technical assistance programme able to facilitate its search for solutions.**

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

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1954)

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

Article 5 of the Convention. The Government indicated in its last report that no progress had been made at the legislative level in guaranteeing compensatory periods of rest for workers employed on the weekly rest day. The Committee recalls that *Article 5* of the Convention provides for, as far as possible, compensatory periods of rest in cases where exceptions have been made regarding the right to weekly rest. In this regard, the Committee once again points out that section 31 of Decree No. 244 (a regulation issued under the General Labour Act) allows more latitude to the employer than is envisaged under the Convention. The Committee is bound to highlight with regret that since 1966 the Government has been indicating that amendments to the Labour Act will bring the national legislation into conformity with *Article 5* of the Convention. The Committee notes that despite its numerous direct requests and observations for the past 34 years, the Government mentioned in its last report that the amendment of the General Labour Act is under preparation and will be completed within a "reasonable period". **The Committee urges the Government to continue its tripartite consultations and to take all the necessary measures to bring section 31 of Decree No. 244 (regulation issued under the General Labour Act) into conformity with the Convention. It hopes that new legislation will be adopted in the near future and requests the Government to indicate any progress made in this respect and to provide a copy of the relevant text once it has been adopted.**

The Committee is also addressing a request directly to the Government on certain matters.

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

Night Work (Bakeries) Convention, 1925 (No. 20) (ratification: 1973)

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

The Committee notes with regret that despite the observations it has made many times, the Government has not taken the necessary measures to bring its labour law into conformity with the obligations deriving from *Article 2 of the Convention*, with regard to the period during which work is forbidden.

The Committee takes this opportunity to recall that the ILO Governing Body, on the basis of the conclusions of the Working Party on Policy regarding the Revision of Standards, decided to shelve certain Conventions, including Convention No. 20, on the grounds that they were not suited to current needs and had become obsolete. The decision to shelve a Convention means that ratification of the instrument is no longer encouraged and that detailed reports on its application are no longer requested on a regular basis (see document GB.283/LILS/WP/PRS/1/2, paragraphs 31 and 32). The Committee also recalls that in accordance with its *Article 11*, Convention No. 20 may be denounced at any time as long as there has been full consultation of the representative organizations of employers and workers.

Consequently, the Committee invites the Government to consider denouncing Convention No. 20 and ratifying the Night Work Convention, 1990 (No. 171), the scope of which is more extensive and includes workers of both sexes, as well as nearly all branches of activity and all occupations. Unlike traditional definitions of night work, which refer to a specific period of hours during the night, the new standards focus on workers who perform a substantial number of hours of night work. In addition, Convention No. 171 broadens the range of measures needed to improve the quality of life at work of night workers. **The Committee requests the Government to keep the Office informed of any developments in this respect.**

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

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1973)

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

Article 7(1)(a) of the Convention. Permanent exceptions – intermittent work. The Committee notes that under section 46 of the General Labour Act of 1942, the rules on working hours laid down by the Act do not apply to wage earners who engage in discontinuous work. **The Committee requests the Government to indicate the types of work covered by this exception.**

Article 7(2). Additional hours of work. The Committee notes that the labour inspectorate is not, as the Committee said in its previous comments, authorized by section 50 of the General Labour Act to allow additional hours of work under any circumstances. It also notes that in support of that assertion, the Government referred, in its 2005 report, to section 37 of Decree No. 244 of 1943 issuing implementing regulations for the General Labour Act, under which additional hours of work may be authorized only "in unforeseeable circumstances, to the extent necessary to avoid hindrance of the normal running of the establishment and to prevent accidents or carry out unpostponable repairs or adjustments on the machinery or plant". The

Committee observes that the exception set forth in section 37 is covered by the exceptions allowed in *Article 7, paragraph 2(a)*, of the Convention.

However, the Committee also notes two judgements of the Constitutional Court of Bolivia, attached to the Government's report submitted in 2005 regarding Convention No. 1 (judgement No. 149 of 26 April 2002, *Maria Lourdes Villegas de Aguirre v. Banco del Estado en Liquidación*, and judgement No. 257 of 10 November 2001, *Humberto Rodríguez v. Ex-Banco del Estado*). In both decisions the Court held that the definition of overtime (*horas extraordinarias*) implied that such work was "out of the ordinary" and performed occasionally. The Court also ruled that it was for employers to prove that they needed to impose overtime and that overtime must be authorized by the labour inspector. The Committee notes that the above decisions make no reference to unforeseeable circumstances, accident prevention or urgent repair of machinery. The Committee accordingly understands that the instances in which additional hours of work may be allowed are not limited to those set forth in section 37 of Decree No. 244.

The Committee points out that *Article 7, paragraph 2*, of the Convention allows the granting of temporary exceptions to rules on working hours (apart from the cases of unforeseeable circumstances, accident prevention or urgent repair of machinery) only in the following cases: in order to prevent the loss of perishable goods or avoid endangering the technical results of the work; in order to allow for special work (stocktaking, preparation of balance sheets, closing of accounts, etc.); or to enable establishments to deal with cases of abnormal pressure of work due to special circumstances. *While noting the statement in the report submitted in 2005 by the Government that because of the present political and social crisis it is unable to ensure that new labour legislation will be enacted in the near future, but that it will make every effort gradually to amend the existing legislation on an ad hoc basis, the Committee again expresses the hope that the Government will take the necessary steps as soon as possible to give full effect to the Convention on this point. It strongly encourages the Government to contact the International Labour Office, and more particularly its regional office in Lima, in order to set up a specific technical assistance programme able to facilitate its search for solutions.*

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

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1973)

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

The Committee recalls its previous comments in which it noted that the night period provided for in section 46 of the General Labour Act is not consistent with the 11-hour minimum nightly rest required under *Article 2 of the Convention*, whereas section 60 of the General Labour Act refers to broader exemption possibilities than those specifically allowed by the Convention. With reference to the ongoing process of revision of the General Labour Act, the Committee notes the Government's request for technical assistance to the work of the tripartite committee responsible for amending the Act in conformity with the suggestions of the Committee of Experts.

The Committee takes this opportunity to refer to paragraphs 191 to 202 of its General Survey of 2001 on the night work of women in industry, in which it observed that the present trend is no doubt to move away from a general prohibition against women's night work and to give the social partners the responsibility for determining the extent of the permitted exemptions. In this respect, the Committee considered that the Protocol of 1990 to Convention No. 89 was designed as a tool for smooth transition from outright prohibition to free access to night employment, especially for those States that wished to offer the possibility of night employment to women workers but felt that some institutional protection should remain in place to avoid exploitative practices and a sudden worsening of the social conditions of women workers. It also suggested that greater efforts should be made by the Office to help those constituents who are still bound by the provisions of Convention No. 89, and who are not yet ready to ratify the new Night Work Convention, 1990 (No. 171), to realize the advantages of modernizing their legislation in line with the provisions of the Protocol. *Therefore, the Committee once again invites the Government to give favourable consideration to the ratification of the 1990 Protocol which affords greater flexibility in the application of the Convention while remaining focused on the protection of female employees and requests the Government to keep the Office informed of any decision taken in this respect.* Finally, the Committee trusts that the Government may draw on the Office's technical cooperation and expert advice in amending its labour legislation in line with the preceding observations and expresses the firm hope that the Government will be in a position to indicate substantial progress in this regard in the very near future.

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

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1973)

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

Article 8(3) of the Convention. The Committee notes with regret that the Government has taken no steps to bring the national legislation into line with the provisions of *Article 8, paragraph 3*, of the Convention under which compensatory rest of a duration at least equivalent to the period provided for under *Article 6* must be granted, without prejudice to any monetary compensation, where temporary exemptions are made in respect of weekly rest. It recalls that since 1976 it has been commenting on the need to amend to this effect section 31 of Regulatory Decree No. 244 of 1943, which provides that remuneration may be granted instead of compensatory rest. *The Committee again expresses the hope that the Government will take the necessary steps to this end as soon as possible.*

The Committee notes that the Government envisages amending certain provisions of the General Labour Act and hopes that the Government will take advantage of this occasion to bring section 31 of Decree No. 244 into conformity with the Convention. *It hopes that the new legislation will be adopted in the near future and requests the Government to indicate any progress achieved in this respect and to provide a copy of the relevant text once it has been adopted.*

The Committee also addresses a request directly to the Government on certain points.

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

Bosnia and Herzegovina

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1993)

Article 2 of the Convention. Weekly rest period. The Committee recalls its previous comment in which it noted the comments of the Confederation of Trade Unions of the Republika Srpska concerning serious problems of implementation of the labour laws in the territory of Bosnia and Herzegovina, and in particular the violation of the legal provisions on weekly rest both in the public and private sectors. In addition, the workers' organization drew attention to the problem of grey economy, or informal sector, which represents more than 40 per cent of the workforce and which openly contravenes all legal provisions on working hours, weekly rest or annual leave. *The Committee again asks the Government to provide its views with regard to the observations of the Confederation of Trade Unions of the Republika Srpska in order to enable the Committee to better evaluate the manner in which the Convention is implemented in law and practice.*

The Committee is also addressing a request on certain other points directly to the Government.

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1993)

Article 6 of the Convention. Weekly rest period. The Committee recalls the observations previously submitted by the Confederation of Independent Trade Unions of Bosnia and Herzegovina according to which the majority of employers contravene the provisions of the labour legislation by preventing workers from using their weekly rest and by imposing working schedules that amount to 260 or more monthly hours. In similar comments submitted by the Confederation of Trade Unions of the Republika Srpska, it was indicated that those employed in commerce, who are principally female employees, enjoy no weekly rest given the fact that stores remain open almost around the clock. In its reply, the Government states that all workers have access to inspection bodies as well as to courts in case of violation of the labour legislation, which guarantees effective protection of their rights. The Committee wishes to recall in this connection that, beyond the legislative conformity with the requirements of the Convention, the Government bears also responsibility for its application in practice, and therefore needs to take all appropriate measures, including adequate inspection and truly dissuasive sanctions, to ensure effective implementation and compliance. *The Committee therefore asks the Government to provide in its next report more detailed information, including all available statistical data, on the nature and extent of the problems referred to by the two workers' organizations and to describe any concrete steps taken or envisaged in order to prevent and punish the violations of the labour legislation in respect of weekly rest.*

The Committee is also addressing a request on certain other points directly to the Government.

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1993)

Article 3 of the Convention. Entitlement of workers to annual paid holiday. The Committee notes that the Government's report does not contain any information concerning the observations made by the Confederation of Trade Unions of the Republika Srpska concerning the serious problems of application of the labour legislation in Bosnia and Herzegovina. The Committee recalls that in these observations the Confederation denounced the fact that very often workers cannot take their annual holiday within the prescribed time limit due to work requirements and therefore accumulate unused days of leave that they eventually lose due to the fact that employers refuse to grant any holidays after these time limits. The Confederation also referred to the absence of regulations on hours of work, weekly rest and annual leave in the informal sector, which is problematic as this sector employs over 40 per cent of the active population. *The Committee once again requests the Government to provide its comments on these matters so that they can be examined at the Committee's next session.*

The Committee is also addressing a request directly to the Government on other matters.

Brazil

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1965)

Article 7 of the Convention. Special weekly rest schemes. The Committee notes the adoption of Act No. 11.603 of 5 December 2007 which amends the provisions of Act No. 10.101 of 19 December 2000 concerning the weekly rest of workers in the commerce sector. This Act, similar to the previous one, permits work on Sundays, and the weekly rest period is granted during the week. In this respect, the Committee notes the comments of the Single Confederation of Workers (CUT) dated 28 August 2008, which were transmitted to the Government on 22 September 2008.

First, the trade union points out that Act No. 11.603 – which provides that the weekly rest day must fall on a Sunday at least once in a period of three weeks instead of four previously – improves working conditions in the commerce sector because it reduces the possibilities of introducing special weekly rest schemes and the risk of arbitrary practices. However, CUT points out that work on Sundays – presented as being necessary to maintain the competitiveness of shops, in order to

satisfy consumers' needs and create enterprises – is not justified. In agreement with the National Confederation of Workers in the Commerce and Service Sectors (CONTRACS), CUT points out that, under these conditions, workers may have to work up to 56 hours per week, thereby infringing the provisions pertaining to maximum weekly hours of work; furthermore, they do not receive higher pay than those carrying out their work within the statutory working time. It is for these reasons that CUT advocates the gradual banning of work on Sundays. Second, the trade union states that Act No. 11.603 allows for work on Sundays without previous authorization from the competent authorities or any other body, contrary to the requirements of the Convention, and that the representative organizations of the workers concerned are seldom consulted, resulting in unilateral decisions taken by employers. In this respect, the Committee recalls that *Article 7, paragraph 1*, of the Convention only authorizes special weekly rest schemes: (i) where the nature of the work, the nature of the service performed by the establishment, the size of the population to be served or the number of persons employed make it impossible to apply the normal weekly rest scheme; (ii) following measures taken by the competent authority or through the appropriate machinery; and (iii) in the case of specified categories of persons or specified types of establishments covered by the Convention, regard being paid to all proper social and economic conditions. Furthermore, *Article 7, paragraph 4*, requires that any measures regarding the application of the provisions of *Article 7* should be taken in consultation with the representative employers' and workers' organizations concerned. ***The Committee requests the Government to indicate the measures taken or envisaged to bring its legislation into full conformity with the Convention on these points, and to submit any comments it might consider relevant concerning the observations made by CUT.***

In addition, the Committee addresses a request directly to the Government concerning other points.

Bulgaria

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1960)

Article 8, paragraph 3, of the Convention. Temporary exemptions and compensatory rest. The Committee notes with **satisfaction** that, under the Act published in *Official Gazette* No. 52-2004 and in force since 1 August 2004, section 150(2) of the Labour Code, which prohibited the compensation of overtime work by rest, has been repealed and a new paragraph 4 has been added to section 153 of the same Code, providing for supplementary payment of wages together with compensatory rest of 24 consecutive hours the following week for workers who perform overtime on the two weekly rest days.

Furthermore, the Committee raises other points in a direct request to the Government.

Cameroon

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1973)

The Committee notes with regret that the Government confines itself to reiterating information already provided in its previous reports. The Government indicated previously that amendments, formulated by the National Labour Advisory Commission to bring certain provisions of the Labour Code into conformity with the Convention, would be available during the course of 2004. ***In the absence of new elements in this respect, the Committee urges the Government to take the necessary measures concerning the matters that have been raised in its observations for several years.***

Article 5(1) and (2) of the Convention. Minimum period of service for entitlement to annual holiday with pay. Further to its previous comments, the Committee notes that under section 92(1) of the Labour Code the minimum period of service required for entitlement to any annual holiday with pay is one year. It also notes that, under section 92(2), collective agreements determining a period of holiday that is longer than the period determined by section 89 of the Labour Code may establish a longer minimum period of service, up to a maximum of two years. The Committee once again recalls that the establishment of a minimum period of actual service is an option and not a requirement. It further emphasizes that, *Article 5, paragraph 2*, of the Convention establishes that the minimum period of service must not in any circumstances exceed six months. ***The Committee requests the Government to take the necessary measures to reduce to six months at the most the statutory period of service and any such periods established by collective agreement for entitlement to annual holiday with pay.***

Article 9. Postponement of annual holiday with pay. The Committee notes that, under the terms of section 1(3) of Decree No. 75-28 of 10 January 1975, the annual holiday with pay may be postponed, at the request of the worker, for a period of up to two years. The Committee has been drawing the Government's attention since 1980 to the fact that this provision is not in conformity with *Articles 8, paragraph 2, and 9, paragraph 1* of the Convention, which provide that a holiday of two uninterrupted working weeks must be granted no later than one year from the end of the year in respect of which the holiday entitlement has arisen, and the remainder of the holiday no later than 18 months from the same starting point. ***The Committee requests the Government to take the necessary measures to amend section 1(3) of Decree No. 75-28 of 10 January 1975 and bring it into conformity with these provisions of the Convention.***

Central African Republic

Night Work (Women) Convention (Revised), 1934 (No. 41) (ratification: 1960)

Articles 3 and 4 of the Convention. Exemptions from prohibition of night work. Further to its previous observation concerning the Government's continued failure to bring the national legislation into conformity with the Convention with respect to authorized exemptions from the prohibition of night work for women, the Committee notes the Government's statement that the process for the ratification of the Night Work Convention, 1990 (No. 171) has been initiated and also that the denunciation of Convention No. 41 is scheduled for 2009.

In this respect, the Committee once again recalls that the ratification of Convention No. 171 does not *ipso jure* involve the immediate denunciation of Convention No. 41 and therefore the denunciation of Convention No. 41 will have to be undertaken separately. According to established practice, this Convention may be denounced every ten years but only during an interval of one year and will again be open to denunciation from 22 November 2016 to 22 November 2017. On the contrary, Convention No. 4 may be denounced at any time provided that the representative organizations of employers and workers are fully consulted in advance.

The Committee hopes that the Government will take the necessary steps in order to terminate its obligations under obsolete Conventions Nos 4 and 41 in keeping with the procedural requirements indicated above, and asks the Government to keep the Office informed of any progress made concerning the ratification of Convention No. 171.

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1964)

Article 2(1) of the Convention. Minimum period of service giving entitlement to annual holiday with pay. The Committee notes with concern that the Government's report does not provide any new information in reply to its previous comments. It recalls that for over 30 years the Committee has been drawing the Government's attention to section 129(2) of the Labour Code, which provides that the right to paid holiday is not obtained until after a period of service of 24, or even 30 months. In this respect, the Committee notes the Government's reference to a new Labour Code which it indicates would take into consideration the observations of the Committee concerning the right of all persons to annual holiday with pay once one year of continuous service has been completed. ***The Committee requests the Government to provide a copy of the text of the new Labour Code to which it refers or any other relevant text which has not been previously provided to the Office.***

Article 8. System of sanctions. The Government does not provide any new information concerning the establishment of a system of sanctions in respect of employers failing to apply the Convention. ***The Committee requests the Government to indicate the measures adopted or envisaged to establish a system of sanctions in accordance with this provision of the Convention.***

Parts IV and V of the report form. Court decisions and application in practice. The Committee notes the Government's indication that many relevant court decisions handed down are not communicated to the labour inspectorate and that the provisions of the Convention are not entirely applied, particularly with regard to days of leave per month of service. ***The Committee hopes that the Government will make every effort to collect and communicate relevant court decisions and requests it to supply full information of a general nature to enable it to assess the application of the Convention in practice.***

The Committee also takes this opportunity to recall that, at the proposal of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body considered that Convention No. 52 was outdated and invited the States parties to this Convention to contemplate ratifying the Holidays with Pay Convention (Revised), 1970 (No. 132), which is not considered to be fully up to date but remains relevant in certain respects (see document GB.283/LILS/WP/PRS/1/2, para. 12). The acceptance of the obligations of Convention No. 132 in respect of persons employed in economic sectors other than agriculture by a State party to Convention No. 52 involves *ipso jure* the immediate denunciation of the latter Convention. This approach would appear particularly desirable since the legislation in the Central African Republic, which provides for 18 working days of paid annual leave for each period of 12 months of effective service, is clearly more favourable than the requirements of Convention No. 52. ***The Committee requests the Government to keep the Office informed of any decision that it may take relating to the ratification of Convention No. 132.***

Chile

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1925)

Article 2 of the Convention. Maximum working day. The Committee notes with regret that the Government only provides very partial replies to the various points that have been raised for many years. Further to its previous comments concerning section 28 of the Labour Code, which sets a maximum working day of ten hours, the Committee regrets that the Government limits itself to indicating that, since it is a legislative matter, the competent authorities will be informed so that they take into consideration the amendment of the above section during future reforms of the labour legislation. ***The Committee expresses its firm hope that the comments that it has made on this matter will be taken into account promptly and requests the Government to keep the Office informed of any developments in this regard.***

With regard to Article 6 (overtime in the case of temporary exceptions), the Committee requests the Government to refer to the comments made under Article 7 of Convention No. 30.

Furthermore, the Committee addresses a request to the Government directly on other points.

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1935)

Article 7 of the Convention. Temporary exceptions – additional hours. The Committee notes with regret that the issue of overtime hours and the harmonization of sections 31 and 32 of the Labour Code with the provisions of the Convention have been raised for many years without result. In its latest report, the Government indicates that there are no special circumstances which have resulted in the conclusion of agreements under the above sections. The Committee also notes that, although Act No. 19.759 of 27 September 2001 restricts recourse to overtime hours to responses to “a temporary need or situation prevailing in the enterprise”, section 31 of the Labour Code nevertheless still allows the parties to agree that overtime hours will be performed up to the limit of two hours in the day in jobs which, by their nature, are not harmful to the health of workers. The Committee recalls once again that *Article 7, paragraph 2*, of the Convention only allows temporary exceptions in specific cases, namely: (i) in case of accident, actual or threatened, force majeure or urgent work to machinery or plant, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment; (ii) in order to prevent the loss of perishable goods or avoid endangering the technical results of the work; (iii) in order to allow for special work such as stocktaking and the preparation of balance sheets, settlement days, liquidations, and the balancing and closing of accounts; and (iv) in order to enable establishments to deal with case of abnormal pressure of work due to special circumstances, insofar as the employer cannot ordinarily be expected to resort to other measures.

Moreover, with regard to collective agreements containing provisions respecting overtime hours, the Committee notes the Government’s indication that there has been no change in the legislation in this field and that the limit of overtime hours is determined by day and not in the year, contrary to *Article 7, paragraph 3*, of the Convention which requires, in respect of temporary exceptions, that the number of additional hours of work which may be allowed to be determined in the day and in the year. ***The Committee requests the Government to take the necessary measures without further delay to bring its legislation into conformity with the provisions of the Convention in this respect. It also requests the Government to provide copies of collective agreements establishing systems of overtime hours.***

The Committee is also addressing a request directly to the Government on other points.

Colombia

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1933)

The Committee notes the Government’s brief report, which merely states that there has been no change in the national legislation.

Article 2 of the Convention. Working hours. The Committee notes the observations from the General Confederation of Labour (CGT), dated 18 August 2008 and sent to the Government on 19 September 2008, according to which Act No. 789 of 2002 is contrary to the provisions of the Convention since it prolongs daily working time by four hours, thereby obliging some workers – particularly in commerce – to work ten or even 12 hours per day and without a rest day on Sunday. In this regard, the Committee notes that section 161(d) of the Labour Code – as amended by section 51 of the abovementioned Act – makes provision on the basis of an individual agreement between employer and employee for flexible working hours, which can range from four hours to ten hours per day and be effected without being qualified as overtime between 6 a.m. and 10 p.m., six days per week, provided that the average of 48 hours per week is not exceeded. The Committee is bound to remind the Government once again that the Convention only allows the maximum limit on daily working hours to be exceeded in specific conditions laid down by *Article 2(b)* (distribution of weekly working hours) and *Article 2(c)* (averaging of hours over a three-week period). Furthermore, the Convention provides for other exceptions to the general rule of eight hours per day and 48 hours per week but only under circumstances strictly defined in *Article 2* (accidents, urgent work and force majeure), *Article 4* (non-stop factory work), *Article 5* (averaging of hours in exceptional cases) and *Article 6* (permanent and temporary exceptions). Finally, the Committee emphasizes that exceptions to the eight-hour day necessitate prior consultation of the organizations of employers and workers concerned – or even regulations adopted by the public authority after consultation of the employers’ and workers’ organizations concerned – and therefore an individual agreement between employer and employee is in any case not sufficient for authorizing an extension of working hours. In this regard, the Committee draws the Government’s attention to paragraphs 85–168 of the General Survey of 2005 on working hours relating to Conventions Nos 1 and 30, which provides a detailed analysis of the requirements of the Convention regarding the distribution of working hours and authorized exceptions. ***The Committee therefore requests the Government to revise section 161(d) of the Labour Code in order to bring it into full conformity with the Convention and to keep the Office informed of all progress made on this point.***

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1969)

Article 8(3) of the Convention. Compensatory rest. The Committee notes with regret that the Government's report does not reply to its previous observation and that section 180 of the Labour Code has not been amended. It recalls that under this section a worker who works on an exceptional basis on the weekly rest day is entitled, at his/her choice, to compensatory paid leave or financial compensation. The Committee once again draws the Government's attention to the fact that, in accordance with *Article 8, paragraph 3*, of the Convention, where temporary exceptions are made in respect of weekly rest, the persons concerned must be granted compensatory rest of a total duration of at least 24 consecutive hours, irrespective of the payment of any financial compensation. The Committee recalls that it has been commenting for over 30 years on the non-conformity of section 180 of the Labour Code not only with the letter, but also with the very spirit of the Convention, which is to protect the health of workers by ensuring a minimum period of weekly rest. ***It expresses the firm hope that the Government will finally take the necessary measures to amend section 180 of the Labour Code in order to bring its legislation into line with the provisions of the Convention.***

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

Comoros

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1978)

Article 2, paragraphs 1 and 4, of the Convention. Deferral of the annual paid holiday. The Committee recalls that, since the adoption of the Labour Code in 1984, it has been making comments on the application of these provisions of the Convention. The Committee accordingly noted section 132(3) of the Labour Code, under the terms of which workers may opt to take accumulated holidays in respect of two consecutive years. It also emphasized that, in accordance with the Convention, every person to whom the Convention applies is entitled to an annual holiday with pay of at least six working days and that only the part of the holiday which exceeds this minimum duration may be deferred. The Committee notes that in its last report the Government confines itself to indicating that measures have been taken to further examine the conformity of the provisions of the Labour Code with the Convention and that the amended texts will be provided once they have been adopted. It further notes that, in its 2001 report, the Government was already indicating that a draft text to bring the Labour Code into conformity with the Convention would be submitted in the near future to the Legislative Council after consultations with the social partners in the context of the Higher Labour and Employment Council (CSTE). ***The Committee trusts that the Government will take the necessary measures without further ado to bring the Labour Code into conformity with the Convention on this point.***

Article 2, paragraph 3(b). Interruptions of work due to sickness. Further to its previous comments on this point, the Committee notes the Government's indications that, under section 126(3) of the Labour Code, interruptions of work due to sickness are not counted as part of annual leave. In this respect, the Committee notes that section 126(3) provides that "for the purposes of calculating the duration of holiday entitlement, regular absences for occupational accidents or diseases shall be assimilated to effective service ... as well as, within the limit of six months, absences for sickness duly certified by an approved doctor." It draws the Government's attention to the fact that this provision covers the inclusion of interruptions of work due to sickness in the calculation of the period of effective service giving entitlement to holiday, whereas *Article 2, paragraph 3(b)*, of the Convention provides that such interruptions may not be deducted from the number of days of annual holiday granted to the worker. These two situations are also very clearly distinguished in Article 5, paragraph 4, and Article 6, paragraph 2, of the Holidays with Pay Convention (Revised), 1970 (No. 132), which the Government has not yet ratified. ***The Committee trusts that the Government will amend the Labour Code without further ado so as to ensure that interruptions of work due to sickness are not included in the annual holiday with pay granted to workers.***

Part V of the report form. ***The Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied in practice including, for instance, extracts from the reports of the inspection services and, if such statistics are available, information concerning the number of workers covered by the relevant legislation, the number and nature of the contraventions reported and the measures adopted to bring an end to them, etc.***

The Committee also takes this opportunity to recall that, at the proposal of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body considered that the Convention was outdated and invited the States parties to the Convention to contemplate ratifying Convention No. 132, which is not considered as being fully up to date but remains relevant in certain respects (see document GB.283/LILS/WP/PRS/1/2, paragraph 12). The acceptance of the obligations of Convention No. 132 in respect of persons employed in economic sectors other than agriculture by a State party to Convention No. 52 involves *ipso jure* the immediate denunciation of the latter Convention. ***The Committee requests the Government to keep the Office informed of any decision that it may take with regard to the ratification of Convention No. 132.***

Costa Rica

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1982)

Articles 2 and 6 of the Convention. Daily hours of work and overtime. Over the years, the Committee has been drawing the Government's attention to the divergences between the provisions of the Labour Code, particularly sections 136, 139 and 140, and those of the Convention. In its last report, the Government indicates that Bill No. 15.161, certain provisions of which were in conflict with the Convention, was withdrawn from the agenda of the Legislative Assembly and sent back to the Social Affairs Commission. The outcome of the discussions in the Commission is Bill No. 16.030, which is currently being examined by the Human Rights Commission of the Legislative Assembly and on which comments have been made by the Confederation of Workers Rerum Novarum (CTRN). While recognizing the developments in the world of work, CTRN states that the new Bill, far from being an improvement on the previous Bill, proposes amendments to the Labour Code, which are in total contradiction with the provisions of the Convention and which would be to the prejudice of workers in the occupational, social and economic fields. Indeed, for 40 years, many enterprises have opted for the continuous production system, with work being carried out by three teams of workers a day, without it being necessary, as indicated in the Bill, to introduce exceptions to daily hours of work and allow them to be lengthened from eight to ten or even 12 hours. Furthermore, CTRN emphasizes that, although consultations were held with trade union organizations, the opinions expressed were not taken into account.

In addition, the Committee notes that the Government has requested the Office's advice on the new Bill. In this respect, the Committee notes that, although the Bill is intended to improve conditions of work and to protect the rights of workers, the amendments made are nevertheless contrary to the provisions of the Convention, as the Committee indicated in its previous comment concerning the annualization of working time and the extension of daily hours of work up to 12 hours. Indeed, the Committee wishes to draw the Government's attention to the following points: first, section 136 of the Bill that is under examination is identical to section 136 of the previous Bill and provides, in subsection 2, for the possibility in work that is not unhealthy or hazardous to accumulate weekly hours of work over a period of five days, introducing a "cumulative" day which may be as long as ten hours. Secondly, section 145 provides that, by way of exception, in the case of seasonal, temporary and continuous work and for activities subject to significant variations in market conditions, production and the supply of raw materials, the normal working day may be extended up to 12 hours or annualized at up to 2,400 hours. In this respect, the Committee notes that, although section 145(2) provides that the limit of 48 hours of work a week must not be exceeded, other provisions in this section allow the working day of eight hours to be exceeded, namely: subsection 4, which provides that annualized ordinary daily hours of work may be extended up to ten hours a day; and subsection 9, which provides that women who are pregnant or who are nursing may not be required to work over ten hours a day.

The Committee is therefore bound to recall once again that the Convention only allows the maximum daily limit of working hours to be exceeded in the very specific conditions set out in *Article 2(c)* (distribution of working hours over the week) and *(d)* (averaging over a period of three weeks in case of shift work). The Convention also envisages other exceptions to the general rule of eight hours in any one day and 48 hours in any one week, but only under the strict conditions set out in *Articles 2* (accident, urgent work or force majeure), *4* (continuous processes), *5* (averaging of hours in exceptional cases) and *6* (permanent and temporary exceptions). The Committee also refers to paragraphs 85–168 of the General Survey that it published in 2005 on Conventions Nos 1 and 30 concerning hours of work, which provide a detailed analysis of the requirements of the Convention in relation to the distribution of hours of work and the authorized exceptions. *The Committee hopes that the Government will take into account the numerous comments that it has made, particularly with regard to the maximum daily hours of work and overtime, so that the provisions of the Labour Code or of any new legislative text are in full conformity with the requirements of the Convention. It also requests the Government to provide any information that it deems useful in reply to the observations of the CTRN.*

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1984)

Articles 4 and 5 of the Convention. Total or partial exceptions. The Committee requests the Government to refer to the comments made under Articles 7 and 8 of Convention No. 106.

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1960)

Article 3 of the Convention. Prohibition of night work for women. Following up on its previous comment, the Committee notes the Government's explanations that it intends to examine carefully the advisability and implications of the possible ratification of the 1990 Protocol to Convention No. 89 as a means of adapting the national legislation to new economic and social realities and innovative forms of work, such as flexible hours and telework. In this connection, the Government refers to a communication of the National Women's Institute, dated 3 July 2008, in which it is stressed the importance of ratifying the 1990 Protocol with a view to bringing the national legislation into line with other ratified instruments, such as the UN Convention on the Elimination of All Forms of Discrimination Against Women and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). A similar view was expressed by the Gender Equality Department of the Ministry of Labour and Social Security in a letter dated 30 June 2008, in which the ratification of the Protocol was recommended as a tool for smooth transition from outright prohibition to free access to night

employment. The Government indicates that it will launch a vast process of consultations on this matter and that it will report on the results obtained.

In this connection, the Committee wishes to draw once more the Government's attention to the fact that member States are increasingly required to initiate a review process of their protective legislation aiming at the gradual elimination of any provisions which would be contrary to the principle of equal treatment between men and women, except those connected with maternity protection, and with due account being taken of national circumstances. The Committee, therefore, invites the Government to favourably consider the possibility of ratifying either the 1990 Protocol to Convention No. 89, which offers greater flexibility by allowing exemptions from the prohibition of night work and variations in the duration of the night period through agreements between the employers and workers, or the Night Work Convention, 1990 (No. 171), which shifts the emphasis from a specific category of workers and a sector of economic activity to the protection of night workers irrespective of gender in all branches and occupations. The Committee recalls that the Government may, if it so wishes, draw upon the expert advice and technical assistance of the International Labour Office for the purpose of revising and adapting existing legislation. ***It requests the Government to keep the Office informed of the ongoing consultations in these matters and of any decision taken or envisaged with regard to the possible ratification of the 1990 Protocol or of Convention No. 171.***

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1959)

The Committee notes the information provided by the Government concerning the application of *Articles 6* (general weekly rest scheme) and *10* (system of inspection and sanctions) of the Convention.

Articles 7 and 8 of the Convention. Permanent and temporary exemptions. Further to its previous comments concerning section 152 of the Labour Code, the Committee notes the Government's indications that activities of "obvious public or social interest" include, in particular, work in hospitals and clinics, ports and the Electricity Institute of Costa Rica (ICE). It therefore understands that the large majority of trading establishments or establishments in which office work is carried out are not covered by the provision providing for the possibility of working on the weekly rest day by agreement between the parties. However, it notes that, according to the Government's report, the increase in work carried out on the weekly rest day is due to the constant competition and to an economy which forces trading establishments to remain available to the public most of the time. This implies that work on the weekly rest day is generally permitted and that there are no specific regulations on this subject. ***Taking into account the fact that the Convention only authorizes exemptions under strict and limited conditions, either due to the inherent need to leave certain establishments open on the rest day (for example, hospitals, hotels, the press, transport and industrial workplaces in which processes are carried on continuously) or where it is required due to exceptional conditions (for example, in case of accident, force majeure or urgent work to premises and equipment), the Committee requests the Government to indicate the measures taken or envisaged to give full effect to these provisions of the Convention. It also requests the Government to indicate whether relevant provisions exist in collective agreements concluded both at the branch and enterprise levels and, if so, to provide copies.***

The Committee also notes that the Government refers in its last report to the direct applicability of the Convention in the national legislation, which explains the absence of detailed legislative or regulatory provisions giving effect to the various provisions of the Convention. However, it draws the Government's attention to the fact that most of the Convention's provisions are not self-executing and require the adoption of specific measures, in particular to determine the cases in which permanent or temporary exemptions may be granted or to establish special weekly rest schemes (for example, through rotation or the accumulation of days, etc.). ***In the light of these comments, the Committee once again requests the Government to take the necessary measures to make the appropriate legislative changes to bring section 152 of the Labour Code into full conformity with the provisions of the Convention.***

Côte d'Ivoire

Night Work (Women) Convention (Revised), 1934 (No. 41) (ratification: 1960)

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

The Committee notes that in its last report the Government reaffirmed that the current labour legislation no longer gives effect to the provisions of the Convention. The Committee wishes to recall, in this connection, the conclusions of the 2001 General Survey on the night work of women in industry, according to which Convention No. 4 is manifestly of historical importance only and no longer makes a useful contribution to attaining the objectives of the Organization, while Convention No. 41 is little relevant to present-day realities and therefore member States parties to this Convention should be invited to ratify instead the revising Convention No. 89 and its Protocol. The Committee also recalls that in line with the views expressed in the General Survey and following the proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided to shelve both Conventions No. 4 and No. 41 considering that they no longer correspond to current needs and have become obsolete. Shelving further implies that ratification of these instruments is no longer encouraged and that detailed reports on their application will no longer be requested on a regular basis (see GB.283/LILS/WP/PRS/1/2, paragraphs 31–32). Hoping that the Government will not fail to take appropriate action to remove the inconsistency between the national law and practice and its obligations arising from the ratification of these two Conventions, the Committee recalls that whereas

Convention No. 4 may be denounced at any time, Convention No. 41 will again be open to denunciation, in accordance with its *Article 12, paragraph 2*, from 22 November 2016 to 22 November 2017. However, the Committee considers that the process of eliminating legal restrictions on women's employment during the night should not result in a legal vacuum with night workers being deprived of any regulatory safeguards. *In view, therefore, of the enacted legislation on night work, the Committee invites once again the Government to give favourable consideration to the ratification of the Night Work Convention, 1990 (No. 171), which is designed to apply to both genders and to nearly all occupations focusing mainly on the occupational safety and health dimension of night work. The Committee requests the Government to keep the Office informed of all developments in this regard.*

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

Cuba

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1934)

Article 2 of the Convention. Weekly working hours. The Committee notes that, under section 67 of the Labour Code, the normal working day is eight hours and the normal working week is 44 hours on average. It also notes that the Labour Code does not define a reference period by which average weekly working hours must be calculated. Nor does the Code lay down an absolute limit on the length of the working week. The Committee recalls that *Article 2* of the Convention sets the maximum length of the working week at 48 hours. Averaging the working week with the 48-hour limit exceeded in certain weeks is only permitted in specific exceptional cases (for example, shift work, covered by *Article 2(c)*, of the Convention). Hence the Committee is bound to conclude that section 67 of the Labour Code, which provides for the averaging of weekly working hours without any restriction, is not in conformity with the provisions of the Convention. *The Committee trusts that the Government will soon take the necessary steps to amend its legislation to allow the 48-hour working week to be exceeded, in the context of the averaging of weekly working hours, only in the circumstances provided for by the Convention. It requests the Government to supply information on any developments in this regard.*

Furthermore, the Committee notes that the 1989 General Regulations on construction brigades establish a 12-hour working day, with a six-day working week and 26 working days per month (section I.6 of the Regulations). In reply to the Committee's previous comments on the Regulations, the Government stated that, because of the "special period" that the country was undergoing, this system was not applied in practice, owing to a lack of raw materials and fuel. The Committee understands that the "special period", marked by a major economic crisis, is now over, as indicated by the fact that Resolution No. 187/2006 issuing regulations on working hours and work periods repeals, inter alia, Resolution No. 13 of 23 October 2001, which provided for reduced working hours in certain cases and was adopted during the initial phase of the "special period". *If this is the case, the Committee requests the Government to state whether the provisions of the General Regulations on construction brigades are again being applied in practice.* In this regard, it recalls that the standards laid down by these Regulations (12 hours per day and 72 hours per week) far exceed the limits authorized by *Article 2* of the Convention. *The Committee trusts that the Government will take the necessary steps as soon as possible to amend these Regulations in order to bring them into conformity with the provisions of the Convention.*

The Committee is also addressing a direct request to the Government on a number of other matters.

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1936)

Article 3 of the Convention. Weekly hours of work. The Committee notes that, under section 67 of the Labour Code, the length of the normal working day is eight hours and the average normal working week is 44 hours. It also notes that the Labour Code does not define a reference period on the basis of which the length of the average working week may be calculated. Nor does the Code lay down an absolute limit on the length of the working week. The Committee recalls that *Article 3* of the Convention sets the maximum length of the working week at 48 hours. Calculation of the average working week with the 48-hour limit exceeded in certain weeks is only permitted in the exceptional cases referred to in *Article 6* of the Convention. Hence the Committee is bound to conclude that section 67 of the Labour Code, which permits the averaging of weekly hours of work without any restriction, is not in line with the provisions of the Convention. *The Committee trusts that the Government will soon take the necessary steps to amend its legislation to allow the 48-hour working week to be exceeded, in the context of averaging of the weekly hours of work, only in the exceptional circumstances laid down by the Convention. It requests the Government to supply information on any further developments in this regard.*

The Committee is also addressing a direct request to the Government with regard to a number of other points.

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1953)

Article 4 of the Convention. Prohibition of any agreement to relinquish the right to an annual holiday with pay. The Committee recalls that for over 20 years it has been drawing the Government's attention to section 98 of the Labour Code, which is not in conformity with *Article 4* of the Convention, under which any agreement to relinquish the right to an annual holiday with pay shall be void. As the Committee emphasized in paragraph 193 of its General Survey of 1964 on annual holidays with pay, for social and health reasons it should not be open to the worker to abandon any part of his

holiday in return for cash compensation. However, under section 98 of the Labour Code, the State Labour and Social Security Committee may authorize the administration, on an exceptional basis and in certain sectors or activities, to grant one or more workers, with their consent, cash remuneration in lieu of their holiday leave and without any other period of rest. The Committee notes the Government's indication that the Ministry of Labour has not recorded any authorization granted in this respect and that, although section 98 of the Labour Code is not applied in practice, it will remain formally in force until the adoption of the new Labour Code. ***The Committee hopes that the Government will take into account the comments that it has been making for many years on this matter in order to bring its legislation into full conformity with the Convention. It once again requests the Government to keep the Office informed of any development in the situation and to provide a copy of relevant texts once they have been adopted.***

The Committee also takes this opportunity to recall that, at the proposal of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body considered that Conventions Nos 52 and 101 were outdated and invited the States parties to these Conventions to contemplate ratifying the Holidays with Pay Convention (Revised), 1970 (No. 132), which is not considered to be fully up to date but remains relevant in certain respects (see document GB.283/LILS/WP/PRS/1/2, paragraph 12). The acceptance of the obligations of Convention No. 132 in respect of persons employed in all economic sectors, including agriculture by a State party to Conventions Nos 52 and 101 involves *ipso jure* the immediate denunciation of the latter Conventions. This approach would appear particularly appropriate as the legislation in Cuba, which provides for annual holiday with pay of at least one month for each period of 11 months of effective service, is clearly more favourable than the requirements of Convention No. 52 and seems to be in substantial conformity with most of the provisions of Convention No. 132. ***The Committee requests the Government to keep the Office informed of any decision that it may take in relation to the ratification of Convention No. 132.***

Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1954)

Article 8 of the Convention. Prohibition to relinquish the right to an annual holiday with pay. The Committee requests the Government to refer to the observation that it has made under Convention No. 52.

Djibouti

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1978)

Article 3 of the Convention. Prohibition of night work for women. Further to its previous comment in which the Committee noted that the new Labour Code of 2006 gives no longer effect to the provisions of the Convention, the Committee notes the Government's explanations that night work is rather rare, almost non-existent, due to the low level of industrialization and that Convention No. 89 is one of those ratified Conventions which remain practically without object in everyday life. The Government adds that, even though since independence the participation of women in the workforce has been constantly on the increase, especially in the education and health sectors and central administration, the employment of women during the night is a phenomenon generally unknown to the public that the Government has not considered it useful to regulate. The Government indicates, however, that it intends to examine measures to ensure compliance with the requirements of the Convention in the framework of the National Council of Labour, Employment and Vocational Training when it meets next.

While noting these explanations and fully understanding the Government's decision to eliminate all gender-specific restrictions on night work, the Committee once again draws attention to the Night Work Convention, 1990 (No. 171), which shifts the emphasis from a specific category of workers and sector of economic activity to the safety and health protection of all night workers. Under the circumstances, the Committee considers that the Government should consult the National Council of Labour, Employment and Vocational Training on the possible ratification of Convention No. 171, which would offer appropriate protection to all night workers irrespective of gender and occupation, rather than on the reintroduction of women-specific restrictions in conformity with Convention No. 89.

In this connection, the Committee wishes to refer to paragraphs 92–93 of its General Survey of 2001 on the night work of women in industry in which it noted with concern the large number of member States which opted to no longer apply one of the relevant Conventions Nos 4, 41 or 89 without however taking any concrete measures under ILO constitutional procedures with a view to formally terminating their obligations arising out of those Conventions. The Committee accordingly insisted that the governments concerned should take the necessary action to remove any contradiction between international treaty obligations, that might have grown outdated over time, and domestic legislation in the interest of preserving a coherent body of international labour standards and giving full meaning to the Organization's supervisory organs. For all useful purposes, the Committee recalls that Convention No. 89 may be denounced every ten years and will again be open to denunciation for a period of one year as from 27 February 2011. ***The Committee therefore invites the Government to give favourable consideration to the ratification of Convention No. 171 and to keep the Office informed of any decision taken with respect to Convention No. 89.***

Ecuador

Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1969)

Further to its numerous comments, the Committee notes with regret that the Government provides no fresh information as to any amendment of its legislation, despite the assurance given in its last report that it would make every effort to amend the legislation as rapidly as possible to take account of national practice and the Committee's comments.

Articles 1 and 8 of the Convention. Postponement by the worker of paid annual holiday. The Committee notes that section 75 of the Labour Code still allows workers to relinquish their paid annual holidays for three consecutive years so that they can take it cumulatively in the fourth year. It draws the Government's attention to paragraph 177 of its General Survey of 1964 on annual holidays with pay in which it pointed out that the fact that the Convention provides for the obligation to grant workers "annual" holidays (*Article 1*) and prohibits renunciation of this right (*Article 8*), is taken to mean that the postponement of holidays – which may nullify the whole purpose of the Convention – is not permitted. Should certain exceptions be considered as acceptable because they respond to the interests of both workers and employers, "it is essential to maintain the principle that, in the course of the year, the worker must be granted at least part of his leave in order to enjoy a minimum amount of rest and leisure." ***The Committee accordingly urges the Government to take the necessary steps without delay to ensure that should the postponement of annual holiday continue to be permitted, this will not affect a certain minimum part of the holiday, which must be granted every year.***

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

Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153) (ratification: 1988)

Articles 5 to 9 of the Convention. Hours of work and rest. The Committee notes with regret that the Government merely refers in its report to the provisions of the Labour Code concerning conditions of work in public and private transport enterprises, the non-conformity of which with the Convention it has been emphasizing for 20 years. It also notes the new Organic Act on land transport, traffic and road safety, adopted on 24 July 2008, a copy of which has been attached by the Government to its report, but which does not contain any relevant provision regarding the implementation of the Convention. Finally, the Committee notes that the Government refers to the overall reform of the country's legal system which is currently in progress, without, however, supplying any details regarding the possible preparation of a draft Act intended to bring the legislation into conformity with the Convention. It recalls that, at the June 2003 session of the International Labour Conference, the Conference Committee on the Application of Standards urged the Government to "adopt the necessary administrative and legal measures, in consultation with the interested representative organizations of workers and employers with a view to bringing the national legislation and practice into conformity with the requirements of the Convention". ***The Committee can only reiterate this request once again. It trusts that the Government, 20 years after ratification of the Convention, will finally take all the necessary steps to implement its provisions and proceed with the necessary amendments to the Labour Code. It requests the Government to supply all relevant information on progress made in the application of the Convention.***

Equatorial Guinea

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1985)

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

Article 6 of the Convention. In reply to the comments the Committee has been making since 1994, the Government indicates that the regulations applying section 49 of Act No. 2/1990 are still being examined with the parties concerned, particularly in the oil sector. ***The Committee asks the Government to provide information on the progress made in this matter. The Government is also invited to communicate information on the organizations of employers and workers consulted in the preparation of the abovementioned regulations. Pending the latter's adoption, the Committee urges the Government to provide information on the manner in which effect is given, in practice, to the provisions of section 49 of Act No. 2/1990 on overtime.***

Part VI of the report form. ***The Committee requests the Government to supply information on the practical application of the Convention, including extracts of reports of the inspection services and, to the extent possible, statistical information on the number and nature of reported infringements of the rules on hours of work.***

The Committee is also addressing a request concerning other points directly to the Government.

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

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1985)

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

Article 7 of the Convention. In reply to comments that the Committee has been making since 1994, the Government indicated in its last report that the regulations to implement section 49 of Act No. 2/1990 are still being examined with the parties concerned, particularly in the oil sector. ***It requests the Government to report on progress in this process. The Government is also asked to provide information on the employers' and workers' organizations consulted in the preparation of these regulations. Pending the latter's adoption, the Committee urges the Government to provide information on the way in which the provisions of section 49 of Act No. 2/1990 on overtime are applied in practice.***

Part V of the report form. ***The Committee requests the Government to provide information on the practical application of the Convention, including extracts of reports by the inspection services and, to the extent possible, statistical data on the number and nature of the breaches of the rules on hours of work that have been reported.***

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

Georgia

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1993)

Articles 2 and 6 of the Convention. Workers' right to annual holidays with pay. The Committee notes the observations made by the Georgian Trade Union Confederation (GTUC) on the application of the Convention. The Confederation denounces employment relations whereby employees working under renewable one-month employment contracts provide their services for more than a year without, however, being eligible for annual paid leave. The GTUC also states that there are numerous cases where employees are dismissed before they make use of their annual leave entitlement and their employers refuse to pay remuneration in respect of the unused portion of their holidays in the absence of an express legislative provision to this effect. ***The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the GTUC.***

Ghana

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1959)

Article 3 of the Convention. Prohibition of night work for women. Further to its previous comment in which the Committee noted that the new Labour Act, 2003 no longer gives effect to the provisions of the Convention, the Committee notes the Government's indications that the Ministry of Manpower, Youth and Employment has been advised of the Committee's recommendations and will duly examine, in consultation with other competent authorities such as the Ministry of Women and Children's Affairs (MOWAC), the National Labour Commission and the Commission on Human Rights and Administrative Justice (CHRAJ), the possibility of ratifying the Night Work Convention, 1990 (No. 171).

In this connection, the Committee wishes to refer to paragraphs 92–93 of its General Survey of 2001 on the night work of women in industry, in which it noted with concern the large number of member States which opted to no longer apply one of the relevant Conventions Nos 4, 41 or 89 without however taking any concrete measures under ILO constitutional procedures with a view to formally terminating their obligations arising out of those Conventions. The Committee accordingly insisted that the governments concerned should take the necessary action to remove any contradiction between international treaty obligations, that might have grown outdated over time, and domestic legislation in the interest of preserving a coherent body of international labour standards and giving full meaning to the Organization's supervisory organs. For all useful purposes, the Committee recalls that Convention No. 89 may be denounced every ten years and will again be open to denunciation for a period of one year as from 27 February 2011. ***The Committee therefore once again encourages the Government to give favourable consideration to the ratification of Convention No. 171. It also requests the Government to keep the Office informed of any decision taken with respect to Convention No. 89.***

Guatemala

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1988)

Articles 2 and 6 of the Convention. Work in excess of normal hours of work – Overtime hours. Further to its previous comments relating to the observations made by the Trade Union of Workers of Operators of Plants, Wells and Guards of the Municipal Water Company and its Annexes (SITOPGEMA), the Committee notes ruling No. 1088-2004-561 of the labour and social insurance tribunal of 16 April 2008. The ruling sets aside the union's claim for the payment of overtime hours on the basis of the decision of the municipal council of 18 December 1995 approving the internal work rules for staff not subject to limitations on the ordinary daily hours of work of the Municipal Water Company of the City of Guatemala (EMPAGUA). The Committee also notes the indication by the administration of the EMPAGUA that the above decision provides for a working day of 24 hours followed by 48 hours of rest for career workers not subject to limitations on ordinary daily hours of work, or 72 hours of work a week. In this respect, the Committee is bound to recall that the Convention establishes a double cumulative limit, namely eight hours in the day *and* 48 hours in the week. It only allows exemptions from these maximum limits in restricted and well-defined circumstances, namely: (i) the distribution of hours of work over the week (*Article 2(b)*); (ii) the averaging of hours of work over a period of three weeks in the case of

shift work (*Article 2(c)*); (iii) processes that are necessarily carried on continuously within the limit of 56 hours in the week (*Article 4*); (iv) the averaging of hours of work in exceptional cases (*Article 5*); and (v) permanent exceptions (preparatory, complementary or intermittent work) and temporary exceptions (exceptional cases of pressure of work) (*Article 6*). The Committee also wishes to refer to paragraphs 85 to 168 of the General Survey that it published in 2005 on Conventions Nos 1 and 30 relating to hours of work, which provide a detailed analysis of the requirements of the Convention in relation to the distribution of hours of work and authorized exemptions. ***The Committee requests the Government to indicate whether employers' and workers' organizations were consulted before the adoption of above-referenced work the rules by the public authority, in accordance with Article 6, paragraph 2, of the Convention, and it urges the Government to revise any rules providing for working days of 24 hours, which are manifestly contrary to the most elementary principles of this Convention.***

Furthermore, with regard to the observations made in August 2003 by the Trade Union Confederation of Guatemala (UNSI TRAGUA), the Committee notes that the Government's report does not contain any reply. It recalls that, according to these observations, a number of enterprises set production targets which can only be achieved by working days that are sometimes in excess of 12 hours, but which nevertheless pay the minimum wage or a wage calculated on a piecework basis, in accordance with section 88(b) of the Labour Code. The union also pointed out that in industrial enterprises staff responsible for security could alternate between periods of 24 hours of work and of rest and that the Minister of Labour authorized collective agreements accepting these conditions. ***The Committee requests the Government to provide information on the current situation and any observations that it deems pertinent in this respect.***

Finally, the Committee notes that section 122 of the Labour Code, which provides that the working day including overtime hours may not exceed 12 hours, has still not been amended and that it does not determine the circumstances in which overtime hours may be performed, nor the maximum number of overtime hours that may be authorized in each case. The Committee notes with regret that the question of the harmonization of section 122 of the Labour Code with the provisions of the Convention has been raised for many years without any progress being noted. In this respect, the Committee recalls that in a previous report the Government indicated that the Tripartite Subcommittee on Legal Reforms was due to discuss the amendments to be made to this provision of the Labour Code. ***The Committee requests the Government to provide information on the conclusions of the Subcommittee. It hopes that the necessary measures will be taken without further delay to bring section 122 of the Labour Code into full conformity with the provisions of the Convention.***

[The Government is asked to reply in detail to the present comments in 2009.]

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1961)

Article 6 of the Convention. Overtime. Further to its previous comments on the observations submitted by the Trade Union Confederation of Guatemala (UNSI TRAGUA) about the hours of work and overtime of judges and auxiliary staff of law courts, the Committee notes the information supplied by the Supreme Court of Justice that in the event of overtime or work done on weekly rest days or holidays, the abovementioned personnel in all instances have compensatory rest (to be taken in the course of the following week), as provided in article 32 of the collective agreement on conditions of work concluded between the state judicial body and the union of its workers (STOJ), or else special remuneration. With regard to UNSI TRAGUA's observations on unpaid overtime, mainly in banks and in respect of certain categories of public employees engaged in office work, the Committee notes the information from the Government that the Ministry of Labour and Social Welfare has held consultations in a number of banking establishments. It is clear from these consultations and from communications sent by the representatives of a number of national banks that overtime is paid, or else the general labour inspectorate brings legal action to seek redress and obtain sanctions. ***The Committee asks the Government to refer to its comments under Convention No. 1 in which it noted serious and persistent problems in applying the Convention, particularly with regard to maximum daily hours of work.***

Part V of the report form. Practical application. The Committee notes the detailed information sent by the Government on inspections carried out in the banking sector and in the judiciary for the period 2007–08. ***The Committee requests the Government to continue to provide general information on the manner in which the Convention is applied, including extracts of reports by the labour inspection services indicating the number or workers covered by the relevant legislation, the number of contraventions reported in the areas covered by the Convention and the penalties imposed, etc.***

India

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1950)

Article 1, paragraph 1(a), of the Protocol to the Convention. Exemptions from prohibition and variations in the night period. The Committee has been drawing attention to this provision of the Protocol which requires the express agreement of – and not mere consultation with – employers' and workers' organizations at the branch or enterprise level before any variation in the duration of the night period or exemption from the prohibition of night work can be introduced. In its last report, the Government indicates that the proposed amendment of section 66 of the Factories Act 1948 will duly

reflect the Committee's comments and will be in conformity with the requirements of the Protocol. **Noting that the amendment is currently pending consideration by the Parliament, the Committee asks the Government to transmit a copy of the revised text of the Factories Act 1948 once it has been adopted.** In this connection, the Committee notes the new comments communicated by the Centre of Indian Trade Unions (CITU) on 25 August 2008 according to which the Government has not yet reacted to the concrete suggestions and concerns expressed earlier on the application of the Convention and the proposed amendment of section 66 of the Factories Act. **Noting that the Government has not yet replied to the previous observations of the CITU, dated 24 August 2005, the Committee invites the Government to express its views in response to both communications of the CITU.**

Article 2, paragraph 1, of the Protocol. Maternity protection. The Committee notes the Government's reference to sections 10 (additional leave for illness arising out of pregnancy) and 12 (protection against unfair dismissal) of the Maternity Benefit Act 1961 which are nonetheless not relevant with *Article 2, paragraph 1*, of the Protocol which prohibits to apply any negotiated exemptions from the prohibition of night work or variations in the duration of the night period to women workers during a period of at least 16 weeks before and after childbirth. **The Committee therefore asks the Government to take appropriate action in order to bring the national legislation into full conformity with the Protocol in this regard.**

Article 5 of the Convention. Suspension of the prohibition of night work in case of serious emergency. The Committee notes the Government's statement that state governments may grant exemptions from the prohibition of night work on account of "public emergency", as defined in section 5 of the Factories Act, and that the Union Territory of Pondicherry resorts to the use of section 5 on a regular basis in order to grant exemptions under section 66 of the Factories Act 1948. The Committee is obliged to observe, in this connection, that *Article 5* of the Convention requires prior consultations with the employers' and workers' organizations concerned, and most importantly refers to a compelling national interest in case of serious emergency, such as in time of war. **Noting that under the Factories Act, the term "public emergency" is meant to cover situations where the security of India is threatened whether by war or external aggression or internal disturbance, the Committee asks the Government to provide additional explanations on the use made of this exceptional provision, especially on the circumstances which would possibly justify the regular recourse to the "public emergency" clause by the southern Union Territory of Pondicherry.**

Article 3 of the Protocol and Parts IV and V of the report form. Practical application. **With further reference to recent court decisions which upheld that the prohibition against the employment of women during the night was unconstitutional, the Committee would appreciate receiving up to date information on any further developments, including new judgements, relevant reports of tripartite consultative bodies, studies published by women's organizations or other interest groups, etc.**

In addition, the Committee notes the comments made by the Bharatiya Mazdoor Sangh (BMS). According to the workers' organization, the situation of women night workers should be looked with caution in the light of national circumstances where women have a greater role to play in family, workers have to travel long distances to their workplace, and workplace protection against sexual harassment is weak. The BMS considers that the Convention must be strictly enforced and refers to recent judgements of various courts that have amplified controversy over the issue of night work. **The Committee requests the Government to transmit together with its next report any comments it may wish to make with regard to the observations of the BMS.**

Finally, the Committee notes that the Government remains bound by the provisions of the Night Work (Women) Convention, 1919 (No. 4), and therefore action also needs to be taken in this regard. In its General Survey of 2001 on the night work of women in industry, the Committee concluded that Convention No. 4 was a rigid instrument, ill-suited to present-day realities and manifestly of historical importance only (paragraph 193). Similarly, the ILO Governing Body, based on the recommendations of the Working Party on Policy regarding the Revision of Standards, decided to retain Convention No. 4 as a candidate for possible abrogation considering that it no longer corresponded to current needs and had become obsolete (see GB.283/LILS/WP/PRS/1/2, paragraphs 31–32 and 38). The Committee takes this opportunity to recall that contrary to most other Conventions which may be denounced after an initial period of five or ten years but only during an interval of one year, the denunciation of Convention No. 4 is possible *at any time* provided that the representative organizations of employers and workers are fully consulted in advance. **The Committee therefore strongly encourages the Government to take appropriate action in respect of obsolete Convention No. 4.**

Indonesia

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1972)

Article 8(3) of the Convention. Compensatory rest in case of temporary exemptions from the regular weekly rest scheme. The Committee once again regrets that the Government has still not taken any measures, legislative or others, to ensure that employees working on a weekly rest day are granted compensatory rest of a total duration at least equal to the general 24-hour rule, irrespective of any monetary compensation, as required under this Article of the Convention. The Government limits itself to reiterating that workers may get compensatory rest only if it is so provided in company regulations or relevant collective agreements and that employers are encouraged to include provisions to this effect in

company regulations and collective agreements. In this connection, the Government refers to regulations of institutions, such as the *Action contre la faim* or the Church World Service, as providing for compensatory rest, but these documents were not attached to the Government's report. **Recalling that the Committee has been raising this question for over 30 years, it urges the Government to take the necessary steps without further delay in order to bring its legislation into line with the requirements of the Convention. It also asks the Government to transmit copies of any company regulations or collective agreements which may have been concluded so far and which provide for a 24-hour compensatory rest period in case of work performed on a weekly rest day. Finally, the Committee asks the Government to transmit in its next report up to date information on the practical application of the Convention, including, for instance, statistics on the approximate number of workers covered by the relevant legislation, labour inspection results showing the number of contraventions observed concerning weekly rest and sanctions imposed, etc.**

Finally, the Committee takes this opportunity to recall that, based on the conclusions and proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided that the ratification of up to date Conventions, including the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), should be encouraged because they continued to respond to current needs (see GB.283/LILS/WP/PRS/1/2, paras 17–18). **The Committee accordingly invites the Government to contemplate ratifying Convention No. 14 and to keep the Office informed of any decisions taken or envisaged in this respect.**

Madagascar

Night Work (Women) Convention (Revised), 1934 (No. 41) (ratification: 1960)

Article 3 of the Convention. General prohibition on women's night work. The Committee notes the communication of 28 May 2008 by which several trade union organizations protest against the non-observance of the Convention within the export processing zones (EPZs) following the recent adoption of a new legislative text. More concretely, eight trade unions forming a common platform named Conference of Madagascar Workers have drawn attention to section 5.6 of Act No. 2007-037 of 14 January 2008 on EPZs and enterprises, which provides that the provisions of the Labour Code on the night work of women, in particular section 85 of the Labour Code or any other legislative or regulatory provision which might replace it, are not applicable to EPZs. In addition, the trade unions allege that in adopting the new legislation the Government failed to consult the National Labour Council which is the official tripartite consultative body set up in accordance with section 184 of the Labour Code and in application of the ratified ILO Convention No. 144 concerning tripartite consultations. **The Committee requests the Government to transmit its observations in response to the comments made by the Conference of Madagascar Workers.**

The Committee notes with interest that, as the Government had announced in its report received on 15 October 2008, the instruments of ratification of Convention No. 89 and its 1990 Protocol and of Convention No. 171 were communicated and registered on 10 November 2008. As the Committee has explained in previous comments, the ratification of Convention No. 89 *ipso jure* involves the immediate denunciation of Convention No. 41 but has no similar legal effect with regard to Convention No. 4 which has to be denounced separately (Convention No. 4 may be denounced at any time provided that the representative organizations of employers and workers are fully consulted in advance). **The Committee hopes that the Government will take appropriate action with respect to obsolete Convention No. 4 in the very near future and will keep the Office informed accordingly.**

Mali

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1960)

Article 5 of the Convention. Compensatory rest. The Committee notes that in reply to its previous observation, the Government merely sends copies of an internal memo and an application form for leave or compensatory rest, from two non-governmental organizations. The Committee points out that these documents do not constitute local agreements within the meaning of *Article 5* of the Convention. **In view of the importance of compensatory rest to the protection of the health of the workers concerned, the Committee trusts that the Government will take the necessary steps without delay to ensure that, as far as possible, such rest is granted to workers who work on their weekly day of rest. It requests the Government to provide information on all progress made in this regard.**

Article 7. Posting of notices and record-keeping. The Committee notes that the documents sent by the Government are not such as to ensure application of this provision of the Convention. It reminds the Government that, according to *Article 7* of the Convention, employers must be required either to make known to the whole of the staff the days and hours of collective weekly rest or to draw up a roster indicating any special system of weekly rest. **The Committee once again requests the Government to provide information on the measures taken or envisaged to give effect to this provision of the Convention.**

The Committee is also addressing a request directly to the Government on other matters.

Morocco

Night Work (Women) Convention, 1919 (No. 4) (ratification: 1956)

Article 3 of the Convention. Prohibition of night work for women. The Committee notes that under section 172 of the new Labour Code, Act. No. 65-99 of 11 September 2003, women may be engaged in all types of night work taking into consideration their state of health and their social situation, after consultation with the most representative employers' and workers' organizations. It also notes the adoption of Decree No. 2-04-568 of 29 December 2004 fixing the conditions to be put in place to facilitate the night work of women. The Committee is therefore bound to conclude that the Convention has for all practical purposes ceased to apply both in law and practice.

In this regard, the Committee recalls the conclusions of its 2001 General Survey on the night work of women in industry, according to which Convention No. 4 is manifestly of historical importance only, and the decision of the Governing Body to shelve that Convention which means that ratification is no longer encouraged and detailed reports on its application are no longer requested on a regular basis. The Committee further recalls that the instrument of denunciation of Convention No. 4 may be communicated at any time (the rule of one-year intervals, or denunciation "windows", every ten years not being applicable to Convention No. 4) on condition that the representative organizations of employers and workers are fully consulted in advance. The Committee hopes that the Government will take the necessary action without further delay to formally put an end to its obligations under this obsolete instrument. **The Committee asks the Government to keep the Office informed of any progress made in this respect.**

In addition, the Committee notes with interest the Government's statement that it intends to initiate the procedure for the ratification of the Night Work Convention, 1990 (No. 171), given that the provisions of the Labour Code fully reflect the principles of that Convention. **The Committee requests the Government to keep the Office informed of any progress made in this regard.**

Myanmar

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1954)

The Committee notes the Government's reference to section 96 of the new State Constitution (2008), which was approved in a constitutional referendum in May 2008 and is due to take effect in 2010, conferring powers to the national Parliament to enact laws, among other matters, on hours of work and rest and holidays. It also notes the Government's indication that the revision process of the labour legislation has been initiated. **Recalling that the Government has been referring for over 15 years to an ongoing review process by the Laws Scrutiny Central Body of the Attorney-General's Office, the Committee hopes that the Government will take prompt action to give full effect to the requirements of the Convention.**

Article 1 of the Convention. Scope of application. **In the absence of any reply to its previous comment on this point, the Committee is obliged to reiterate its request for a copy of the Fundamental Rules and the Burma Leave Rules and additional clarifications on the legal provisions regulating annual paid leave for those workers who are excluded from the coverage of the Leave and Holidays Act 1951.**

Article 2(1) and (4). Postponement of annual leave. Further to its previous comments on section 4(3) of the Leave and Holidays Act 1951, which allows for the accumulation of holidays over a period of three years, the Committee once again recalls that the Convention requires the granting of at least six working days of leave every year, even in case of division of the leave into parts. **The Committee regrets that the Government has not proceeded – as it had indicated in earlier reports – to the amendment of section 4(3) on the occasion of the adoption of Law No. 6/2006 amending the Leave and Holidays Act 1951, and asks the Government to take appropriate steps for the timely revision of the relevant provision.**

Article 2(2). Annual holiday with pay for persons under 16 years of age. The Committee notes that following the adoption of Law No. 6/2006 amending the Leave and Holidays Act 1951, amended section 4(1) of the Act now prescribes ten consecutive days of leave remunerated at average pay for all workers, regardless of their age, who have completed 12 months of continuous service. The Committee is bound to observe that the new provision is still inconsistent with this *Article 2(2) of the Convention* which provides that apprentices and persons under 16 years of age are entitled to annual paid leave of at least 12 working days. **The Committee asks the Government to take all necessary measures to bring its legislation into conformity with the Convention.**

Netherlands

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 2001)

Article 6 of the Convention. Normal weekly rest scheme. The Committee notes the observations made by the Confederation of Netherlands Industry and Employers (VNO-NCW) concerning the application of the Convention. The VNO-NCW indicates that the weekly rest standards set out in the new Working Hours Act (ATW), which came into effect

in April 2007, have received the unanimous support of the Social and Economic Council (SER) as a means of balancing concerns about workers' health on one hand, and labour market needs at the time of teleworking, on the other. In the view of VNO-NCW, monitoring working-time arrangements in telework is very difficult and it is in the interest of both employers and workers that the weekly rest rules are applied in a flexible manner. The new Working Hours Act provides such flexibility, whereas the Convention is a hindrance to evolving practices in time organization in commerce and offices, and therefore needs to be revised. ***The Committee requests the Government to transmit any comments it may wish to make in reaction to the observations of the VNO-NCW.***

Article 7. Special weekly rest schemes. The Committee notes the Government's explanations in reply to the observations made by the Netherlands Trade Union Confederation (FNV) concerning the application of the Convention. The Government states that as a general rule, employees in trade enterprises and offices are entitled to a period of rest of at least 36 consecutive hours in every period of seven consecutive days and that a different reference period is only legally permitted if the nature of the work or the working conditions so require. The Government adds that the application of a special weekly rest scheme further requires a collective agreement, or a written agreement between the employer and the works council or other employee representation body, or, in the absence of such agreement, the consent of the worker concerned. It also indicates that, in practice, most workers employed in commerce and offices enjoy the normal weekly rest scheme of at least 36 hours every seven days while 80 per cent of the employees are covered by a collective labour agreement.

While noting these explanations, the Committee is obliged to observe that in its current reading section 5:5(2) of the Working Hours Act offers the choice between two alternative weekly rest schemes, i.e. either 36 hours of rest in every seven-day period or 72 hours of rest in every 14-day period. The Act requires employers to apply one or the other of the reference periods but does not make the granting of a 72-hour rest in every 14-day period in any way dependent on operational needs or other particular conditions. The Committee recalls, in this regard, that under the terms of the Convention the basic standard for the normal weekly rest scheme is 24 hours of uninterrupted weekly rest at seven-day intervals, and that permanent exceptions to that standard, also known as special weekly rest schemes, may only be introduced: (i) by the competent authority or through the appropriate machinery; (ii) for specified categories of persons or specified types of establishments; and (iii) when the basic standard is inapplicable due to the nature of the work or service, the size of the population to be served or the number of persons employed. ***The Committee therefore asks the Government to indicate the measures taken or envisaged to ensure that the accumulation or distribution of weekly rest over a period longer than a week is an exception, and not an alternative to the basic standard, and that is authorized only under the limited conditions set out in Article 7 of the Convention.***

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

Norway

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) ***(ratification: 1953)***

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

Article 8 of the Convention. Consultation with workers' and employers' organizations. The Committee notes the observation made by the Norwegian Confederation of Trade Unions (LO) and its objection to the procedure used for legislating amendments to the Working Environment Act 1977, namely, section 50. *Article 8* requires regulations made for the exceptions to the hours of work (overtime) to be made *after* consultation with workers' and employers' organizations concerned. LO holds that the amendment on overtime was adopted without substantial consultations with the social partners. ***The Committee hopes that the Government will discuss in the future, with the workers' and employers' organizations, any problems arising out of section 50 and take the steps which may appear necessary. The Committee also asks the Government to consult the workers' and employers' organizations on any proposals to amend legislation on permanent or temporary exceptions to the hours of work (Articles 6 and 7) in the future.***

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

Panama

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) ***(ratification: 1959)***

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

Article 7(2) and (3) of the Convention. Temporary exceptions – annual limits to additional hours. With reference to its previous comments, the Committee notes the conclusions of the technical assistance mission which took place in February 2006. It notes in this respect that, during the mission, the social partners expressed different points of view on the annual limit of additional hours which is required to be set in relation to temporary exceptions in conformity with the provisions of the Convention. The Committee notes that, in the view of the National Council of Organized Workers (CONATO), the number of additional hours should not exceed 200 per year, whilst the National Council of Private Enterprise of Panama (CONEP) considers

that the weekly limit of nine additional hours, or 468 per year, should not be changed. Finally, the Government came out in favour of an annual limit of 240 additional hours, while insisting that, in the absence of consensus between employers' and workers' organizations, no amendment could be made to the Labour Code for this purpose. The Committee further notes that, according to the conclusions of the technical assistance mission, this issue could be addressed in two seminars which the Government has requested the Office to organize, on the one hand, with CONEP and, on the other, with CONATO. *The Committee hopes that these seminars will lead to significant progress with a view to the amendment of section 36(4) of the Labour Code so as to bring it into conformity with Article 7 of the Convention.* It wishes, however, to remind the Government, as the technical assistance mission did, of its primary responsibility for compliance with international labour standards and the full application of ratified Conventions, and the proactive and committed attitude that it has to demonstrate in reaching tripartite consensus. *The Committee expresses the firm hope that the Government will take all the necessary measures to resolve this issue without further delay and to bring its legislation into conformity with the Convention on this point.*

The Committee further notes that, during the technical assistance mission in February 2006, CONATO called for the rules on additional hours that are in force in the private sector to be transposed to the public sector. *In this respect, the Committee requests the Government to indicate the limits (both daily and annual) for additional hours that are applicable in the public sector.*

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

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1970)

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

Further to its previous comments concerning the Government's persistent failure to give effect to the provisions of the Convention, the Committee notes that the Government reiterates its intention to denounce the Convention considering that this instrument not only stands as an obstacle to the realization of the principle of equality of opportunity and treatment but is also prejudicial to the prospects of women workers for employment and advancement. The Committee recalls that although the Government has been reporting for some time past that it is examining the possibility of denouncing the Convention, it has not exercised the right of denunciation provided for in *Article 15, paragraph 1, of the Convention* during the period from 27 February 2001 to 27 February 2002 when the Convention was last open to denunciation. Therefore, in accordance with *Article 15, paragraph 2, of the Convention*, the Government remains bound for another period of ten years, that is until the Convention will again be open to denunciation from 27 February 2011 to 27 February 2012.

In this connection, the Government's attention is drawn to paragraphs 191 to 202 of the General Survey of 2001 on the night work of women in industry in which the Committee, referring to the continued relevance of the ILO instruments on women's night work, concluded that there can be no doubt that the present trend is clearly in support of lifting all restrictions on women's night work and formulating gender-sensitive night work regulations offering safety and health protection to both men and women. The Committee further indicated that the Night Work Convention, 1990 (No. 171), was drafted for those countries which would be prepared to eliminate all women-specific restrictions on night work (except for those aimed at protecting women's reproductive and infant nursing role) while seeking to improve the working and living conditions of all night workers.

Considering, therefore, that the Convention has ceased to apply in both law and practice, and also recalling the need for an appropriate legal framework addressing the problems and hazards of night work in general, the Committee invites once again the Government to give favourable consideration to the ratification of the Night Work Convention, 1990 (No. 171), which shifts the emphasis from a specific category of workers and sector of economic activity to the safety and health protection of night workers irrespective of gender in nearly all branches and occupations. The Committee asks the Government to keep the Office informed of any decision taken in this regard.

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

Peru

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1945)

Articles 2 and 5 of the Convention. Averaging of hours of work. The Committee notes that, under section 2(1)(b) of Legislative Decree No. 854 on hours of work (consolidated by Supreme Decree No. 007-2002-TR), the employer can fix the hours of work in such a way that they are greater than eight hours on certain days and less than eight hours on other days, on condition that weekly hours of work do not exceed an average of 48 hours. It also notes that, under section 2(1)(c) of the same Decree, the employer may reduce or increase the number of working days during the week through the distribution of the daily hours of work, on condition that an average of 48 hours per week is not exceeded. In the case of extended or untypical days of work, the daily hours of work may not exceed an average of ten hours over the period under consideration. The Committee also notes that section 2(2) imposes the obligation on the employer in this case to consult and negotiate with the union concerned or otherwise with the representatives of the workers.

The Committee recalls that the basic rule established by the Convention is observance of a twofold limit on hours of work, namely eight hours per day and 48 hours per week and that, as it emphasized in its General Survey of 2005 on hours of work (paragraph 57), "these limitations ... should be viewed as strict maximum limits which are not liable to variation or waiver at the free will of the parties". *Article 2(b)* of the Convention allows, within certain limits, the uneven distribution of hours of work over the week instead of averaging the weekly hours of work, especially when no reference period is fixed for such averaging. Moreover, *Article 5* of the Convention, which authorizes the distribution of hours of work over a period longer than a week, applies only in exceptional cases which make the limits established by the Convention regarding daily and weekly hours of work inapplicable. This provision requires the conclusion of an

agreement on this subject between employers' and workers' organizations and the approval thereof by the competent national authorities. ***The Committee trusts that the Government will amend the provisions of Legislative Decree No. 854 in order to restrict the possibility of averaging weekly hours of work to exceptional cases which make the normal limits of eight hours per day and 48 hours per week inapplicable. It requests the Government to provide information on any further developments in this regard.***

Article 2(c). Shift work. With reference to its previous comments, the Committee notes with interest the decision handed down on 17 April 2006 by the Constitutional Court, which upheld the appeal lodged by the Toquepala Workers' Union (STTA) against the decision of the High Court of Justice of Tacna, which had rejected the appeal lodged by this organization requesting the hours of work imposed by the Southern Peru Copper Corporation to be declared illegal (namely, 12-hour working days for four days, followed by three rest days). It notes that the decision of the Constitutional Court is based on the provisions relating to hours of work contained not only in the Constitution but also in ILO Convention No. 1, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Additional Protocol to the American Convention on Human Rights. It notes that, on the basis of the analysis of the abovementioned provisions and taking into account the hazardous nature of work in mines, the Constitutional Court concluded that the working arrangements established by the Southern Peru Copper Corporation were contrary to the Constitution and the daily hours of work in mines should not exceed eight hours.

The Committee also notes the resolution of the Constitutional Court of 11 May 2006, which provides additional explanations relating to the abovementioned decision and reproduces extracts from the General Survey of 2005 on hours of work. It also notes that this resolution emphasizes that in all sectors of activity, including mining, schemes for the organization of working time in which the averaging of hours of work over a maximum three-week period exceeds eight hours per day and 48 hours per week are contrary to the Constitution. However, it notes that the resolution makes the limitation on hours of work in the mining sector subject to a "protection test" comprising a number of cumulative conditions: (a) a case-by-case evaluation taking account of the characteristics of the mining establishment; (b) examination of whether or not the employer complies with occupational safety and health conditions; (c) verification of whether or not guarantees are provided by the employer with regard to health requirements and adequate supplies of food for long days of work; (d) whether or not the employer grants adequate rest periods during the working day; and (e) whether or not the employer complies with the obligation to reduce working hours where work is done at night. The Court also raises the possibility of taking account of an additional criterion, namely whether or not to include provisions limiting daily working time to eight hours in the applicable collective agreement. The Constitutional Court maintains the conclusion which it reached in the case referred to above, namely that the work schedule established by the Southern Peru Copper Corporation is unconstitutional, but considerably reduces the scope of the limitation on hours of work in the context of shift work.

The Committee recalls that, under the terms of *Article 2(c)* of the Convention, hours of work in the case of shift work may be extended beyond the normal limits laid down by the Convention, namely eight hours per day and 48 hours per week, on condition that the average number of hours over a period of three weeks or less does not exceed eight per day and 48 per week. This provision, which already provides flexibility for taking account of particular working arrangements in certain enterprises, does not permit exceptions as would be allowed by application of the "protection test" mentioned by the Constitutional Court. ***The Committee therefore requests the Government to take the necessary steps to ensure strict compliance with this rule in all the enterprises to which the Convention is applicable, including mining enterprises.***

The Committee is also addressing a request concerning a number of other points directly to the Government.

Philippines

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1953)

Articles 2, 4, 5 and 8 of the Convention. Definition of night and exceptions from the night work prohibition. The Committee has been commenting for a number of years on sections 130 and 131 of the Labour Code, which are not in conformity with the Convention since they provide for a night work prohibition covering a period of only eight hours and possible exemptions on account of the manual skill and dexterity of female workers. In its last report, the Government indicates that at present there are approximately 120 establishments which have been granted exemption from the night work prohibition in accordance with section 131(g) of the Labour Code which allows for exemptions "under other analogous cases exempted by the Secretary of the Department of Labour and Employment in appropriate regulations". The Government adds that such exemptions are granted by the Secretary of the Department of Labour and Employment upon written request provided that (i) the enterprise provides safe and healthy conditions and adequate facilities such as sleeping quarters; (ii) female employees are not below 18 years of age; and (iii) pregnant women and nursing mothers produce a medical certificate regarding their fitness to perform night work.

The Committee is obliged to draw once again the Government's attention to the fact that the duration of the compulsory night rest for women provided for in the current laws and regulations is significantly shorter than that required by *Article 2* of the Convention and also that the authorized exceptions are much broader than those permitted by *Articles 4, 5 and 8* of the Convention. ***It therefore urges the Government to take all necessary action without further delay in order to bring the national legislation into conformity with the requirements of the Convention.***

The Committee understands that the Government has been hesitating between a rigorous application of a strict prohibition against women's night work and a compelling demand for night work due to pressing economic needs. It also understands that the provisions of the Labour Code seek to strike a balance between the perceived need to protect women workers as a vulnerable group on the one hand and the pursuit of an active employment promotion policy on the other. In this connection, the Committee recalls that the Protocol of 1990 to Convention No. 89 was drafted with a view to offering greater flexibility in terms of variations in the duration of the night period and broader possibilities for exemptions from the night work prohibition, and therefore its ratification and proper implementation would permit to eliminate the current inconsistencies between the national legislation and the Convention. ***The Committee therefore invites the Government to give favourable consideration to the ratification of the 1990 Protocol to Convention No. 89 and to keep the Office informed of any decision taken or envisaged in this regard.***

Portugal

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1981)

Article 9(1) of the Convention. Division and accumulation of annual holidays with pay. The Committee refers to its previous comments in which it noted that section 7(3) of Legislative Decree No. 874/76 allowed the accumulation of leave for two years for certain workers and was therefore not in conformity with *Article 9, paragraph 1*, of the Convention, according to which a part of the holiday (a minimum of two working weeks) must be granted and taken no later than one year from the end of the year in respect of which the holiday entitlement has arisen.

The Committee notes with *satisfaction* that, following the adoption of Act No. 99/2003 issuing the Labour Code, Legislative Decree No. 874/76 has been repealed. It also notes that under section 215, paragraph 1, of the Labour Code, leave must be taken during the calendar year in respect of which the holiday entitlement has arisen, and accumulation during the same year of leave for two years or more is not permitted.

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

Romania

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1921)

Article 8 of the Convention and Part VI of the report form. Violations of the rules respecting hours of work and practical application of the Convention. The Committee notes with interest that, following the amendment of section 276 of the Labour Code by Emergency Ordinance No. 65 of 29 June 2005, failure to comply with the provisions of the Labour Code respecting the performance of overtime hours and weekly rest henceforth constitutes an infringement with a fine of between 1,500 and 3,000 lei. It also notes the Government's indications that in 2007 labour inspectors inspected 90,677 economic entities in which 3,776,476 workers were employed, and that sanctions were imposed on 406 employers under this provision of the Labour Code. ***The Committee requests the Government to indicate the measures adopted or envisaged to extend the application of section 276(h) of the Labour Code to other cases of failure to comply with the provisions of the Labour Code respecting hours of work, as suggested by the Block of National Trade Unions in the observations that it made in 2004 on the application of the Convention. The Government is also requested to confirm that the amount of the fine indicated in section 276 of the Labour Code is expressed in Romanian new lei (i.e. a fine of between €400 and €800). Finally, the Committee requests the Government to continue providing information on the application of the Convention in practice, including information on the types of working time arrangements (for example, compressed work weeks, averaging of hours, etc.) used by employers, and the types of violations of the legal provisions respecting hours of work reported by the labour inspection services, and any remedial action taken.***

The Committee is also addressing a request concerning a number of other points directly to the Government.

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1923)

Article 2(1) of the Convention. Entitlement to weekly rest. The Committee notes with *satisfaction* that as it was suggested in its previous observation, Emergency Order No. 65/2005 introduces a new provision (section 276(1)(i)) into Act No. 53/2003 issuing the Labour Code, establishing that any breach of the legal provisions on weekly rest constitutes an offense punishable by a fine of 1,500 to 3,000 lei (i.e. approximately €400 to €800; provided that, as understood by the Committee these amounts are expressed in Romanian new lei). It also notes the statistics supplied by the Government for the period from 2005 to 2008 and notes, in particular, the increase in the number of employers sanctioned under the new provision of the Labour Code. The Committee recalls in this connection that fines must be set and periodically adjusted at a level that is really dissuasive and enables breaches of the legislation on weekly rest to be prevented effectively.

The Committee is also addressing a request concerning a number of other points directly to the Government.

Sierra Leone

Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1961)

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

Articles 1 and 8 of the Convention. Right to annual holidays with pay. The Committee notes the statement in the Government's last report that section 63(6) of the Draft Employment Act would provide that any agreement to relinquish the right to minimum annual holiday would be null and void. The Committee hopes that the Act will be adopted in the near future, bringing section 12(a) of Government Notice No. 888, which it has repeatedly highlighted as being in need of amendment, into conformity with the Convention. ***It requests the Government to provide a copy of the full text of the revised legislation as soon as it is adopted.***

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

Spain

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1929)

Article 2 of the Convention. Daily and weekly hours of work. The Committee notes that under section 34, paragraph 1(2), of the Workers' Statute, the maximum number of normal hours of work is 40 actual hours of work a week as an annual average. Under paragraph 2, the irregular distribution of hours of work over the year may be decided upon by collective agreement or, in the absence of a collective agreement, in an agreement concluded between the enterprise and the workers' representatives, provided that the minimum periods of daily and weekly rest are respected. The Committee further notes that section 34, paragraph 3, establishes the minimum period of daily rest at 12 hours and provides that the number of normal hours of actual work may not exceed nine in the day, unless provided otherwise in a collective agreement or, in the absence of collective agreement, an agreement concluded between the enterprise and the workers' representatives. Finally, it notes, that under section 37, paragraph 1, workers are entitled to a weekly rest of at least one and a half days without interruption. However, this rest may be accumulated over periods of 14 days as a maximum.

The Committee also notes the Government's reply to its previous comments and the observations made in 2003 by the General Union of Workers (UGT). It notes in particular that working time arrangements may not be imposed unilaterally by the employer, but must be a result of agreements concluded through collective bargaining or, in the absence of collective bargaining, between the employer and the workers' representatives. The Government also refers to the criteria, guidance and recommendations that have to be taken into account in collective bargaining, which are enumerated in the various inter-confederation agreements for collective bargaining (ANC) concluded by the social partners, including the UGT, and in particular the ANC of 2007, which addresses, among other matters, collective bargaining on the management of working time, including the annualization of hours of work. The Government adds that workers' representatives participate in the process of determining hours of work, particularly in the event of their irregular distribution, which only affects a small percentage of workers. In this respect, it indicates that the annualization of hours of work concerned 17.5 per cent of workers in 2005 and 16.9 per cent in 2006. In conclusion, the Government states that it does not understand the reasons why the UGT made observations on the application of the Convention and considers that Spanish legislation is in conformity with the requirements of the Convention and is more favourable than the standards set out in the 2003 European Directive on the organization of working time.

However, in the light of the above provisions of the Workers' Statute, the Committee is bound to observe that the national legislation does not establish an absolute limit for weekly hours of work and that the maximum daily hours of work, set at nine hours, may be exceeded by means of collective agreements or enterprise agreements. Accordingly, taking into account the rules respecting daily rest (12 hours) and weekly rest (one and a half days), daily hours of work could in theory be as many as 12 hours and weekly hours of work could total 66 hours. The Committee therefore shares the analysis made by the UGT, according to which hours of work may exceed 60 in a week. Furthermore, if the possibility of accumulating weekly rest over a period of 14 days is taken into account, an employed person could be required to work a maximum of 12 hours for seven consecutive days, that is 84 hours, and 48 hours the next week (four times 12 hours). In this respect, the Committee notes the UGT's indication that it is not aware of cases in which workers are engaged under such a schedule, but claims knowledge of more common cases involving 63-hour weeks (seven days of nine hours), followed by a 36-hour week (four days of nine hours).

The Committee recalls that under *Article 2* of the Convention working hours, with the exceptions provided for in that Article, must not exceed eight in the day and 48 in the week. Under the terms of *Article 2(b)*, where the hours of work on one or more days of the week are less than eight, the limit of eight hours may be exceeded on the remaining days of the week, provided however that in no case may the daily limit be exceeded by more than one hour. The Committee is bound to reiterate its observation of 2004 in which it emphasized that the possibility offered by the national legislation to allow a working day of more than nine hours is contrary to the Convention even if this is provided for by collective agreement or

enterprise agreement. ***It therefore once again requests the Government to take the necessary steps rapidly to bring the legislation into conformity with the Convention on this point.***

Furthermore, the Committee draws the Government's attention to the fact that the Convention only allows the averaging of hours of work in excess, in certain weeks, of the limit of 48 hours under certain specific circumstances (for example, in the case of shift work, covered by *Article 2(c)* of the Convention). The Committee is accordingly bound to observe that section 34 of the Workers' Statute, which allows the averaging of weekly hours of work without any restriction, is not in conformity with the provisions of the Convention. ***The Committee trusts that the Government will take the necessary measures rapidly to amend the legislation so that it only allows the limits determined by the Convention in relation to daily and weekly hours of work to be exceeded occasionally, in the context of the averaging of working time, in the circumstances envisaged by the Convention. It requests the Government to provide information on any developments in this respect.***

The Committee also notes that under section 34, paragraph 7, of the Workers' Statute, the Government may, after consulting the most representative organizations of trade unions and employers, increase or limit hours of work and periods of rest in sectors and types of work where the specific characteristics so require. ***The Committee requests the Government to indicate whether decisions to increase hours of work or reduce rest periods in specific branches of activity or for particular types of work have already been taken on the basis of this provision. If so, the Government is requested to provide all relevant information concerning the exceptions established and the rules applicable to the workers concerned in relation to hours of work.***

The Committee further notes that, in accordance with section 34, paragraph 8, of the Workers' Statute, all workers are entitled to adapt the duration and distribution of their working time so as to enable them to reconcile their personal, family and professional life in accordance with the terms set out by collective bargaining or in the agreement concluded with their employer. ***The Committee requests the Government to provide the available information on the implementation of this provision.***

The Committee further notes that, in reply to its previous comment concerning the possibility for the employer to undertake substantial modifications of conditions of work under section 41, paragraph 1, of the Workers' Statute, the Government indicates that such modifications have to be in compliance with the applicable regulations, including those respecting hours of work. It notes that case law has determined what is to be understood by "substantial modification of conditions of work". Accordingly, the High Court of Madrid considered that a measure consisting of the suppression of a flexitime schedule came under section 41 of the Workers' Statute. However, an increase of 25 hours in annual hours of work, representing less than ten minutes a day, did not constitute a substantial modification of conditions of work. The Government adds that, in general, substantial modifications of conditions of work relate to changes in the regular distribution of hours of work over the year, but do not include modifications involving a reduction of working time accompanied by a reduction of wages, nor an increase in working time, nor the irregular distribution of hours of work over the year. ***The Committee notes the fact that the modifications covered by section 41 of the Workers' Statute have to conform to the applicable legal provisions and it requests the Government to provide copies of the court decisions referred to in its report and of any other relevant decision or official report prepared on this subject.***

Articles 3 and 6, paragraph 1(b). Cases in which additional hours may be performed. The Committee notes the indication contained in the Governments' report that collective agreements or employment contracts may envisage the performance of additional hours in various cases. These normally consist of work performed to respond to production needs. However, the Committee notes that section 35, paragraph 4, of the Workers' Statute is confined to providing that the performance of additional hours must be voluntary, unless it is envisaged in a collective agreement or an employment contract. In this respect, the Committee recalls that the Convention only allows the performance of additional hours on a temporary basis in the following specific cases: accident, urgent work to be done to machinery or plant, or in case of force majeure (*Article 3*) or exceptional cases of pressure of work (*Article 6, paragraph 1(b)*). ***The Committee hopes that the Government will take measures rapidly to amend the Workers' Statute so as to allow the performance of additional hours only in the cases envisaged by the Convention.***

Article 6, paragraph 2. Limitation of the number of additional hours. The Committee notes that, under section 35, paragraph 2, of the Workers' Statute, the number of additional hours cannot exceed 80 in a year. It also notes that, according to the case law of the High Court of the Basque Country, this limit may not be exceeded either by means of collective bargaining or in the employment contract. However, under the terms of section 35, paragraph 2, additional hours which give rise to compensatory rest during the four months following their performance are not taken into account in this context. The Committee recalls that *Article 6, paragraph 2*, of the Convention requires that, in exceptional cases of pressure of work, regulations fix the number of additional hours authorized in each instance. ***The Committee requests the Government to take the necessary measures to extend the limits set forth in the Workers' Statute in relation to the number of additional hours authorized to those which give rise to compensatory rest during the four months following their performance. The Committee also requests the Government to provide a copy of the ruling by the High Court of the Basque Country to which it refers in its report.***

Remuneration of overtime. The Committee notes that section 35, paragraph 1, of the Workers' Statute provides that additional hours must be paid at a rate determined by a collective agreement or, in the absence of a collective agreement, by the individual employment contract, but which may not be lower than the rate applicable for normal hours of work, or

may be compensated in the form of equivalent periods of paid rest. It notes the indication in the Government's report that the law shows a clear preference for the compensation of additional hours in the form of periods of paid rest of equivalent duration. The Committee also notes that the collective agreement applicable in the tiles, bricks and special clay forms sector envisages compensatory rest periods increased by 75 per cent in respect of overtime. The agreement applicable to the sugar industry provides for rest periods equivalent to the number of additional hours performed, supplemented by an additional wage rate of 50 per cent. The Committee however draws the Government's attention to the fact that, in accordance with *Article 6, paragraph 2*, of the Convention, the increased rate of pay for additional hours performed to deal with exceptional cases of pressure of work of not less than one and one-quarter times the regular rate has to be of general application and cannot therefore be left to the discretion of collective bargaining. Furthermore, compensation for additional hours in the form of paid holiday but without an increased wage rate, does not give effect to this provision of the Convention. ***The Committee hopes that the Government will take measures rapidly to bring its legislation into conformity with the Convention on this point. It also requests the Government to provide copies of the collective agreements referred to in its report.***

Part V of the report form. The Committee notes the information provided by the Government concerning the activities of the labour and social security inspection services in relation to hours of work in the industrial sector during the period 2003–07. It notes in this respect that the number of inspections more than doubled between 2006–07 and that, over the same period, the number of violations reported and the amount of the penalties imposed almost tripled; while the number of workers concerned rose from 941 to 6,013 and the number of warnings issued rose from 166 to 425. ***The Committee requests the Government to provide information on the reasons for this significant strengthening of labour inspection activities in the sector and on the measures adopted in practice. The Government is also requested to continue providing information on the application of the Convention in practice including, where possible, more detailed information on the nature of the violations reported of the legislation respecting hours of work and on the measures adopted to bring them to an end.***

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1924)

The Committee requests the Government to refer to the comments made in relation to Convention No. 106.

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1932)

Articles 3 and 4 of the Convention. Daily and weekly hours of work. The Committee notes that, under section 34, paragraph 1(2), of the Workers' Statute, the maximum number of normal hours of work is 40 actual hours of work a week as an annual average. Under paragraph 2, the irregular distribution of hours of work over the year may be decided upon by collective agreement or, in the absence of a collective agreement, in an agreement concluded between the enterprise and the workers' representatives, provided that the minimum periods of daily and weekly rest are respected. The Committee further notes that section 34, paragraph 3, establishes the minimum period of daily rest at 12 hours and provides that the number of normal hours of actual work may not exceed nine in the day, unless provided otherwise in a collective agreement or, in the absence of a collective agreement, an agreement concluded between the enterprise and the workers' representatives. Finally, it notes that, under section 37, paragraph 1, workers are entitled to a weekly rest of at least one and a half days without interruption. However, this rest may be accumulated over periods of 14 days as a maximum.

The Committee also notes the Government's reply to its previous comments and the observations made in 2003 by the General Union of Workers (UGT). It notes in particular that working time arrangements may not be imposed unilaterally by the employer, but must be a result of agreements concluded through collective bargaining or, in the absence of collective bargaining, between the employer and the workers' representatives. The Government also refers to the criteria, guidance and recommendations that have to be taken into account in collective bargaining, which are enumerated in the various inter-confederation agreements for collective bargaining (ANC) concluded by the social partners, including the UGT, and in particular the ANC of 2007, which addresses, among other matters, collective bargaining on the management of working time, including the annualization of hours of work. The Government adds that workers' representatives participate in the process of determining hours of work, particularly in the event of their irregular distribution, which only affects a small percentage of workers. In this respect, it indicates that the annualization of hours of work concerned 17.5 per cent of workers in 2005 and 16.9 per cent in 2006. In conclusion, the Government states that it does not understand the reasons why the UGT made observations on the application of the Convention and considers that the national legislation is in conformity with the requirements of the Convention and is more favourable than the standards set out in the 2003 European Directive on the organization of working time.

However, in the light of the above provisions of the Workers' Statute, the Committee is bound to observe that the national legislation does not establish an absolute limit on weekly hours of work and that the maximum daily hours of work, set at nine hours, may be exceeded by means of collective agreements or enterprise agreements. Accordingly, taking into account the rules respecting daily rest (12 hours) and weekly rest (one and a half days), daily hours of work could in theory be as many as 12 hours and weekly hours of work could total 66 hours. The Committee therefore shares the analysis made by the UGT, according to which hours of work may exceed 60 in a week. Furthermore, if the possibility of accumulating weekly rest over a period of 14 days is taken into account, an employed person could be required to work a maximum of 84 hours, that is 12 hours for seven consecutive days, and 48 hours the next week (four times 12 hours). In

this respect, the Committee notes the UGT's indications that it is not aware of cases in which workers are engaged under such a schedule, but has knowledge of more common cases involving 63-hour weeks (seven days of nine hours), followed by a 36-hour week (four days of nine hours).

The Committee recalls that under *Article 3* of the Convention working hours, with the exceptions provided for in the Convention, may not exceed eight in the day and 48 in the week. *Article 4* allows the unequal distribution of weekly hours of work, on condition that hours of work in any day do not exceed ten hours. The Convention only allows the averaging of hours of work so that in certain weeks they exceed the limit of 48 hours in the exceptional cases envisaged in *Article 6* of the Convention. The Committee is accordingly bound to observe that section 34 of the Workers' Statute, which allows the averaging of weekly hours of work without any restriction, is not in conformity with the provisions of the Convention. ***It trusts that the Government will take the necessary measures rapidly to amend the legislation so that it only allows the limits determined by the Convention in relation to daily and weekly hours of work to be exceeded occasionally, in the context of the averaging of working time, in the circumstances envisaged by the Convention. It requests the Government to provide information on any developments in this respect.***

The Committee also notes that under section 34, paragraph 7, of the Workers' Statute, the Government may, after consulting the most representative organizations of trade unions and employers, increase or limit hours of work and periods of rest in sectors and types of work where the specific characteristics so require. ***It requests the Government to indicate whether decisions to increase hours of work or reduce rest periods in specific branches of activity or for particular types of work have already been taken on the basis of this provision. If so, the Government is requested to provide all relevant information concerning the exceptions established and the rules applicable to the workers concerned in relation to hours of work.***

The Committee further notes that, in accordance with section 34, paragraph 8, of the Workers' Statute, all workers are entitled to adapt the duration and distribution of their working time so as to enable them to reconcile their personal, family and professional life in accordance with the terms established through collective bargaining or in the agreement concluded with their employer. ***The Committee requests the Government to provide any available information concerning the implementation of this provision.***

The Committee further notes that, in reply to its previous comment concerning the possibility for the employer to undertake substantial modifications of conditions of work under section 41, paragraph 1, of the Workers' Statute, the Government indicates that such modifications have to be in compliance with the applicable regulations, including those respecting hours of work. It notes that case law has determined what is to be understood by "substantial modification of conditions of work". Accordingly, the High Court of Madrid considered that a measure consisting of the suppression of a flexi-time schedule came under section 41 of the Workers' Statute. However, an increase of 25 hours in annual hours of work, representing less than ten minutes a day, did not constitute a substantial modification of conditions of work. The Government adds that, in general, substantial modifications of conditions of work relate to changes in the regular distribution of hours of work over the year, but do not include modifications involving a reduction of working time accompanied by a reduction of wages, nor an increase in working time, nor the irregular distribution of hours of work over the year. ***The Committee notes the fact that the modifications covered by section 41 of the Workers' Statute have to conform to the applicable legal provisions and it requests the Government to provide copies of the court decisions referred to in its report and of any other relevant decision or official report prepared on this subject.***

Article 7, paragraph 2. Cases in which additional hours may be performed. The Committee notes the indications contained in the Government's report that collective agreements or employment contracts may envisage the performance of additional hours in various cases. These normally consist of work performed in response to production needs. However, the Committee notes that the Government does not reply in its report to its previous comment on this point. It observes that section 35, paragraph 4, of the Workers' Statute is confined to providing that the performance of additional hours must be voluntary, unless it is envisaged in a collective agreement or an employment contract. In this respect, the Committee recalls that *Article 7, paragraph 2*, of the Convention contains a limitative enumeration of the cases in which the performance of additional hours is authorized in the context of temporary exceptions. ***The Committee hopes that the Government will take measures rapidly to amend the Workers' Statute so as to allow the performance of additional hours only in the cases envisaged by the Convention.***

Article 7, paragraph 3. Limitation of the number of additional hours. The Committee notes that, under section 35, paragraph 2, of the Workers' Statute, the number of additional hours cannot exceed 80 in a year. It also notes that, according to the case law of the High Court of the Basque Country, this limit may not be exceeded either by means of collective bargaining or in the employment contract. However, under the terms of section 35, paragraph 2, additional hours which give rise to compensatory rest during the four months following their performance, and those performed to prevent or make good exceptional and urgent damage, are not taken into account in this context. The Committee recalls that *Article 7, paragraph 3*, of the Convention requires the determination of the number of additional hours of work which may be allowed in the day and in the year, in respect of temporary exceptions, save as regards cases of accident, force majeure, or urgent work to machinery or plant. The Committee notes that the collective agreement for driving schools limits the number of additional hours to two hours a day, 15 hours a month and 80 hours a year. It, however, draws the Government's attention to the fact that the Convention requires daily and annual limits to be determined in all branches of activity and that this matter cannot be left to the discretion of collective bargaining. ***The Committee requests the***

Government to take the necessary measures to determine also a daily limit to the number of additional hours authorized and to apply the daily and annual limits to additional hours which give rise to compensatory rest during the four months following their performance. The Committee also requests the Government to provide a copy of the ruling by the High Court of the Basque Country to which it refers in its report.

Article 7, paragraph 4. Remuneration of additional hours. The Committee notes that section 35, paragraph 1, of the Workers' Statute provides that additional hours have to be paid at a rate determined by collective agreement or, in the absence of a collective agreement, by the individual employment contract, but which may not be lower than the rate applicable for normal hours of work, or may be compensated in the form of equivalent periods of paid rest. It notes the indications in the Government's report that the law shows a clear preference for the compensation of additional hours in the form of periods of paid rest of equivalent duration. The Committee also notes that the collective agreement applicable in the perfume and allied industries provides for the compensation of each additional hour by 1.25 hours of rest or, if that is not possible, by pay corresponding to 1.5 times the wage rate for normal hours. The collective agreement for the large-scale distribution sector provides that compulsory additional hours are to be paid at a rate increased by 50 per cent or compensated by an equivalent period of rest, at the worker's choice. Similar provisions are also found in the collective agreement for travel agencies and that for financial credit institutions. The Committee however draws the Government's attention to the fact that, in accordance with *Article 7, paragraph 4*, of the Convention, the increased rate of pay of at least 25 per cent more for overtime, except in the case of accidents, force majeure or urgent work to machinery or plant, has to be of general application and cannot therefore be left to the discretion of collective bargaining. Furthermore, compensation for additional hours in the form of paid leave, but without an increased wage rate, does not give effect to this provision of the Convention. **The Committee hopes that the Government will take measures rapidly to bring its legislation into conformity with the Convention on this point. It also requests the Government to provide copies of the collective agreements referred to in its report.**

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1971)

Article 6, paragraph 1, of the Convention. Minimum weekly rest period. For a number of years, the Committee has been drawing the Government's attention to the provisions of section 37(1) of the Workers' Statute, which provides for the possibility of accumulating weekly rest days over a period not exceeding 14 days, contrary to the provisions of *Article 6, paragraph 1*, of the Convention, which requires the granting of an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days. In this regard, the General Union of Workers (UGT) emphasized in its previous comments that this provision could affect the health and safety of workers and also the quality of work performed.

The Government states in its report that the national legislation as a whole applies the provisions of the Convention and that the exceptions to the general system may not be imposed unilaterally by the employer but are negotiated with workers' representatives. The Government adds that the legislation is in full conformity with the provisions of Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organization of working time, in particular article 16(a) thereof, which states that Member States may lay down a reference period not exceeding 14 days. While noting the Government's explanations, the Committee reiterates that section 37(1) of the Workers' Statute remains contrary to the provisions of the Convention. **The Committee therefore hopes that the Government will review this matter and take the necessary steps in the near future to bring its legislation into full conformity with the provisions of the Convention.**

The Committee is also raising a number of other points in a direct request to the Government.

Suriname

Night Work (Women) Convention (Revised), 1934 (No. 41) (ratification: 1976)

Article 3 of the Convention. General prohibition on women's night work. Following up on its previous comment, the Committee notes that despite the fact that the Convention is no longer implemented in national law or practice, no specific action has as yet been taken with respect to its denunciation since the question has still to be discussed by the Labour Advisory Board. The Committee regrets that the Government has not seized the opportunity, in consultation with the social partners, to terminate its obligations under the Convention during the denunciation period which ran from 22 November 2006 to 22 November 2007, and will therefore remain formally bound by the Convention for another period of ten years (denunciation becoming again possible from 22 November 2016 to 22 November 2017).

The Committee wishes to recall, in this regard, paragraph 162 of its 2001 General Survey on night work of women in industry in which it concluded that a blanket prohibition on women's night work, such as that reflected in Conventions Nos 4 and 41, now appears objectionable and it cannot be defended from the viewpoint of the principle of non-discrimination. It also recalls that the Government, which is a party to Convention No. 41 since 1976, has eliminated the prohibition against women's night work by legislation enacted in 1983 and that the Committee has been drawing attention to this unfortunate situation for more than 25 years.

Under the circumstances, the Committee strongly encourages the Government to consider the ratification of the Night Work Convention, 1990 (No. 171), which is not devised as a gender-specific instrument but focuses on the safety and health protection of all night workers, both men and women, in all sectors and occupations. *The Committee expresses the hope that the Government will take the necessary action in order to terminate its obligations under outdated Convention No. 41 in keeping with the procedural requirements indicated above, and asks the Government to keep the Office informed of any decision taken or envisaged concerning the ratification of Convention No. 171, following the recommendations of the Labour Advisory Council.*

Uruguay

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1977)

Article 6(1) of the Convention. Exclusion of official and customary public holidays from the annual holiday with pay. Further to its previous comments, the Committee notes the explanations provided by the Government concerning the various types of public holidays, namely (i) ordinary public holidays, during which work may be performed (*feriados communes*), (ii) statutory paid public holidays, which are paid and on which it is compulsory for work to cease (*feriados pagados*) and (iii) non-working public holidays which are not necessarily paid (*feriados no laborables*). In this respect, the Committee notes in particular the indication that, although there is no collective agreement authorizing the counting of common public holidays in annual holidays with pay, individual and enterprise agreements allow this practice. It is the Committee's understanding that such agreements allow daily workers to receive remuneration that they would not have received had such public holidays been excluded from holidays with pay. The Committee recalls, as it has been doing for 26 years, that the Convention does not allow public holidays of whatever sort to be counted as part of the annual holiday with pay. *It therefore urges the Government to take the necessary measures to bring the legislation into conformity with the Convention on this point.*

Article 7(2). Payment in advance of holidays for public servants. Further to its previous comments, the Committee notes the Government's indication that public servants are entitled to payment for their holidays, but not at the higher holiday rate, which is exclusively reserved for workers in the private sector and the public non-state sector, as well as for rural and domestic workers. However, it notes that the Government's report does not contain any new information concerning the payment in advance of the holidays of public servants, on which the Committee has been making observations for many years. *The Committee requests the Government to indicate the legal or other provisions guaranteeing the payment of the remuneration due in respect of holidays with pay to public servants in advance of their holidays.*

Bolivarian Republic of Venezuela

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1944)

Articles 2 and 5 of the Convention. Averaging of hours of work. The Committee notes with regret that the Government's report does not reply to its previous observation concerning section 206 of the Basic Labour Act. It observes that this provision allows employers and workers to decide by common agreement to modify the limits set by the Act for hours of work, on condition that compensatory measures are envisaged and that weekly hours of work do not exceed 44 hours on average over a period of eight weeks. The Committee recalls in this respect that the basic rule established by the Convention is compliance with a double limit on hours of work, namely eight hours in the day and 48 hours in the week and that, as it emphasized in its 2005 General Survey on hours of work (paragraph 57), "these limitations of normal working hours laid down in the Conventions should be viewed as strict maximum limits which are not liable to variation or waiver at the free will of the parties". *Article 2(b) of the Convention allows, within certain limits, the unequal distribution of hours of work over a week, but not the averaging of hours of work over a period of eight weeks. In any event, such an arrangement can only be envisaged by law, custom or agreement between representative employers' and workers' organizations. Furthermore, Article 5 of the Convention, which authorizes the distribution of hours of work over a period longer than a week, applies only in exceptional cases where the limits established by the Convention in relation to daily and weekly hours of work are recognized as being inapplicable. This provision also requires the conclusion of an agreement on this subject between employers' and workers' organizations and its approval by the competent national authorities. The Committee is therefore obliged to emphasize once again that section 206 of the Basic Labour Act, which allows the averaging of hours of work over a period of eight weeks without restriction and on the sole condition of the conclusion of an agreement for this purpose between the employer and the worker concerned, is not in conformity with the Convention. In view of the importance of limiting hours of work to protect the health of workers and the need to protect the latter against any abuses, the Committee trusts that the Government will take the necessary measures without further delay to amend section 206 of the Basic Labour Act so as to bring it into conformity with the provisions of the Convention.* In this respect, the Committee notes that the Government no longer refers in its last report to the draft reform of the Basic Labour Act. *It requests the Government to provide information on the progress made in the process of adopting this draft text.*

The Committee is also addressing a request directly to the Government on other points.

Night Work (Women) Convention (Revised), 1934 (No. 41) (ratification: 1944)

Article 3 of the Convention. General prohibition of night work for women. Further to its previous comments, the Committee notes that the recently adopted Decree No. 4.447 of 25 April 2006 regarding regulations under the Organic Labour Act repeals Decree No. 1563 of 31 December 1973, Title IV of which concerning special conditions of employment previously gave effect to the requirements of the Convention. In contrast, the new regulations do not contain any provision expressly prohibiting the employment of women during the night. The Committee, therefore, concludes that the Convention is no longer given effect in either law or practice. Under the present circumstances, it is necessary for the Government to take appropriate steps in order to formally terminate its obligations under a Convention that has ceased to apply. Besides, the Committee has been recalling for a number of years the conclusions of the 2001 General Survey on the night work of women in industry, according to which Convention No. 41 is ill-suited to present-day realities, and also the decision of the ILO Governing Body to shelve that Convention, which means that its ratification is no longer encouraged and detailed reports on its application are no longer requested on a regular basis.

The Committee has, accordingly, invited the Government to consider the ratification of the Night Work Convention, 1990 (No. 171), which sets out up to date standards applying to all night workers and to all occupations without distinction. In addition, the Committee has referred to paragraph 202 of the abovementioned General Survey in which it cautioned against the risk of a complete deregulation of night work through the removal of all protective measures for women and the failure to replace them with a legislation offering adequate protection to all night workers. In its last report, the Government states that it will inform the Office in due course of its decision concerning the possible ratification of Convention No. 171 but gives no indication of any concrete steps taken towards the denunciation of Convention No. 41.

In this respect, the Committee recalls that the ratification of Convention No. 171 does not involve the immediate denunciation of Convention No. 41 and, therefore, the denunciation of Convention No. 41 will have to be undertaken separately. According to established practice, this Convention may be denounced every ten years but only during an interval of one year and will again be open to denunciation from 22 November 2016 to 22 November 2017. ***The Committee expresses the hope that the Government will take the necessary action in order to terminate its obligations under obsolete Convention No. 41 in keeping with the procedural requirements indicated above, and asks the Government to keep the Office informed of any decision taken or envisaged concerning the ratification of Convention No. 171.***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 1** (Angola, Argentina, Bangladesh, Chile, Cuba, Czech Republic, Djibouti, Dominican Republic, Equatorial Guinea, Ghana, Haiti, Israel, Lithuania, Malta, Nicaragua, Pakistan, Peru, Portugal, Romania, Syrian Arab Republic, Uruguay, Bolivarian Republic of Venezuela); **Convention No. 4** (Cambodia, Colombia, Cuba, Lao People's Democratic Republic, Nicaragua, Spain); **Convention No. 14** (Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bangladesh, Belarus, Belize, Bolivia, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Chile, Colombia, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark: Faeroe Islands, Denmark: Greenland, Djibouti, Dominica, Egypt, Finland, France, France: French Guiana, France: French Polynesia, France: New Caledonia, France: St Pierre and Miquelon, Gabon, Ghana, Greece, Grenada, Guatemala, Guinea-Bissau, Haiti, Hungary, Islamic Republic of Iran, Ireland, Israel, Italy, Kyrgyzstan, Latvia, Lebanon, Lithuania, Madagascar, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Netherlands, Nicaragua, Niger, Pakistan, Paraguay, Peru, Poland, Portugal, Romania, Rwanda, Saint Lucia, Senegal, Serbia, Slovenia, Solomon Islands, Suriname, Switzerland, Tajikistan, Thailand, United Kingdom: Montserrat, Bolivarian Republic of Venezuela, Zimbabwe); **Convention No. 30** (Chile, Colombia, Cuba, Equatorial Guinea, Ghana, Haiti, Israel, Morocco, Nicaragua, Syrian Arab Republic, Uruguay); **Convention No. 41** (Afghanistan, Chad, Estonia, Gabon); **Convention No. 52** (Albania, Argentina, Azerbaijan, Belarus, Bulgaria, Burundi, Colombia, Côte d'Ivoire, Djibouti, Egypt, France, France: French Polynesia, France: New Caledonia, France: Réunion, Gabon, Georgia, Greece, Israel, Kyrgyzstan, Mali, Mauritania, Mexico, Morocco, New Zealand, Paraguay, Peru, Russian Federation, Senegal, Tajikistan, Uzbekistan); **Convention No. 89** (Angola, Bahrain, Bangladesh, Belize, Bosnia and Herzegovina, Brazil, Burundi, Cameroon, Congo, Egypt, Guatemala, Guinea, Guinea-Bissau, Kenya, Kuwait, Lebanon, Malawi, Mauritania, Pakistan, Paraguay, Romania, Rwanda, Saudi Arabia, Senegal, Serbia, Slovenia, South Africa, Swaziland, Syrian Arab Republic, Tunisia, United Arab Emirates); **Convention No. 101** (Algeria, Antigua and Barbuda, Burundi, Central African Republic, Colombia, Comoros, Costa Rica, Djibouti, Ecuador, Egypt, France, France: French Guiana, France: French Polynesia, France: Martinique, France: New Caledonia, France: Réunion, France: St Pierre and Miquelon, Gabon, Guatemala, Israel, Mauritania, Morocco, Netherlands, New Zealand, Paraguay, Peru, Poland, Saint Lucia, Senegal, Spain, Suriname, United Republic of Tanzania: Tanganyika); **Convention No. 106** (Afghanistan, Angola, Azerbaijan, Bangladesh, Belarus, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cameroon, Colombia, Croatia, Denmark: Faeroe Islands, Djibouti, Dominican Republic, Ecuador, Egypt, France, France: French Guiana, France: French Polynesia, France: New Caledonia, France: St Pierre and Miquelon, Gabon, Ghana, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Islamic Republic of Iran, Israel, Kyrgyzstan, Latvia, Lebanon, Malta, Mexico, Morocco, Netherlands, Pakistan, Paraguay, Peru, Portugal, Russian

Federation, Sao Tome and Principe, Serbia, Slovenia, Spain, Sri Lanka, Suriname, Uruguay); **Convention No. 132** (*Bosnia and Herzegovina, Burkina Faso, Chad, Czech Republic, Guinea, Hungary, Ireland, Italy, Madagascar, Malta, Republic of Moldova, Portugal, Rwanda, Serbia, Slovenia, Spain, Switzerland*); **Convention No. 153** (*Mexico, Spain, Switzerland, Turkey, Uruguay, Bolivarian Republic of Venezuela*); **Convention No. 171** (*Czech Republic, Portugal*); **Convention No. 175** (*Albania, Guyana, Portugal*).

Occupational safety and health

Algeria

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1969)

Article 14 of the Convention. Suitable seats for workers. The Committee notes the information provided by the Government that workers assigned to activities in commerce and offices have seats which they can use in the context of the work, despite the absence of a legal text in this respect. The Government specifies that the provision of suitable seats to workers forms part of the working conditions without which the workers could not perform their work suitably and effectively. However, the Government indicates that it has noted the Committee's observation with a view to its integration into the provision of the future Labour Code. ***The Committee once again requests the Government to adopt suitable regulatory measures to ensure that all workers covered by the Convention have sufficient and suitable seats and the possibility of using them, and to keep the Office informed of any progress achieved in this respect.***

Article 18. Protection against noise and vibrations. In its previous comments, the Committee noted the Government's intention to develop regulations respecting the prevention of risks related to noise and vibrations. However, the Committee notes that the Government's report does not contain information on this matter. ***It once again requests the Government to adopt the appropriate regulatory measures as soon as possible to give effect to the provisions of this Article and to keep the Office informed of any progress achieved in this respect.***

Part IV of the report form. Application in practice. With reference to its previous comments, the Committee notes that the Government's report does not contain information on this matter. ***The Committee accordingly requests the Government to provide information on the manner in which the Convention is applied in practice, for example by supplying information on the number of workers covered by the legislation in force and extracts from inspection reports indicating the number and nature of the diseases contracted, and also the contraventions reported and penalties imposed.***

Belize

Radiation Protection Convention, 1960 (No. 115) (ratification: 1983)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters previously raised in a direct request, which read as follows:

Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention. The Committee notes the Government's indication regarding the steps taken to ensure effective protection of workers against ionizing radiations. The Committee observes that the measures mentioned by the Government mainly refer to personal protective equipment. With regard to the establishment of permissible maximum dose limits regarding the exposure of workers to ionizing radiations, the Committee notes the Government's indication that the dose limits currently applied in the country are in conformity with the exposure limits adopted by the International Commission on Radiation Protection (ICRP) in its 1990 Recommendations. The Committee understands from the information provided by the Government that the dose limits applied in the country are not laid down in any statutory legal text. ***It accordingly invites the Government to consider the possibility to adopt regulations laying down the dose limits already applied in the country, in order to make them enforceable. The Committee requests the Government to indicate the measures taken or envisaged to this end.***

Article 10. The Committee notes the information provided by the Government in its report that there have been indeed no notifications of work involving exposure of workers to ionizing radiations other than of work involving such exposure for medical or dental purposes. ***It requests the Government to inform the Office when the use of ionizing radiations in other sectors is notified.***

Article 14. Provision of alternative employment. The Committee notes the Government's indication that pregnant workers are assigned to other jobs without any loss of pay, seniority, or other rights or benefits. ***The Committee requests the Government to specify the legal basis providing for the transfer of pregnant women from their work involving exposure to ionizing radiations to another job. It further requests the Government to confirm that the latter jobs do not involve any exposure to ionizing radiations. With reference to the indications provided in paragraphs 28 to 34 of the Committee's 1992 general observation under the Convention, the Committee requests the Government to indicate the measures taken or contemplated to provide suitable alternative employment opportunities not involving exposure to ionizing radiations for workers having accumulated an effective dose beyond which detriment to their health considered unacceptable is to arise and who may be faced with the dilemma that protecting their health means losing their employment.***

Occupational exposure during an emergency. With reference to paragraphs 16 to 27 and 35(c) of its 1992 general observation under the Convention, and paragraphs V.27 and V.30 of the International Basic Safety Standards issued in 1994, ***the Committee requests the Government to provide in its next report full information on the circumstances in which exceptional exposure is authorized, the measures taken or envisaged to make protection as effective as possible against accidents and during emergency operations, in particular with regard to the design and protective features of the workplace and the equipment, and the development of emergency intervention techniques, the use of which in emergency situations would enable the exposure of individuals to ionizing radiations to be avoided.***

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

Bolivia

Benzene Convention, 1971 (No. 136) (ratification: 1977)

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

The Committee notes the adoption of Supreme Decree No. 26171 of 4 May 2001, supplementing the Environmental Regulations for the hydrocarbon sector issued by Supreme Decree No. 24335 of 19 July 1996. The Committee notes that the new Decree covers activities and factors liable to affect the environment in general, that is to contaminate the air, water in all its states, soil and subsoil, in excess of the permissible limits established, but that it does not contain measures respecting the protection of workers against risks of poisoning deriving from their exposure to benzene. The Committee notes that this report does not contain sufficient information in reply to its previous comments, and recalls that from its first comments in the 1980s the Committee has been drawing the Government's attention to the necessity to adopt measures to give effect to many substantive provisions of the Convention, in accordance with *Article 14 of the Convention*. ***The Committee notes that such measures have not been adopted and urges the Government to ensure that they are adopted in the near future by the competent authorities, including the government body referred to above, in relation to the following provisions of the Convention: Article 1(b) (adoption of protective measures in relation to products the benzene content of which exceeds 1 per cent by volume); Article 2 (use of harmless or less harmful substitute products); Article 4, paragraphs 1 and 2 (prohibition of the use of benzene and products containing benzene as a solvent or diluent in certain work processes, except where the process is carried out in an enclosed system or where there are other equally safe methods of work); Article 6, paragraphs 1, 2 and 3 (measures taken to prevent the exposure of workers to benzene; to ensure that, in any case, workers are not exposed to a concentration of benzene in the air exceeding a ceiling value of 25 parts per million; and to issue directions on carrying out the measurement of the concentration of benzene in the air of places of work); Article 7, paragraph 1 (the carrying out of work processes involving the use of benzene or of products containing benzene in an enclosed system); and Article 11, paragraphs 1 and 2 (prohibition to employ pregnant women, nursing mothers and young persons under 18 years of age in work processes involving exposure to benzene or products containing benzene).***

Article 9 of the Convention. Pre-employment and subsequent medical examinations. The Committee refers to its previous comments concerning draft regulations respecting medical services covering, among other matters, the need to perform medical examinations prior to employment and during and after employment. ***As its latest report does not contain information in this respect, the Committee requests the Government to indicate in its next report whether, in the meantime, the above regulations respecting medical services have been adopted and, if so, it requests the Government to indicate whether the provisions contained in the draft regulations have been established in such a manner as to ensure that medical examinations are carried out taking into account this Article of the Convention. The Committee also requests the Government to provide a copy of the above text.***

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

Croatia

Asbestos Convention, 1986 (No. 162) (ratification: 1991)

With reference to its previous comments, the conclusions of the ILO high-level direct contacts mission to Croatia from 2 to 6 April 2007 (the mission), and the discussions in the Conference Committee on the Application of Standards, most recently in June 2008, the Committee notes the detailed information submitted by the Government in its reports of March 2008 concerning measures taken since the mission, and of November 2008 concerning the legislative, judicial, institutional and environmental protection measures taken by it to follow up on the conclusions of the mission and of the Conference discussion in 2008, to improve the application of the Convention in the country and to adopt a more holistic approach to occupational safety and health in the country.

As regards *legislative measures* taken, the Committee notes with *satisfaction* that as a follow-up to the conclusions of the mission, the following legislation has been adopted:

- Act on Mandatory Health Monitoring of Workers Occupationally Exposed to Asbestos.
- Act on Amendments to the List of Occupational Diseases Act.
- Act on Requirements for Obtaining an Old-Age Pension by Workers Occupationally Exposed to Asbestos.
- Act on Compensating Workers Occupationally Exposed to Asbestos.
- Act on Amendments to the Occupational Health and Safety Act.
- Act on Amendments to the Occupational Health and Safety Insurance Act.
- Act on Amendments to the Health-Care Act.

The Committee also notes that the Government indicates that implementing legislation to the Act on Mandatory Health Monitoring of Workers Occupationally Exposed to Asbestos, including diagnostic procedures and criteria for establishing a list of occupational diseases caused by asbestos, has been drafted and is due to be published in the Official Gazette shortly. The Committee also notes, with interest, the measures taken to raise awareness concerning the Act on Compensating Workers Occupationally Exposed to Asbestos and to facilitate the filing and handling of claims for compensation through, inter alia, occupational medicine specialists and outreach activities to the trade unions and associations of persons suffering from asbestos-related diseases (ARDs) such as the “Asbestos beagles” from Vranjic and

“Victims of Asbestos” from Plöce. *The Committee notes that the Government now has enacted the legislative programme it undertook to carry out at the conclusion of the mission and that it has created the necessary legal basis for complying with the Convention. It urges, however, the Government to adopt all relevant implementing legislation, take all relevant action to ensure that the legislative measures taken are effectively implemented and to pursue its efforts to raise awareness among all workers occupationally exposed to asbestos regarding the possibilities to seek redress and to facilitate the procedures for those who wish to do so by filing claims for compensation. It requests the Government to submit copies of all relevant new legislation and to report on progress made in this respect.*

With respect to the question of *effective compensation of victims* and providing them with *old-age pension on more favourable conditions*, the Committee notes the detailed information regarding the work of the Commission for Settling Claims for Compensation by Workers Suffering from Occupational Diseases Due to Exposure to Asbestos, the body responsible for handling claims for compensation. It notes that, until November 2008, 26 claims for a total of 2,115,336 Croatian Kunas have been awarded. The Committee further notes the information that the Commission cooperates with national courts to identify the large number of workers suffering from ARDs that already have been awarded claims for compensation but who have been unable, wholly or partially, to collect damages from the employer for whom they worked when they were exposed to asbestos and that information is also sought from the relevant enterprises. The Committee also notes the information regarding the claims for old-age pension and that until November 2008, 79 out of 135 workers of Salonit Vranjic had met the requirements for obtaining old-age pension pursuant to the Act on Requirements for Obtaining an Old-Age Pension by Workers Occupationally Exposed to Asbestos and that 21 had actually started to receive this pension. It also notes the information that, out of the 468 former workers from Plobest, in Plöce, who had not yet received old-age pensions, only 40 workers had filed claims for old-age pensions pursuant to the Act and that 27 had been awarded a pension. *While noting that some progress has been made in the processing of claims and the award of old-age pensions, the Committee urges the Government to take all measures necessary to minimize the delays incurred for those entitled to compensation and to old-age pension, to ensure that all claims and requests are handled as expeditiously as possible and to report on progress made in this respect.*

At regards measures taken at the *institutional level* the Committee notes that, in addition to setting up the Commission for Settling Claims for Compensation by Workers Suffering from Occupational Diseases Due to Exposure to Asbestos, the legislative amendments in 2008 to the Occupational Health and Safety Act, the Occupational Health and Safety Insurance Act and the Health-Care Act referred to above, were enacted to create the basis for the setting up as of 1 January 2009 of the Croatian Institute for Health and Safety at Work to replace the Croatian Institute for Occupational Medicine. The Committee notes that this new institution will be staffed with 55 experts including occupational medicine specialists, psychologists, toxicologists and occupational health and safety specialists and will be responsible for preventive activities, statistical research, education and promotion of occupational health and safety, on the basis of a multidisciplinary approach. The Committee notes with interest that this new institution is intended to provide administrative and professional support not only in the normative area, but also towards building capacities for prevention, counselling and research and that it is to assist and cooperate with the tripartite National Council for Occupational Health and Safety to resolve various issues connected with the protection of health and safety at work. *The Committee welcomes these developments and requests the Government to provide further information on the actual activities of the new institution once it has become operational and to provide further details regarding the institutional cooperation between the National Council for Occupational Health and Safety and the Croatian Institute for Health and Safety at Work.*

As regards *measures taken to rehabilitate* the Salonit factory and adjacent areas, the Committee notes the adoption of a Waste Management Plan 2007–15, the Transport of Hazardous Substances Act, the Ordinance on the Methods and Procedures for the Management of Asbestos containing Waste and the Decision on Action to be Undertaken by the Fund for Environmental Protection and Energy Efficiency to implement emergency measures aimed at setting up a system for collecting and managing asbestos containing waste. It also notes the detailed information concerning the completion of the remediation of asbestos cement waste and of the facilities of the Salonit Vranjic factory and at the Mravinacka Kava landfill in September 2007 and, most recently, of the football field adjacent to the Salonit Vranjic factory. The Committee notes the requirements that all work related to remediation has been carried out under expert supervision by an authorized company. The Committee also notes that the recent decision enables the competent ministry to respond to the numerous inquiries regarding the manner and location for the disposal of asbestos containing waste and that it has published a list of the companies holding a waste management licence and that are authorized to collect, transport and dispose of waste that contains asbestos, giving effect to *Article 19 of the Convention*. *While welcoming these developments, it urges the Government to ensure that the new legislative measures adopted will be applied throughout the country and asks the Government to report on progress in this respect.*

With reference to the conclusions of the Conference Committee regarding the *fragmented approach taken to the general application of the Convention*, the Committee notes the information that a National Programme for Occupational Health and Safety is being prepared by the National Council for Occupational Health and Safety and is to be adopted before the end of 2008. It notes that, through this National Programme, the Government intends to define a national occupational health and safety policy, allocate funds for resolving certain OSH issues, and to provide for further implementing OSH regulations to the Occupational Health and Safety Act. The Committee notes that the proposed

National Programme will specify areas for targeted action and that action is to be governed by the following strategic principles: partnership and cooperation of all the stakeholders; the prevention of risks; sustainable development and reasonableness used to minimize risks. The basic goals of the Programme are to reduce the number of occupational accidents, the number of occupational diseases and work-related diseases and to prevent and reduce economic losses due to occupational accidents and diseases. The Committee welcomes this approach and hopes that, once it has become operational and effectively implemented, the National Programme will contribute to a more holistic approach to OSH in the country and constitute a framework for national OSH legislation, including the legislation relevant for the application of the present Convention. **The Committee asks the Government to report on progress made in this respect, and to pay particular attention to the need for coherent national action in the general application of the Convention.**

[The Government is asked to report in detail in 2010.]

Democratic Republic of the Congo

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)

Article 2, paragraphs 2–4 of the Convention. Prohibition against the sale, hire, transfer in any other manner and exhibition of unguarded machinery. The Committee notes the information provided by the Government according to which a draft law has been prepared concerning the guarding of machinery and other mechanical devices and prohibiting the sale, hire, transfer in any other manner and exhibition of machinery not provided with appropriate protection of their dangerous parts. It notes that this law is to be submitted for examination during the next session of the Labour Council. **The Committee asks the Government to ensure that the draft legislation gives effect to the Convention and requests it to transmit a copy thereof as soon as it has been adopted.**

Article 3. Exemptions to the obligation to provide guards. Article 4. Responsibility for ensuring compliance. With reference to its previous comments, the Committee notes that the Government's report does not provide an answer to the questions raised by the Committee. **The Committee urges the Government to provide information on measures taken or envisaged to give effect, in law and in practice, to Articles 3 and 4 of the Convention.**

Part V of the report form. Practical application of the Convention. **The Committee requests the Government yet again to provide a general appreciation of the manner in which the Convention is applied in the country, including, for instance, extracts from official reports, such as labour inspection reports, and information on any practical difficulties in the application of the Convention, the number and nature of work accidents reported, as well as any other information allowing the Committee to assess more accurately how the Convention is applied in practice in the country.**

[The Government is asked to reply in detail to the present comments in 2009.]

Djibouti

Radiation Protection Convention, 1960 (No. 115) (ratification: 1978)

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

The Committee notes with regret that, since 2000, the Government has submitted the same report which does not provide any new information in reply to its previous comments. The Committee understands, however, that a new Labour Code has recently been adopted (Act No. 133/AN/05 of 28 January 2006) and notes with interest that it contains provisions concerning occupational safety and health that constitute a general framework for the protection of workers against risks related to work. According to previously submitted information, the relevant legislation would also include Order No. 1010/SG/CG of 3 July 1968 concerning the protection of workers against ionizing radiation in hospitals and health-care institutions, or in Order No. 72/60/SG/CG of 12 January 1972 on occupational medicine. **With reference to article 125(a) of the newly adopted law providing for the adoption of implementing legislation to regulate measures for the protection of safety and health in all establishments and companies covered by the Labour Code, on a series of different issues including radiation protection, the Committee requests the Government to clarify whether the abovementioned Orders remain in force, and, as appropriate, to transmit to it copies of any revised or complementing legislation once it has been adopted.**

The Committee also notes the observations submitted by the General Union of Djibouti Workers (UGTD) on 23 August 2007 raising concerns regarding insufficient protection against ionizing radiation for employees at health-care centres. These observations were transmitted to the Government for comment on 21 September 2007, but no comments have been received to date.

Article 3, paragraph 1, of the Convention. Effective protection of workers against ionizing radiations. Article 6, paragraph 2. Maximum permissible doses. Article 9, paragraph 2. Instruction of the workers assigned to work under radiations. With reference to the foregoing and its previous comments, the Committee recalls that all appropriate steps shall be taken to ensure effective protection of workers against ionizing radiations and to review maximum permissible doses of ionizing radiations in the light of current knowledge. In this context, the Committee notes that the UGTD indicates that, in practice, industrial undertakings using procedures involving ionizing radiation do not seem to apply uniform rules for the protection of workers against exposure thereto and that the workers engaged in, for example, health-care centres, are not sufficiently informed of the dangers related to their activity and are not protected in an adequate way. The Committee again draws the Government's attention to the revised dose limits for exposure to ionizing radiation established on the basis of new physiological findings by the International Commission on Radiological Protection (ICRP) in its 1990 recommendations. **The Committee requests the Government to respond to the observations made by the UGTD and urges the Government to take all appropriate measures, in**

the very near future, and with due account taken of the 1990 recommendations of the ICRP, to give full effect, in law and in practice, to these provisions of the Convention.

Article 7, paragraphs 1(b) and 2. Exposure limits for young persons between 16 and 18 years of age. Prohibition against employing young persons under 16 in work involving exposure to radiation. In its previous comments, the Committee had noted that there were no provisions in relevant legislation prohibiting the employment of children under 16 years of age in radiation work and fixing maximum permissible doses for persons between 16 and 18 who are directly engaged in radiation work, as called for by these provisions of the Convention. **The Committee urges the Government to take all appropriate measures to ensure the application of these provisions of the Convention in the near future.**

Occupational exposure during an emergency. With reference to its previous comments, the Committee again draws the Government's attention to paragraphs 16 and 17 of its 1992 general observation under this Convention which concern occupational exposure during and after an emergency. **The Government is requested to indicate whether, in emergency situations, exceptions are permitted to the normally tolerated dose limits for exposure to ionizing radiation and, if so, to indicate the exceptional levels of exposure allowed in these circumstances and to specify the manner in which these circumstances are defined.**

With reference to the advances that hopefully will be made through the Decent Work Programme 2008–12, including, inter alia, further cooperation with the social partners, the Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1978)

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

The Committee notes with regret that, since 2000, the Government has submitted the same report, which does not provide any new information in reply to its previous comments. The Committee understands, however, that a new Labour Code has recently been adopted (Act No. 133/AN/05 of 28 January 2006) and notes with interest that it contains provisions concerning occupational safety and health that constitute a general framework for the protection of workers against risks related to work. **The Committee nevertheless requests the Government to provide additional information concerning the following points.**

Articles 10, 13, 14, 15, 16 and 18 of the Convention. With reference to the comments that it has formulated for several years, the Committee notes that article 125(a) of the Labour Code provides for the adoption of implementing legislation to regulate measures for the protection of safety and health in all establishments and companies covered by the Labour Code, in particular, with regard to lighting, ventilation or aeration, drinking water, sanitary facilities, evacuation of dust and fumes, precautions to be taken against fire, installation of emergency exits, radiation, noise and vibrations. **The Committee trusts that the Government will adopt the abovementioned legislation in the very near future and that it will give full effect to Articles 10, 13, 14, 15, 16 and 18 of the Convention. The Committee requests the Government to provide a copy of this legislation as soon as it has been adopted.**

With reference to the advances that hopefully will be made through the Decent Work Programme 2008–12, including, inter alia, further cooperation with the social partners, the Committee hopes that the Government will make every effort to take the necessary action in the very near future.

France

Guadeloupe

Radiation Protection Convention, 1960 (No. 115)

New relevant legislation. Article 14 of the Convention. Provision of alternative employment and application in practice. The Committee notes the Government's reply to its previous comments that the legislation applicable in the area of radiation protection is the same for metropolitan France and Guadeloupe. **With reference to its observation and direct request addressed to metropolitan France in 2005, the Committee requests the Government to: (a) send copies of any relevant new legislative texts once they have been adopted; (b) consider taking measures to ensure that the income of the workers concerned is maintained through social security benefits or any other method, when the continued assignments of such workers to work involving exposure to radiation is inadvisable for medical reasons; and (c) supply information regarding the application of the Convention in practice.**

Ghana

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1965)

The Committee notes with regret that the Government's reports received in 2006, 2007 and 2008 do not contain any new information nor any reply to its previous comments.

Articles 1 and 17 of the Convention. Scope of application. The Committee reminds the Government that, for more than 30 years, the Committee has drawn the Government's attention to the need to extend the legislation giving effect to the Convention to agriculture, forestry, road and rail transport and shipping. In its 1986 report, the Government indicated that it was due to submit the Committee's observations to the tripartite National Advisory Committee on Labour so that it could examine them and take the necessary steps to give full effect to the provisions of the Convention. The Committee

trusts that, in the context of the revision of the labour legislation launched with the adoption of the Labour Code in 2003, the Government will focus on the need to revise the legislation in the field of occupational safety and health, especially in order to give effect to the Convention. ***The Committee urges the Government to take the necessary steps in the very near future to ensure the guarding of machinery in all sectors of economic activity, particularly agriculture, forestry, road and rail transport and shipping, and invites the Government to request assistance from the ILO in due course in order to ensure the effective application of the provisions of the Convention.***

[The Government is asked to report in detail in 2009.]

Guinea

Radiation Protection Convention, 1960 (No. 115) (ratification: 1966)

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

The Committee notes that the Government indicates, in its last report, that a draft Order respecting air pollution, noise and vibration, cesspools, drinking water and protection against radiations had been prepared, but was subsequently separated into several draft Orders to make them more easily applicable. These draft Orders should have been adopted some time ago. However, the Advisory Commission on Labour and Social Legislation, as a tripartite commission, is composed of various members with very different concerns and sometimes constraints at the national level, which prevented it from completing its usual session. Furthermore, the Government states that the State of Guinea has priorities, even with regard to the adoption of laws and regulations. The Committee states that the Government has been expressing the intention for many years of adopting regulations to protect workers against ionizing radiations, without however in practice taking the necessary measures to this effect. It notes with regret that the Government's attitude disregards the urgency of taking the necessary legislative action for the adoption of regulations respecting protection against ionizing radiations. In this respect, the Committee recalls that this Convention was ratified by Guinea in 1966 and that since then the Committee has had to comment on various points concerning the application of the Convention. The Committee recalls that, when the Government takes the sovereign decision to ratify a Convention, it undertakes to adopt all the necessary measures to give effect to the provisions of the Convention in question. The Committee also considers that, while the Government may cite the existence of other matters which must take priority in the adoption of laws and regulations, it would be appropriate after the number of years that have elapsed for it to take the necessary measures to ensure that the draft Orders relating to the application of the provisions of this Convention are adopted as soon as possible. ***The Committee therefore once again hopes that the Government will soon be in a position to report on the adoption of provisions covering all activities involving the exposure of workers to ionizing radiations in the course of their work and in conformity with the dose limits referred to in its general observation of 1992, in the light of current knowledge, such as that contained in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) and in the Basic Safety Standards for Protection Against Ionising Radiation and for the Safety of Radiation Sources of 1994.***

Articles 2, 3, paragraph 1, 6 and 7 of the Convention. In its previous comment, the Committee noted the Government's statement that the current dose limits correspond to an equivalent of an annual dose of 50 mSv for persons exposed to ionizing radiations. The Committee had recalled the maximum dose limits for ionizing radiations established in the 1990 Recommendations of the International Commission on Radiological Protection and in the 1994 Basic International Safety Standards for Radiation Protection. For workers directly engaged in work exposed to radiation, this limit is 20 mSv per year averaged over five years (100 mSv over five years), and the actual dose must not exceed 50 mSv in any year. The Committee also draws attention to the dose limits envisaged for apprentices aged from 16 to 18 years, set out in Annex II, paragraph II-6, of the 1994 Basic International Safety Standards for Radiation Protection. ***The Committee once again hopes that the maximum doses and quantities to be included in the Government's draft Order will be in conformity with the maximum permitted doses and quantities, and that the Government does indeed envisage adopting the above draft Order.***

Situations of occupational exposure in emergencies and provision of alternative employment. ***The Committee once again requests the Government to indicate the measures which have been taken or are envisaged in relation to the points raised in paragraph 35(c) and (d) of the conclusions of its 1992 general observation under this Convention.***

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

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1966)

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

Article 11 of the Convention. The Committee notes the Government's reply to its previous comments indicating that it has taken due note that section 170 of the Labour Code seems to permit employers to authorize or to order workers to remove safety devices, contrary to *Article 11* of the Convention. It also notes the Government's statement that such authorization is only based on prior measures taken by the employer to avoid all exposure to occupational risks, and that in any event it is the responsibility of the employer to promote best safety conditions at workplaces periodically visited by the labour inspectorate. ***The Committee would nonetheless request the Government to consider including in the draft Labour Code implementing regulations that are in preparation, a specific provision prohibiting such authorization or order to remove safety devices, as required by this Article of the Convention.***

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

Benzene Convention, 1971 (No. 136) (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters previously raised in a direct request, which read as follows:

The Committee notes that the Government does not presently intend to amend Order No. 2265/MT of 9 April 1982, but envisages formulating, in consultation with the social partners, technical guidelines on harmful, hazardous and carcinogenic products, particularly benzene. The Committee also notes that the guidelines envisaged will be made available to all users. *It hopes that the guidelines will be formulated and adopted without delay and requests the Government to provide information on any progress made in this matter.*

Article 4, paragraph 2, of the Convention. The Committee notes the Government's information on processes which use methods of work that are as safe as those carried out in an enclosed system. It notes in particular that the increase in labour and health inspections in enterprises and the involvement of Workers' Committees for Health, Safety and Working Conditions (CHSCT) ensure that the processes are carried out under the safest possible conditions. *The Committee requests the Government to provide an indication of the frequency of the inspections carried out in enterprises that use benzene. It also requests the Government to provide copies of the statistics collected during inspections, to enable the Committee to assess the extent to which this provision of the Convention is applied in practice.*

Article 6, paragraphs 2 and 3. With regard to the concentration of benzene vapour in the air of workplaces, the Committee notes that a draft Order concerning data files on the safety of chemical substances establishes a level not exceeding 10 ppm or 32 mg/m³ over an eight-hour time-weighted average. The Committee accordingly concludes that the ceiling established in the draft Order is lower than the one established in the Convention when it was adopted in 1971. It nevertheless wishes to point out to the Government that the threshold limit value recommended by the American Conference of Government Industrial Hygienists (ACGIH) is 0.5 ppm over an eight-hour time-weighted average. *It therefore invites the Government to take measures to bring the ceiling value established by the draft Order into line with the value recommended by the ACGIH. The Committee also requests the Government to specify the guidelines issued by the competent authority on the procedure for determining the concentration of benzene in places of employment. It also requests the Government to provide a copy of the abovementioned Order as soon as it is adopted.*

Article 8, paragraph 2. With regard to limiting the duration of exposure of workers who, for special reasons, may be exposed to concentrations of benzene in the air of places of employment which exceed the maximum established, the Committee notes that, according to the Government, a study is under way on this matter. *It requests the Government to provide information on any progress made in this regard.*

The Committee also requests the Government to provide relevant extracts of the inspection reports and the statistics available on the number of employees covered by the legislation as well as the number and nature of violations reported, as requested under Part IV of the report form.

In its previous comments, the Committee noted the Government's statement that a draft Order on occupational cancer giving full effect to the provisions of the Convention had been formulated with ILO technical assistance. *The Committee requests the Government to indicate whether this Order is still under consideration for enactment.*

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

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1982)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters previously raised in a direct request, which read as follows:

Article 1, paragraph 1, of the Convention. The Committee notes that the draft conditions of service of the public service, which is being discussed within the Government, should contain the necessary measures to give full effect to the provisions of this Article of the Convention through their application in practice in all branches of economic activity. *The Committee requests the Government to keep the International Labour Office informed of developments relating to these conditions of service and to provide a copy of them when they have been adopted.*

Articles 4, 8 and 10. The Committee notes the information concerning a draft Order, prepared by the Government, which was due to be examined by the Advisory Committee on Labour and Social Legislation. This draft text would cover cesspits, drinking water, noise, vibration, air pollution, etc. *The Committee requests the Government to indicate whether this text is issued under section 171(1) of the Labour Code.* It reminds the Government that, under the terms of *Article 4*, the provisions adopted must prescribe the specific measures to be taken both for the prevention of occupational hazards due to air pollution, noise and vibration, and to control and protect workers against these hazards. The Committee also reminds the Government that, under the terms of *Article 8* of the Convention, the above draft text should provide for the establishment of criteria for determining the hazards of exposure to air pollution, noise and vibration and should specify exposure limits. The Committee notes that the Government's report does not indicate whether the above draft text provides, as required by *Article 10*, for the provision of personal protective equipment where the measures taken to eliminate hazards do not bring air pollution, noise and vibration within the limits specified by the competent authority. *The Committee requests the Government to keep the Office informed of the adoption of this draft text, to provide a copy when it has been adopted and to inform it of any other specific measures taken for the application of the provisions of Articles 4, 8 and 10 of the Convention.*

Article 9. *The Committee requests the Government to indicate the technical measures and supplementary work organizational measures intended to eliminate the above hazards.*

Article 14. The Committee notes that the National Occupational Medicine Service is equipped with a laboratory which is inadequately provided with appropriate instruments for its needs, but that the Government plans within a relatively short period to provide the above Service with modern and appropriate equipment. *It requests the Government to keep the Office informed of*

the progress made in equipping the National Occupational Medicine Service and to inform it of any other measures taken to promote such research.

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

Kazakhstan

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1996)

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

Article 11, paragraph 4, of the Convention. No adverse effect on the social security rights of workers. With reference to its previous comments and the observations by the Air Crew Trade Union of Alma Ata submitted in 1998, the Committee notes the general information provided by the Government concerning the provisions in the Civil Code on obligations arising as a result of injury, and the Act concerning compulsory civil liability insurance for employers from harm to the life and health of workers and that this information does not address the specific situation of the 80 members of staff of the Kazakhstan civil aviation that allegedly suffered occupational illness and became disabled as a result of excessive exposure to noise and vibration in their work. *With reference to the observations made by the Air Crew Trade Union of Alma Ata, submitted already some time ago, and its previous comments, the Committee urges the Government to take any appropriate action and to provide full particulars regarding the rights of the workers involved under social security or social insurance legislation that may have been adversely affected in this regard.*

The Committee is addressing a request on other matters directly to the Government.

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

Kyrgyzstan

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1992)

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

Article 5, paragraph 3, of the Convention. The Committee asks the Government to provide a copy of collective and other agreements containing mutual obligations designed to ensure safe and healthy working conditions.

Article 6, paragraph 2. The Committee asks the Government to provide information on the general procedures prescribed for the collaboration of employers where two or more of them undertake activities simultaneously at one workplace. It also asks the Government to provide a copy of the Standards and Regulations for Health and Safety in Construction Work (No. III-4-80) and of the Order of the Ministry of Industry and Energy governing work done jointly by several enterprises at the same workplace in coalmining.

Article 12. The Committee asks the Government to provide a copy of the Regulations on state medical supervision referred to in its report.

Article 14. The Committee asks the Government to describe the measures taken to promote research, in accordance with this Article.

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

Paraguay

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1967)

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

Article 6, paragraph 1, and Part IV of the report form. Appropriate measures taken by the inspection service and the application of the Convention in practice. The Committee notes that the Government provides virtually no new information in response to its previous comment. *The Committee must therefore reiterate its request to the Government to provide information in its next report on the manner in which effect is given in practice to the provision of the Convention including information on the employed persons covered by the relevant legislation and the number and nature of the infringements reported, as well as extracts from inspection reports to enable the Committee to assess the effectiveness of the supervision carried out.*

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

Senegal

White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1960)

Article 7 of the Convention. Statistical information. With reference to its previous comments, the Committee notes the information contained in the Government's brief report to the effect that statistics on cases of morbidity and mortality due to lead poisoning among working painters are not available at the Social Security Office, the body responsible for dealing with occupational diseases. The Government indicates that this situation is due, firstly, to the fact that occupational diseases are not declared by the employers or workers concerned and, secondly, to the lack of studies in this very complex sector of activity, in which workers do not make the connection between their work and the disease, which, if necessary, may be declared several years after they have stopped working. However, the Government refers to just one case of work-related asthma developed by a working painter as a result of his employment recorded by the Social Security Office. The Committee would like to remind the Government once again that it has been asking it to supply statistical information since 1981. ***The Committee requests the Government to take all appropriate steps to develop a system for the collection of statistical information enabling, among other things, the identification of cases of morbidity and mortality due to lead poisoning among working painters in order to give full effect to Article 7 of the Convention.***

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1966)

With reference to its previous comments, the Committee notes with *satisfaction* the information contained in the Government's report that the legislative process commenced several years ago in the field of occupational safety and health has resulted in the adoption of Decree No. 2006-1261 of 15 November 2006 establishing general safety and health measures in establishments of all natures and Decree No. 2006-1252 of 15 November 2006 determining the minimum requirements for the prevention of certain physical ambient factors, giving effect to *Articles 14 and 18 of the Convention*. It further notes the adoption of 11 other Decrees in relation to occupational safety and health, namely: Decree No. 2006-1251 of 15 November 2006 respecting workplace installations; Decree No. 2006-1249 of 15 November 2006 determining minimum safety and health requirements for temporary or mobile worksites; Decree No. 2006-1250 of 15 November 2006 respecting the movement of vehicles and equipment within enterprises; Decree No. 2006-1253 of 15 November 2006 establishing a medical labour inspectorate and determining its responsibilities; Decree No. 2006-1254 of 15 November 2006 respecting the manual transport of loads; Decree No. 2006-1255 of 15 November 2006 respecting the legal means of intervention of labour inspectors in the field of occupational safety and health; Decree No. 2006-1256 of 15 November 2006 determining the obligations of employers in relation to occupational safety; Decree No. 2006-1257 of 15 November 2006 determining the minimum requirements for protection against chemical hazards; Decree No. 2006-1258 of 15 November 2006 determining the duties and rules for the organization and operation of occupational medicine services; Decree No. 2006-1259 of 15 November 2006 respecting occupational safety warnings; and Decree No. 2006-1260 of 15 November 2006 respecting ventilation and sanitation measures at the workplace. The Committee notes that these legislative texts give further effect to the provisions of the Convention.

Part IV of the report form. Application in practice. ***The Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied in the country, including for example extracts from the reports of the inspection services, with particular reference to the number of workers covered by the legislation, information on the number and nature of the contraventions reported and the action taken on them, etc.***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 13** (Afghanistan, Cambodia, Iraq); **Convention No. 45** (Kyrgyzstan); **Convention No. 62** (Democratic Republic of the Congo); **Convention No. 115** (Iraq, Kyrgyzstan); **Convention No. 120** (Iraq, Kyrgyzstan); **Convention No. 136** (Iraq); **Convention No. 148** (Costa Rica, Kazakhstan); **Convention No. 155** (Algeria, Antigua and Barbuda, Belize, Bosnia and Herzegovina, Central African Republic, Seychelles, The former Yugoslav Republic of Macedonia, Turkey); **Convention No. 161** (Turkey); **Convention No. 162** (Japan, Uganda); **Convention No. 167** (Iraq, Slovakia); **Convention No. 170** (Burkina Faso).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 119** (San Marino).

Social security

General observation

In Chapter II of its General Report where the Committee highlights the “Application of ILO social security standards in the context of the global financial crisis”, it notes that social security systems are set to pass through the worst financial and possibly economic crisis since the systems were first created. Many national indicators are giving the convergent message that the impact of the crisis may be severe, global in its scope and pose a real threat to the financial viability and sustainable development of social security systems, undermining the application of all ILO social security standards. The Committee recalls that to enable member States to discharge their general responsibility for the financial viability of social security, Article 71(3) of Convention No. 102, Article 25 of Convention No. 121, Article 35(1) of Convention No. 128 and Article 30(1) of Convention No. 130, place each State under the obligation to “take all measures required for this purpose”. The Committee trusts that the measures adopted or envisaged by governments will be commensurate with the gravity of the financial situation and the primary responsibility of the State to ensure the viability and sustainable development of social security.

An effective response to the global financial crisis requires a dynamic mix of urgent and far-sighted measures, the effectiveness of which depends on governments being able to agree on concerted action at all levels. Looking together into the synergies, mix and sequencing of the various policy measures should be the essence of convergent multilateral action to tackle the crisis. At the 303rd Session of the Governing Body in November 2008, its Officers invited ILO constituents to inform the Director-General of actions they may take in response to the crisis. In this connection the Committee wishes to emphasize that the ILO system of regular reporting and supervision of the application of standards could serve as an additional channel of first-hand information on the legal and regulatory measures taken by member States to combat the crisis. With a view to helping the ILO bodies to forge a concerted response to the crisis, the Committee invites the governments of all States, which have ratified one or more Conventions concerning social security, to furnish, under Part V of the report form which requests a general appreciation of the difficulties encountered in the application of the Conventions in practice, detailed information on the impact of the current financial and economic crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population.

In view of the gravity of the situation, the Committee would be grateful if the governments concerned would communicate the requested information by 1 September 2009 together with the reports on ratified Conventions.

Algeria

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1962)

The Committee notes that the new schedules of occupational diseases are established by the Interministerial Order of 5 May 1996 fixing the list of diseases presumed to be of occupational origin (*Official Journal* No. 16 of 23 March 1997). The Government states in this connection that the 84 schedules set forth in the abovementioned Order were so drafted as to be consistent with Convention No. 42 and after consultation of the Occupational Diseases Commission. It adds that the Committee's comments will be brought to the attention of this commission with a view to the updating of the schedule.

While taking due note of this information, the Committee can but observe that despite the comments it has been making for many years, the Government did not seize the opportunity offered by the adoption of the abovementioned Order of 1996 to bring its legislation fully into line with the Convention. *It nevertheless hopes that the Occupational Diseases Commission will be in a position to consider the matter promptly and that the Government will indicate in its next report the measures that have been taken to amend the schedules to take account of the points below:*

- (i) *the lists of the various pathological manifestations related to toxic substances enumerated by the Convention (appearing in the left-hand column of the various schedules) must be of an indicative nature;*
- (ii) *the wording of the items pertaining to poisoning by arsenic (schedules Nos 20 and 21), manifestations caused by the halogen derivatives of hydrocarbons of the aliphatic series (schedules nos 3, 11, 12, 26 and 27), and poisoning by phosphorous and certain of its compounds (schedules Nos 5 and 34) must, pursuant to the Convention, which is worded in general terms on these points, cover all the manifestations that may be caused by the above substances;*
- (iii) *the list of activities in which there is a risk of exposure to anthrax infection (schedule No. 18) must include the “loading, unloading or transport of merchandise” in general.*

[The Government is asked to reply in detail to the present comments in 2010.]

Angola

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1976)

The Committee notes from the Government's report that the observations made in 2007 by the National Union of Angolan Workers (UNTA), identifying a number of shortcomings in national law and practice with respect to the Convention, are currently being considered by the ILO National Tripartite Commission which will shortly issue an opinion. *The Committee hopes that, in its next report, the Government will supply detailed information with respect to the above comments as well as on the manner in which the new industrial accidents scheme established by Decree No. 53/05 of 15 August 2005 concerning industrial accidents and occupational diseases and Act No. 7/04 of 15 October 2004 concerning basic social protection, give effect to each of the provisions of the Convention.*

[The Government is asked to reply in detail to the present comments in 2010.]

Antigua and Barbuda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1983)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

For many years the Committee has been drawing the Government's attention to the fact that the national legislation (Workmen's Compensation Ordinance, No. 24 of 1956, as amended) on compensation for occupational accidents does not give full effect to a number of provisions of the Convention. In its last report, the Government indicates that actions are being taken to ensure that the necessary amendments to national legislation are made. *The Committee hopes that, in its next report, the Government will indicate the measures that have been taken in order to ensure the conformity of national legislation and practice with the following provisions of the Convention.*

Article 5 of the Convention. Compensation in the form of a lump sum. Section 8 of the Workmen's Compensation Ordinance, No. 24 of 1956, should be amended so as to ensure that the compensation due in the event of accidents causing permanent incapacity shall be paid in the form of periodical payments, provided that it may be paid wholly or partially in a lump sum, if the competent authority is satisfied that it will be properly utilized.

Article 7. Additional compensation where the assistance of a third person is needed. This provision of the Convention provides for additional compensation for victims of injuries who need the assistance of a third person both in cases of temporary and permanent incapacity. Section 9 of the above Ordinance should therefore be amended so as to also grant additional compensation in the event of permanent incapacity.

Article 9. Medical and pharmaceutical treatment. According to section 6(3) of the above Ordinance, the employer is responsible for paying the "expenses and reasonable cost" of medical treatment undergone by a worker as a result of an occupational accident up to a prescribed amount, whereas the Convention does not prescribe any limits in such cases. Furthermore, the legislation does not appear to make express provision for surgical and pharmaceutical costs, contrary to this Article of the Convention.

Article 10. Provision of surgical appliances and artificial limbs in general. Section 10 of the abovementioned Ordinance provides for the supply of artificial limbs only when the injured person is likely to improve his/her earning capacity. The Committee recalls that this provision of the Convention requires surgical appliances and artificial limbs to be supplied in all cases in which they are recognized as necessary, and not only with a view to improving the earning capacity.

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

Australia

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1959)

Western Australia. The Committee notes with *satisfaction* that Schedule 3 to the Workers' Compensation and Injury Management Act 1981 has been amended to recognize the occupational nature of anthrax infection in relation with trades and occupations involving the loading, unloading or transport of merchandise in the same terms as the schedule attached to the Convention.

Queensland. The Committee observes once again that, contrary to the Convention, the legislation of Queensland does not recognize the presumption of occupational origin of the diseases listed by the Convention for workers engaged in the corresponding occupations or industries. It notes that, in its last report, the Government indicates that all workers are, however, considered for compensation under the Workers' Compensation and Rehabilitation Act 2003, including the diseases listed in the schedule, where work is a significant contributing factor. While it takes due note of this information, the Committee wishes to stress that, based on scientific evidence, the presumption of occupational origin of the diseases listed by the Convention aims precisely to eliminate the need for workers employed in the corresponding trades and occupations to prove the occupational origin of these diseases. *The Committee therefore urges the Government to re-examine the question and to take the necessary measures to bring the legislation into conformity with the Convention*

by adopting a list of diseases and corresponding trades covering at least those enumerated in the schedule to the Convention, so as to provide for the presumption of their occupational origin.

Australian Capital Territory. In its previous comments, the Committee noted that, according to the Government's report, the Workmen's Compensation Act of 1951 has been amended to include in the list of occupational diseases all the trades, industries or processes likely to cause anthrax infection and requested to receive a copy of the new table of occupational diseases as modified. It observes however that, by virtue of Schedule 1 to the Workers Compensation Regulation 2002 establishing the list of diseases related to employment, the occupational origin of anthrax infection is presumed only where employment is related to animals infected with anthrax; animal carcasses or parts of such carcasses; wool, hair, bristles or skins; or loading, unloading or transport of animals, animal carcasses or parts of such carcasses, or wool, hair, bristles or skins. The Committee is bound to recall in this respect that the Convention recognizes the occupational origin of anthrax infection whenever it affects workers involved in loading and unloading or transport of merchandise in general and not only in the trades listed in the above schedule listing the diseases related to employment, so as to protect workers who have to handle merchandise of such a varied nature that it would be difficult, if not impossible, to prove that the merchandise handled has been in contact with infected animals or parts of animals. ***The Committee therefore invites the Government to re-examine the question and to supply in its next report further information on the reasons to limit the presumption of occupational origin to the above listed trades and occupations as well as on the means available to workers involved in loading, unloading or transport of merchandise in general to establish, if necessary, the occupational origin of anthrax infection.***

South Australia. In its previous comments, the Committee noted that the second schedule of the Workers' Rehabilitation and Compensation Act, 1986, does not include the loading, unloading or handling of merchandise among the activities liable to cause anthrax infection. The Government indicates in its last report that there has been no change in this regard; disabilities, including anthrax infection, are compensable where, on the balance of probabilities, they have arisen out of, or in the course of, employment, including through the loading, unloading or transport of merchandise. ***The Committee takes due note of this information and invites the Government to refer to its remarks relating to Australian Capital Territory above.***

The Committee notes from the detailed information provided in the report on the application of the Convention in the Commonwealth, New South Wales, Victoria, Queensland, South Australia, Western Australia, Australian Capital Territory and Northern Territory jurisdictions, that questions related to workmen's compensation are regulated according to different approaches and in an uneven manner in different parts of the country; some applying the Convention fully while others only partially, as shown by the examples mentioned above. ***The Committee asks the Government to review the situation in order to ensure that the Convention is fully applied throughout the country, thereby also ensuring equal treatment of all workers protected by the Convention.***

[The Government is asked to reply in detail to the present comments in 2010.]

Bahamas

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) ***(ratification: 1976)***

With reference to its previous comments, the Committee notes with *satisfaction* the new section 55A of the National Insurance (Benefit and Assistance) Regulations, inserted by the amendment of 1998, which provides for an additional amount equal to 20 per cent of the disablement benefit to be paid to persons with disablement assessed at 100 per cent and requiring constant care and attendance, thus ensuring better application of *Article 7 of the Convention*.

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

Barbados

Equality of Treatment (Social Security) Convention, 1962 (No. 118) ***(ratification: 1974)***

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

With reference to its previous observations, the Committee recalls that section 49 (in conjunction with section 48) of the National Insurance and Social Security (Benefits) Regulations of 1967 and section 25 of the Employment Injury (Benefits) Regulations of 1970 deprive a beneficiary residing abroad of the right to ask for the benefit to be paid directly to him at his place of residence, which is contrary to the provisions of *Article 5 of the Convention*. In its previous report of 2002, the Government stated that approval has been given for direct payment of the benefits in the country where the claimant is currently residing, that corresponding amendments of the National Insurance and Social Security Act were approved by the Government to bring it in accordance with *Article 5* of the Convention, and that the procedural steps were taken to submit these amendments to Parliament for enactment. In its latest report, received in June 2005, the Government indicates that a draft bill has been prepared for benefits to be paid to persons residing abroad and that a copy of the new provisions will be forwarded to the ILO as soon as they are adopted by Parliament. In addition, the report provides detailed statistics on the number and nationality of the beneficiaries to whom benefits are transferred abroad under the CARICOM Agreement on Social Security 1996 and the bilateral agreements with

Canada and the United Kingdom. It also contains comments of the Congress of Trade Unions and Staff Associations of Barbados, which sees no reason why the Government of Barbados should not apply this Convention, particularly in view of the fact that Barbados is also bound by the CARICOM Agreement on Social Security 1996, which provides for equality of treatment for residents.

The Committee notes this information. It recalls that, in granting equality of treatment for residents of the contracting parties under their social security legislation, the CARICOM Agreement ensures protection and maintenance of the rights of beneficiaries “notwithstanding changes of residence among their respective territories – principles which underlie several of the Conventions of the International Labour Organization”. The Committee wishes to recall in this respect that, in accordance with the principle of the maintenance of rights through the provision of benefits abroad, as established by Convention No. 118, Barbados shall guarantee direct payment of the benefits to all entitled beneficiaries at their place of residence, irrespective of the country in which they reside and even in the absence of a bilateral or multilateral agreement to that effect. ***It therefore trusts that the Government will make every effort to ensure that the bill is adopted in the very near future so as to ensure direct payment at their place of residence abroad of old-age, survivors’ and employment injury benefits, both to its own nationals and to nationals of any other Member that has accepted the obligations of the Convention in respect of these branches. The Committee hopes that the Government’s next report will contain a copy of the new provisions together with detailed statistics on the transfer of benefits abroad to beneficiaries, including Barbadian nationals, who are not covered by the CARICOM Agreement or bilateral agreements with Canada and the United Kingdom.***

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

Bolivia

Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1977)

The Committee notes that the Government’s report has not been received. It recalls that the ILO Subregional Office for Andean Countries had carried out a diagnosis of the Bolivian social security system in the framework of the Decent Work Country Programme for 2007–10, which was subsequently submitted to tripartite consultations. ***The Committee asks the Government to supply a detailed report for examination at its next session as well as to provide information on the progress achieved as regards the overall reform of the social security system.***

Burkina Faso

Workmen’s Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1960)

Schedule of occupational diseases. Anthrax infection. In its previous comments, the Committee drew the Government’s attention to the need to amend item 13 of the schedule of occupational diseases with a view to replacing the reference to anthrax fever with a reference to anthrax infection, as the former is only a symptom of the latter. In its last report, the Government indicates that the definition of occupational diseases has been extended under the effects of section 53 of Article No. 015-2006 AN of 11 May 2006 establishing the social security scheme applicable to employed persons and similar workers. Under this provision, a disease that is not included in the schedule of occupational diseases may henceforth also be presumed to be of occupational origin if it is established that it is essentially and directly caused by the usual work of the victim and that it has resulted in the latter’s death or permanent incapacity. Furthermore, the Government indicates that Decree No. 96-355/PRES/PM/MS/METSS of 11 October 1996 issuing the schedule of occupational diseases (a copy of which was attached to the report) will be amended in the near future so as to take into account the amendments made by the Act of 2006 and the comments of the Committee of Experts. ***The Committee takes due note of this information and requests the Government to provide copies with its next report of the amendments made to item No. 13 of the Decree of 1996 with a view to the explicit inclusion of anthrax infection as an occupational disease where it affects workers engaged in the activities specified by the Convention.*** The Committee considers that the extension of the concept of occupational disease so as to cover certain pathologies that are not included in the schedules of occupational diseases, although it affords better protection to workers by establishing a mechanism for the additional recognition of diseases that are new or still unknown taking into account the present state of scientific knowledge, does not in itself suffice to give full effect to the Convention. The objective of the latter is to dispense protected workers from the need to provide proof of the causal link between their disease and its occupational origin when the disease is among those enumerated in the schedule attached to *Article 2 of the Convention*.

Poisoning by lead and mercury. The Committee notes that schedules 1 and 31 attached to the Decree of 1996 referred to above continue to enumerate in a limitative manner certain pathological manifestations due to infections caused by lead or mercury or their compounds. In this respect, it wishes once again to recall that the Convention refers in general terms to all poisoning by lead and mercury, their alloys, amalgams and compounds and their sequelae. ***The Committee therefore invites the Government to take the opportunity of the forthcoming revision of the Decree of 1996 establishing the schedule of occupational diseases to bring schedules 1 and 31 fully into conformity with the Convention (for example, by ensuring that the diseases currently listed are included only by way of illustration).***

Cape Verde

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1987)

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

With reference to its previous comments, the Committee notes the information contained in the Government's report received in October 2005 and the communication of the Cape Verde Confederation of Free Trade Unions (CCSL) forwarded by the Office to the Government in November 2004. In this communication, the CCSL indicates important changes made in the social security system for dependent workers by the adoption of Legislative Decree No. 5/2004 of 16 February 2004, which was promulgated by the Government without prior consultation with the social partners. The Committee notes that the revision of the social security system undertaken by the Government seems to have no impact on Legislative Decree No. 84/78 of 22 September 1978 establishing the compulsory insurance scheme for industrial accidents which has since been the subject of comments by the Committee.

Branch (g) (benefits for industrial accidents and occupational disease). Articles 3 and 4 of the Convention. In its previous comments, the Committee requested the Government to amend explicitly section 3(3) of Legislative Decree No. 84/78 of 22 September 1978 establishing the system of compulsory insurance against industrial accidents, which subjects equality of treatment of foreign workers working in Cape Verde to a condition of reciprocity, whereas *Articles 3 and 4* of the Convention provide for an automatic system of reciprocity for States that have ratified the instrument. In reply, the Government promises that these amendments will be the subject of consultations with the social partners and be included in the current general revision process of labour legislation with the adoption of the new Labour Code.

The Committee notes this commitment by the Government and requests it to specify to what extent the amendment of Legislative Decree No. 84/78 concerns the general revision of labour legislation, given that the Labour Code currently in force does not cover matters pertaining to insurance against industrial accidents nor the social security of workers in general. As for the Government's intention to consult the social partners, the Committee notes from the social partners' comments included in the Government's report that the National Union of Cape Verde Workers (UNTC-CS) and the Cape Verde Confederation of Free Trade Unions (CCSL) support the revision of section 3(3) of Legislative Decree No. 84/78 which is in accordance with the provisions of the Convention. *The Committee requests the Government to indicate the employers' and workers' organizations which the Government intends to consult and in what time frame, given that it does not specify the employers' and workers' organizations to which it supplied copies of its report, in accordance with article 23, paragraph 2, of the ILO Constitution.* Finally, the Committee recalls that in 1999 the Government indicated that internal discussions had reached total consensus on the need to amend Legislative Decree No. 84/78, but that no amendment has been made. *The Committee is therefore bound to ask the Government once again to take the measures necessary, as soon as possible, to bring section 3(3) of Legislative Decree No. 84/78 into full conformity with the Convention.*

Article 5. In its previous comments, the Committee asked the Government to incorporate in Legislative Decree No. 84/78 of 22 September 1978 a specific provision providing the granting of benefits for employment injuries when the persons concerned are resident abroad in order to give full effect to *Article 5 (branch (g))* of the Convention. The Committee notes that according to section 7 of Legislative Decree No. 5/2004 of 16 February 2004, beneficiaries of compulsory social protection maintain their right to cash benefits when they transfer their residence abroad, subject to the provisions established by the law and the applicable international instruments. *Since the compulsory social protection system does not include benefits for employment injury, which are covered by separate regulations (sections 17 and 18(3) of Legislative Decree No. 5/2004), the Committee trusts that the Government will not fail to apply the same principle of maintaining rights in the event of residence abroad also in regard to the granting of benefits for employment injury in law as well as in practice.* With regard to the situation in law, the Committee considers that the application of article 11(4) of the Constitution of Cape Verde establishing the supremacy of international conventions over any national legislation requires that Legislative Decree No. 84/78 be brought specifically into conformity with *Article 5* of the Convention in order to avoid any ambiguity in legislation and its practical application. *Not having received from the Government the information requested on the internal regulations laying down procedures giving effect in practice to this constitutional principle in the light of Convention No. 118, the Committee also requests the Government to supply information showing the effective transfer by the National Social Security Institute or another relevant institute of the amounts of benefits for employment injury to beneficiaries residing abroad.*

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

Chile

Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35) (ratification: 1935)

Follow-up to the conclusions and recommendations of the committee set up to examine the representation made by Chilean unions of employees of pension fund administrators (AFPs), under article 24 of the Constitution. The Committee notes that the Government's report does not refer to measures taken in order to guarantee the observance of the main recommendations of the committee set up to examine the representation made by a number of Chilean unions of employees of AFPs, under article 24 of the Constitution, concerning non-observance by Chile of Convention No. 35, adopted by the Governing Body at its 277th Session in March 2000 (GB.277/17/5, March 2000). The following were the recommendations: (i) the pension system established by Decree Law No. 3.500 of 1980, as amended, should be administered by non-profit-making organizations; (ii) representatives of the insured should participate in the administration of the system under conditions determined by national law and practice; and (iii) employers should contribute to the resources of the insurance scheme. The Committee notes nevertheless that a special session of the Senate

has been convened in December 2008 in order to get a clear overview of the impact of the global financial and economic crisis on the private pension funds, which have sustained important financial losses. ***In this situation, the Committee trusts that the Government will supply in its next report detailed information on the measures taken to save the national pension system in the light of the recommendations of the Governing Body and in conformity with the provisions of the Convention.***

Follow-up to the conclusions and recommendations of the committee set up to examine the representation made by the College of Teachers of Chile AG under article 24 of the Constitution. The Committee notes that the Government's report contains no reply to its previous observation which concerned the recommendations of the committee set up to examine the representation made by the College of Teachers of Chile AG under article 24 of the Constitution for non-observance by Chile of Conventions Nos 35 and 37, adopted by the Governing Body of the ILO in March 2007 at its 298th Session (GB.298/15/6, March 2007). The following were the recommendations: (a) to take all the necessary measures to solve the problem of the social security arrears arising from non-payment of the further training allowance; (b) to continue and strengthen the supervision of the actual payment of the further training allowance by employers in arrears; and (c) to ensure the effective application of deterrent sanctions in the event of the non-payment of the further training allowance. The Committee expects the next report of the Government to contain full information on the effect given to these recommendations. The Government has also not responded to the communication of the College of Teachers of Chile AG received in July 2007 relating to the so-called "historic debt" of social security (*deuda historica*) generated as a result of the non-payment of the full wages in conformity with Decree Law No. 3.551 of 1981 to nearly 80,000 teachers. The teachers have been deprived of their rightful salary which has consequently affected their social security entitlements since 1981, causing a significant deterioration of their right to a fair pension. In this respect, the Committee notes from the public web site of the Chilean Parliament that a special committee was set up within the national Parliament in November 2008 with the participation of the College of Teachers of Chile AG and other interested parties in order to examine the situation of historical debts. The latter is due to submit its proposals to address the accumulated social security arrears in May 2009 and the Government is to communicate its reply within 60 days. ***The Committee asks the Government to indicate the results of these deliberations in its next report and to reply in detail on other issues raised by the College of Teachers of Chile AG.***

Please also respond to the observations made in January 2008 by the Circle of Retired Police Officers alleging the loss of acquired rights related to old-age pension (quinquenio penitenciario) by penitentiary staff.

In view of the accumulating grievances which do not find adequate response from the Government, the Committee once again urges the Government to re-examine all the issues involved, with the technical assistance of the Office, if need be, and to provide detailed information on the measures taken to redress the situation.

[The Government is asked to supply full particulars to the Conference at its 98th Session and to reply in detail to the present comments in 2009.]

Colombia

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) **(ratification: 1933)**

The Committee notes that the Government's report replying to its 2007 observation has been received. It also notes the comments made by the General Confederation of Labour (CGT) referring, inter alia, to certain practical difficulties concerning the compensation of industrial accidents affecting workers in the construction sector without labour contracts. Since the Government's response to these comments has not yet reached the Office, the Committee has decided to examine all the questions raised with respect to the application of Convention No. 17 at its next session. ***The Committee therefore asks the Government to supply all information relevant in this regard.***

[The Government is asked to reply in detail to the present comments in 2009.]

Democratic Republic of the Congo

Social Security (Minimum Standards) Convention, 1952 (No. 102) **(ratification: 1987)**

In reply to the previous comments made by the Committee for a number of years, the Government refers to the work of the Committee on Social Security Reform established by Ministerial Order No. 12/CAB-MIN/TPS/AR/KF/038/2002 of 23 February 2002, which is responsible for updating the draft Social Security Code and other legislative texts and also to give its opinions and considerations on any matter relating to social security. The Government promises to submit the draft Social Security Code to the ILO for examination before its adoption and to receive any observations concerning the harmonization of the national legislation with the provisions of the Convention. ***The Committee would be grateful if the Government would provide information on progress made in the adoption of the new Social Security Code.***

[The Government is asked to reply in detail to the present comments in 2010.]

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1967)

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

In reply to the Committee's previous comments, the Government had stated previously that it is not in a position to provide information that would enable the Committee to assess the application of *Articles 13, 14 and 18* (in relation with *Articles 19 and 20*), as well as *Articles 21, 23 and 24(2)* of the Convention, in view of the difficult political and economic situation experienced by the country. With regard to the draft text to add to the schedule of occupational diseases, in accordance with *Article 8* of the Convention, diseases caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series and diseases caused by benzene or its toxic homologues, the Government had undertaken to transmit the extended schedule of occupational diseases as soon as it has been adopted by the National Labour Council. *The Committee hopes that, despite the difficulties to which the Government is confronted, the extended schedule of occupational diseases will be adopted in the near future in order to give full effect to Article 8 of the Convention and that the Government will make every effort to provide information concerning the application of the other provisions of the Convention referred to above, as requested in its 1995 observation. The Committee would also be grateful if the Government would indicate any progress achieved in the formulation and adoption of the new Social Security Code.*

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

Djibouti

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1978)

Ever since the Convention was ratified in 1978, the Committee has been drawing the Government's attention to the need to amend section 29 of Decree No. 57-245 of 1957 on the compensation of occupational accidents and diseases in order to bring the national regulations into conformity with *Article 1, paragraph 2, of the Convention*. According to this provision, the nationals of States that have ratified the Convention and their dependants must receive the same treatment as Djibouti grants to its own nationals in respect of workers' compensation. Under the terms of this section of the Decree, unlike nationals, foreign workers injured in industrial accidents who transfer their residence abroad no longer receive a periodical payment but a lump-sum payment equal to three times the periodical payment they received previously. The Government previously referred to a draft reform of the labour legislation aimed at the full application of the principle of equal treatment and the formal repeal of the residence requirement laid down by the Decree of 1957. The Government also stated that this residence requirement has only been applied occasionally to foreigners. In its last report, the Government indicates that the Committee's observations will be studied by the National Council for Labour, Employment and Vocational Training with a view to bringing the national legislation into conformity with the Convention. It hopes that the conditions allowing for this process to resume will be met as soon as possible. Nevertheless, the Government points out that the Djiboutian system does not apply any reduction to the amount of the periodical payment transferred abroad. *The Committee trusts that, in view of the situation which prevails in practice, the Government will seize the opportunity represented by the reform of the system of social protection currently under way and will formally repeal section 29 of Decree No. 57-245 so as to bring both the letter and spirit of the national legislation into full conformity with Article 1, paragraph 2, of the Convention.*

[The Government is asked to reply in detail to the present comments in 2010.]

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1978)

The Committee notes that the system of social protection in force in Djibouti is currently undergoing major restructuring involving the amalgamation of various existing insurance funds. The aim is to rationalize the management thereof, while extending the scope of sickness insurance with a view to the gradual affiliation of the whole population, including persons working in the informal sector. To this end, Act No. 212/AN/07/5^c L establishing the National Social Security Fund (CNSS) provides that new complementary social instruments such as sickness insurance, funded supplementary pension plans and voluntary insurance will be instituted by means of regulations. The Committee also welcomes the recent formulation of the programme to promote decent work in Djibouti and the initiative to include a component on social protection. *The Committee encourages the Government to take all possible steps to complete the reforms under way and to keep it informed of the progress made with a view to establishing an operational sickness insurance system in the context of the principles guaranteed by the Convention. The Government is also invited to continue its efforts towards integrated management of the social security system providing protection for the greatest possible number of people, if necessary, with technical support from the Office.*

Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37) (ratification: 1978)

The Committee notes that the social protection system in Djibouti is undergoing major restructuring involving the merger of various insurance funds, each of which has its own invalidity branch in the interest of efficient management. *The Committee requests the Government to keep it informed of progress in implementing the abovementioned reform*

and to indicate in its next report the manner in which national law and practice give effect to the provisions of the Convention.

Finland

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1976)

The Committee notes with *satisfaction*, from the Government's reply to the Committee's comments of 2001 concerning the application of *Article 12 of the Convention, in conjunction with Article 32(e)*, that the provision allowing suspension or reduction of the disability pension in cases where the beneficiary caused their invalidity through gross negligence has been removed from the new pension legislation which entered into force in 2007.

The Committee would also like the Government to comment at its earliest convenience on the issues raised in the observations on the Government's report made by the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK) and the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA).

Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1974)

With reference to its previous observation where it asked the Government to adopt legislation so as to extend coverage for dental care to the whole of the adult population, the Committee notes with *satisfaction* from the Government's report that, since 1 December 2002, the entire population is covered by dental care under sickness insurance.

The Committee recalls that since the middle of 1990s the workers organizations of Finland – the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK) and the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA) – have been expressing their concern, in the light of *Articles 13, 17 and 30 of the Convention*, regarding the insufficient funding and staffing of the public health system, the lowering of the quality of the municipal health services, the reduction of the preventive health care and the consequent transfer of medical care to the more expensive private sector providers, accompanied by the reduction of the level of compensation and the increase of the patient's own share in the cost of the necessary medical care. In their new observations attached to the Government's latest report for the period ending 31 May 2007, these organizations maintain that: the resources of municipalities for preventive and basic health care are inadequate, the public health service suffers from a shortage of doctors and nursing staff, access to health care is unequal and there are substantial differences in the health conditions of different socio-economic groups. The Committee deals with the issues raised by the workers' organizations in a request addressed directly to the Government.

France

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1974)

The Committee notes the information provided by the Government in reply to its previous direct request, and the information contained in the 21st annual report on the application of the European Code of Social Security.

Governance and financing of social security in periods of crisis. According to the Government, the social security deficit has continued to decrease. The improvement of the financial situation of the social security system remains a priority, which has set as its objective a return to financial equilibrium for the general scheme by 2011. Its strategy is based on new measures to contain costs, more secure resources and greater control over exemptions and "*niches sociales*", the continued clarification of the financial relations between the State and the social security system and the reimbursement of earlier social security deficits by 2021. The Bill on finance and the financing of social security, which will be submitted to Parliament in the autumn of 2008, will include measures in that respect. In the meantime, several additional measures have been adopted in the context of the Act on social security financing for 2008, which introduced new sources of revenue, adapted various measures relating to exemptions from social contributions and abolished all measures granting total exemptions from contributions in relation to employment injury insurance.

The Committee trusts that the measures adopted or envisaged by the Government will be commensurate with both the gravity of the financial situation of the general social security scheme and the general responsibility of the State to ensure the viability and sustainable development of the system. It considers that the return to the annual equilibrium of social financing must constitute a priority for the public authorities. It nevertheless understands that the task of improving the financial situation of the social security system that is incumbent upon the Government is liable to become a greater burden in view of the current crisis in the global financial system, which may endanger social security funds. The Committee notes with concern that, according to the indications provided to the press in October 2008 by the directors of the Pension Reserve Fund in France, since the beginning of the year the Fund's global assets have lost 11 per cent of their

value, or 3.8 billion euros. In the current situation, the Committee believes it important to emphasize that, while it is true that the provisions of the Convention are not designed for the management of social security in a crisis situation, they nevertheless establish parameters compliance with which is intended to ensure the stability and sound governance of the system. A sound management policy in periods of crisis would therefore consist of bearing these parameters in mind to allow the progressive return of the system to its normal condition, even though emergency measures may temporarily introduce significant corrections into these parameters. The role of the Convention therefore takes on particular importance with a view to ensuring the concerted recovery for ratifying countries from the crisis by obliging them all to bring their social security systems back to the initial parameters.

The Committee also wishes to emphasize in this respect that during periods of crisis no member State can discharge its general responsibility under *Article 71, paragraph 3, of the Convention* for the maintenance of financial equilibrium and to safeguard the viability of the social security system without, at the same time, being committed to the obligation to achieve time-bound results. It is with the aim of achieving the desired result within the determined time limits that this provision of the Convention places each member State under the obligation to “take all measures required”, including emergency measures dictated by the crisis.

The Committee notes in this context that at the operational level, through the introduction since 1996 of the management of the social security system in the context of the annual Act on the Financing of Social Security, the French Government has progressively adopted one of the most significant arsenals of financial instruments and regulations in Europe. The experience acquired by the Government in the “tight” financial management of social security affords it comparative advantages to ensure wise governance in these perilous times for both the financial system and the social security system, by maintaining the latter within the parameters envisaged by the Convention. ***The Committee trusts that, despite the financial crisis, the Government will be in a position to specify in its next report, with reference to the relevant texts, the time-bound commitments and revised schedules that it has determined or intends to determine for:***

- (i) ***re-establishing the financial equilibrium of the social security system;***
- (ii) ***stopping the continued growth of the public debt in relation to social security.***
- (iii) ***paying off former debts contracted by the State;***
- (iv) ***envisaging sufficient budgetary allocations to cover the State’s future commitments to social security, particularly in relation to the compensation of exemptions or benefits provided on behalf of the State; and***
- (v) ***introducing governance rules to clarify the financial relations between the social security system and the State and to prevent debts from being renewed in the future.***

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

[The Government is asked to reply in detail to the present comments in 2009.]

St Pierre and Miquelon

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)

Ever since this Convention was declared applicable to St Pierre and Miquelon in 1974, the Committee has regularly drawn the Government’s attention to the need to bring the legislation applicable in this territory into full conformity with the Convention, particularly by including a list of occupational diseases therein, in conformity with *Article 2 of the Convention*. However, the schedules of occupational diseases provided for by Decree No. 57245 of 24 February 1957 on the compensation and prevention of industrial accidents and occupational diseases in overseas territories have never been adopted.

In a report sent in 2003, the Government indicated that the schedules of occupational diseases contained in the Social Security Code are applicable to St Pierre and Miquelon, while pointing out particular difficulties in the practical functioning of the system for the recognition of occupational diseases in this territory. According to the report, these difficulties are connected with medical practitioners’ ignorance of the procedure for the recognition of occupational diseases, and this has the effect of depriving victims of their fundamental right to compensation. There are also organizational deficiencies owing to the fact that there is no department for the prevention of occupational accidents and diseases, no laboratory dealing with occupational diseases and no regional committee for the recognition of occupational diseases. These deficiencies make it impossible to undertake the necessary investigations to establish the occupational origin of certain diseases.

Furthermore, in its 2008 report, the Government states that the Labour, Employment and Vocational Training Department of St Pierre and Miquelon is preparing an order, in close liaison with the consultant physician of the Social Security Fund and in conformity with Decree No. 57245, containing the schedules of occupational diseases contained in the Social Security Code. Another possible approach would be to abolish the Decree of 1957 in future and replace it with a regulatory text extending the schedules of occupational diseases contained in the Social Security Code to the archipelago of St Pierre and Miquelon. This would have the advantage that future updates of the schedules would automatically apply.

While duly noting this information, the Committee cannot help noticing that the two reports sent by the Government contain divergent information as regards the legislative texts governing the recognition of occupational diseases in the territory of St Pierre and Miquelon. *The Committee would therefore be grateful if the Government would include all the necessary clarifications in its next report. Furthermore, while commending the work done to identify clearly since 2003 the dysfunctions affecting the system for the recognition of occupational diseases, the Committee remains concerned about the lack of information in the Government's last report concerning specific measures taken or contemplated in order to remedy the serious deficiencies in the system for the recognition of occupational diseases. It therefore invites the Government to supply detailed information in this regard in its next report and hopes that by then it will be in a position to report on tangible progress made in order to make the system for the recognition of occupational diseases operational.*

Guinea

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1967)

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

Article 5 of the Convention. The Committee recalls that the Government, in its earlier reports, indicated that the new Social Security Code, when adopted, would give full effect to *Article 5* of the Convention under which the provision of old-age benefits, survivors benefits and death grants, and employment injury pensions must be guaranteed in the case of residence abroad, irrespective of the country of residence and even in the absence of agreements with such country, both to nationals of Guinea and to nationals of any other State which has accepted the obligations of the Convention for the corresponding branch. However, in its last report, the Government indicates that the new Social Security Code does not entirely fulfil the requirements of the provisions of *Article 5* of the Convention, in that it does not provide for maintenance of payment of the various benefits in case of change of residence, and that this restriction is a constant feature of the legislation governing the field in the States in the subregion. However, the Government hopes that further negotiation of bilateral agreements with other States will make good this weakness in the Social Security Code.

In this connection, the Committee notes that under section 91, paragraphs 1 and 2, of the new Code, benefits are cancelled when the beneficiary definitively leaves the territory of the Republic of Guinea, or are suspended while she or he is not resident on national territory. It notes however that, under the last paragraph of that section, these provisions "are not applicable in the case of nationals of countries which have subscribed to the obligations of the international Conventions of the International Labour Office regarding social security ratified by the Republic of Guinea, or where there are reciprocal agreements or multilateral or bilateral social security agreements on the provision of benefits abroad". *Since, by virtue of this exception, the nationals of any State which has accepted the obligations of Convention No. 118 for the corresponding branch, may in principle now claim benefits in case of residence abroad, the Committee requests the Government to indicate whether this is in fact the case and, if so, whether a procedure for the transfer of benefits abroad has been established by the national social security fund, to meet the possible demands for such foreign transfer. In addition, the Committee requests the Government to state whether the exception provided in the last paragraph of section 91 is also applicable to Guinean nationals in the event of their transferring their residence abroad, in accordance with the principle of equal treatment established under Article 5 of the Convention as regards the payment of benefits abroad.*

Article 6. With reference to the comments it has been formulating for many years regarding the provision of family allowances in respect of children residing abroad, the Committee notes that, under section 94, paragraph 2, of the new Code, to obtain the right to family allowances, dependent children "must reside in the Republic of Guinea, subject to the special provisions of the international Conventions on social security of the International Labour Office, reciprocal agreements or bilateral or multilateral agreements". With respect to reciprocal agreements or bilateral or multilateral agreements, the Committee recalls that to date Guinea has concluded no agreement of this sort for the payment of family allowances in respect of children residing abroad. Regarding the special provisions of the ILO Conventions, it recalls that under *Article 6* of Convention No. 118 any State which has accepted the obligations of the Convention for *branch (i)* (family benefit) must guarantee payment of family allowances both to its own nationals and to the nationals of any other member which has accepted the obligations of this Convention for that branch, as well as for refugees and stateless persons, in respect of children who reside on the territory of any such State, under conditions and within limits to be agreed upon by the States concerned. In this connection, the Government states in its report that the payment of family benefits is guaranteed to families of whom the breadwinner has been regularly insured by the social security system, and is in order regarding the payment of his own contributions, and those of his successive employers. *The Committee therefore hopes that the Government will be able to confirm formally in its next report that the payment of family allowances will also be extended to cover insured persons up to date with their contributions, whether they are nationals, refugees, stateless persons or nationals of any other States which have accepted the obligations of the Convention for branch (i), whose children reside on the territory of one of these States and not in Guinea. The Committee would also like to know in these cases how the condition of residence is dispensed with for the application of section 99, paragraph 2, of the new Code, which only recognizes as dependent those children "that live with the insured person", and also for section 101, which makes payment of family allowances subject to an annual medical examination of the child, up to the age where she or he comes under the school medical service, and the regular medical care for beneficiaries of school age attending courses in educational or vocational training establishments.*

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

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1967)

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

Article 8 of the Convention. The Committee asks the Government to provide a copy of the list of occupational diseases revised in 1992, indicating whether it is now in force.

Article 15(1). In accordance with the provisions of section 111 of the Social Security Code, periodical payments for employment injury are converted into a lump sum when the permanent incapacity is at most equal to 10 per cent. The Committee recalls, however, that its comments concerned the possibility of converting the benefit granted in the event of employment injury in the circumstances provided for in sections 114 (conversion after expiry of a five-year period) and 115 of the Social Security Code (conversion into a lump sum of part of the periodical payment at the request of the person concerned). *The Committee again expresses the hope that the necessary measures will be taken to ensure that in all these cases periodical payments may be converted into a lump sum only in exceptional cases and with the consent of the victim where the competent authority has reason to believe that the lump sum will be utilized in a manner which is particularly advantageous for the injured person.*

Articles 19 and 20. In the absence of the statistical information requested which the Committee needs so that it can determine whether the amount of benefits paid in the event of temporary incapacity, permanent incapacity and death of the breadwinner, reaches the level prescribed by the Convention, the Committee once again asks the Government to indicate whether it avails itself of Article 19 or of Article 20 of the Convention in establishing that the percentages required by Schedule II of this instrument have been reached, and to provide the statistical information required by the report form adopted by the Governing Body under Article 19 or 20, depending on the Government's choice.

Article 21. In view of the importance it attaches to this provision of the Convention which establishes that the rates of employment injury benefits must be reviewed to take account of trends in the cost of living and the general level of earnings, the Committee hopes that the Government's next report will contain information on the amount of the increases already established and that it will not fail to provide all the statistics required by the report form under this Article of the Convention.

Article 22, paragraph 2. The Committee once again expresses the hope that the Government will be able to take the necessary measures to ensure that, in all cases where employment injury benefits are suspended and particularly in the cases provided for in sections 121 and 129 of the Social Security Code, part of these benefits will be paid to the dependants of the person concerned in accordance with the provisions of this Article of the Convention.

The Committee notes the Government's statement that the provisions of the Conditions of Service of the Public Service give public servants and their families full satisfaction as regards social coverage. *It once again asks the Government to provide the text of the provisions of the above Conditions of Service dealing with compensation for employment injury with its next report.*

Lastly, the Committee asks the Government in its future reports to provide information on any progress made in the revision of the Social Security Code, to which the Government referred previously.

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

Guinea-Bissau

Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1977)

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

In reply to the Committee's previous comments, the Government states in its last report that the National Social Insurance Institute, which has competence for workers' compensation for occupational accidents and diseases, is having difficulty in identifying occupational diseases. The situation therefore remains unchanged in that, having been unable to determine occupational diseases, the Ministry of Public Health has not been able to adopt a list of such diseases.

The Committee takes note of this information. It can only note once again with regret the lack of progress in amending the national legislation to include a list of occupational diseases. *In view of the importance of this matter, the Committee again expresses the hope that the Government will take all necessary steps in the very near future to ensure the adoption of a list of occupational diseases including at least those set out in the Schedule to Article 2 of the Convention.* The diseases in question can then be recognized as occupational where contracted in the conditions prescribed in the Schedule. The Committee reminds the Government that it may seek technical assistance from the Office.

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

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1977)

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

Article 1, paragraph 1, of the Convention. In its previous comments, the Committee drew the Government's attention to section 3(1) of Decree No. 4/80 of 1981, concerning compulsory insurance against industrial accidents and occupational diseases. It pointed out that the abovementioned provision is inconsistent with the Convention in that it lays down reciprocity as a requirement for equal treatment between foreign workers employed in Guinea-Bissau and Guinean workers. In response, the Government states that the matter is still receiving its attention but that, as yet, no text has been adopted regarding the reciprocity

required by section 3(1) of the abovementioned Decree. The Committee recalls in this connection that the Convention lays down a system of *automatic reciprocity* between member States which have ratified it. ***In these circumstances, it hopes that the Government will very shortly take all necessary steps to bring the abovementioned provision of its legislation into line with Article 1, paragraph 1, of the Convention by ensuring that all nationals of States which have ratified this Convention are automatically afforded the same treatment as nationals of Guinea-Bissau with regard to accident compensation.***

Article 1, paragraph 2. The Committee asks the Government to provide information on any compensation paid for injured persons or their dependants residing outside the country.

Article 2. In its previous comments the Committee noted that section 3(3) of Decree No. 4/80 which excludes from the scope of the Decree foreign workers temporarily employed in Guinea-Bissau by foreign undertakings or international bodies is not fully consistent with this provision of the Convention. *Article 2* of the Convention allows the exclusion of workers employed temporarily or intermittently in the territory of one Member on behalf of an undertaking located in the territory of another Member only under a special agreement concluded between the Members concerned. The Government indicated that, in practice, such workers have labour contracts under which they are protected by the legislation of their country of origin or the country of the undertaking or international body. The Government further stated that a bill had been drafted to regulate the conditions of foreign workers employed temporarily in Guinea-Bissau on behalf of a foreign undertaking. The Committee notes that the Government's last report provides no information on the bill – to which the Government has been referring since 1987. ***It asks the Government to keep it informed of progress made in ensuring better application of this provision of the Convention.***

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

Guyana

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1966)

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

The Committee recalls that it has been drawing the Government's attention since 1971 to the need to amend the list of occupational diseases attached to Regulation No. 34 of 1969, implementing Act No. 15 of 1969 on national insurance and social security. It notes with regret, from the information communicated by the Government in its last report, that this list has still not been amended but that the competent authorities have been requested to accelerate the review procedure of the relevant regulation. It further notes that the Government no longer refers to the legislative reform regarding occupational safety and health. ***The Committee trusts that the Government will be able to take the measures necessary as soon as possible to amend the list of occupational diseases to ensure full application of the Convention on the following points:***

- (a) Nos 1(x), (xi), (xii) and (xiv) on this list are to be replaced by a heading containing in general terms all halogen derivatives of hydrocarbons of the aliphatic series;*
- (b) No. 7, which refers to certain disorders due to radiation should include all pathological manifestations due to radium and other radioactive substances or X-rays and the list of processes likely to induce these should be completed;*
- (c) Nos 1(i) and (v) relating to poisoning by lead and its compounds and mercury and its compounds should include lead alloys and mercury amalgams respectively;*
- (d) No. 1(iii), which refers to poisoning by phosphorus and its compounds, should include the inorganic compounds of phosphorus;*
- (e) No. 2 should include, among the processes likely to induce anthrax infection, all loading and unloading or transport of merchandise of any kind;*
- (f) silicosis with or without pulmonary tuberculosis and the industries or processes involving the risk of this infection should also be added to the list.*

The Committee wishes to remind the Government that it may request technical assistance from the ILO in this domain.

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

Hungary

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1928)

Article 6 of the Convention. Participation of representatives of the insured persons in the management of insurance institutions. Referring to its previous comments, the Committee notes the information provided by the Government in its report as well as the comments on the application of the Convention put forward by the employees' representatives in the National ILO Council. The Committee recalls that the supervision and management of the National Health Insurance Fund was transferred to fall under the Government's competency by Act No. XXXIX of 1998 following a decision of the Constitutional Court. The Court concluded that, given the level of unionization, the employees' national representative organizations lack the democratic legitimacy required to be entrusted with representative functions of the insured. Subsequent to this ruling, the role of the social partners became limited to participation in the supervision of the health insurance fund within the tripartite Control Board of Health Insurance. In 2006, however, Act No. CXVI on the Supervision of Health replaced the above Control Board by the Health Insurance Supervisory Authority, the management of which is appointed by the Government. The social partners retained only the right to nominate two out of the seven

independent members of the Surveillance Council appointed by the Government in their individual capacity to assist the Health Insurance Supervisory Authority.

According to the employees' representatives in the National ILO Council, the Act No. CXVI of 2006 on the Supervision of Health Insurance is not in conformity with *Article 6* of the Convention in so far as it does not allow the participation of insured persons in the administration of the national health insurance institution. While the Health Insurance Supervisory Authority is assisted by the Surveillance Council, this body is not involved in the management, but in the control and monitoring of the health insurance institutions. There can be no reason to exclude national level social partners and the insured represented by them from the management of health insurance. All the parties concerned should therefore seek a method in line with Hungarian constitutional requirements which would allow the involvement of employers' and employees' organizations actually representing the insured in the management of the health insurance institutions, in compliance with the provisions of the Convention.

In its response, the Government states that the overall reorganization of the health insurance system has started with the submission of Bill T/4221 on the health insurance administration offices, which seeks to replace the National Health Insurance Fund (OEP) by funds that would give substantial decision rights to private investors, even though the State would still retain the majority participation. The Bill establishes the Tariff Committee and the Quota Committee which are responsible for submitting proposals regarding the modification of the content of the health insurance package and on the extent of the quota per person due. Each Committee will be composed of five members, three of which are appointed by the Government and two by the health insurance funds. To make recommendations to these Committees, the Government considers it essential to, after the adoption of the Bill, establish separate consultative bodies composed of persons delegated by all trade unions concerned. The Tariff and the Quota Committees might thus become major players in the field of health insurance, because they would have the right to make proposals affecting the operation of the health insurance system in consultation with the social partners.

While the reform of the national health insurance system is far from complete, the Committee observes that at present social partners have been moved away from the management of the insurance institutions and have no real role to play in representing the interests of the persons protected. No representation of the insured persons is foreseen in the management of the health insurance funds to be set up under Bill T/4221. The Committee warns that splitting the single National Health Insurance Fund administered by the public authority into a multitude of semi-privatized funds where private investors are given substantial decision rights, whereas the representatives of the insured are excluded from management, raises governance concerns for the health insurance system. In the current period of transformation of the national health insurance system, the Government states that it is unable to declare along which principles the new system will be elaborated and is now examining the roles that the employer and the employee sides could play in the operation of the new system. In this situation, the Committee would like to once again draw the Government's attention to those principles of the participatory management of sickness insurance, which were laid down in *Article 6* of the Convention as early as 1927 and upheld since in many subsequent international and European social security instruments. These principles require the Government to conserve its overall primary responsibility for the proper administration and functioning of the institutions and services involved, to assign and promote a strong role for the social partners, to guarantee an effective representation of the insured persons as well as to ensure close supervision of private investors. *In view of the importance of these principles for the good governance of social insurance, the Committee would like the Government to explain to what extent they are being followed in the current reform of the health insurance in Hungary.*

[The Government is asked to reply in detail to the present comments in 2009.]

Kenya

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1964)

The Committee notes the adoption of the Work Injury Benefits Act which replaced the Workmen's Compensation Act as of June 2008 and addresses certain issues previously raised as regards the manner in which the Convention is implemented in the country. The necessary regulations for the effective implementation of the new Act are yet to be developed and the social partners are being consulted on the matter. The Committee encourages the Government to rapidly adopt the necessary implementing regulations and to give favourable consideration to the following remarks.

Article 5 of the Convention. Payment of compensation in the form of periodical payments. In accordance with section 28 of the Work Injury Benefits Act (WIBA), an employee who suffers temporary total or partial disablement due to an accident that incapacitates the employee for three days or longer is entitled to receive a periodical payment. In case of permanent disablement, section 30 of the Act maintains the payment of a lump sum granted under the previous system, only increasing the amount of the compensation granted to 96 months' earnings as opposed to the 48 months granted under the previous system. While it welcomes this increase, the Committee wishes to recall that *Article 5* of the Convention guarantees that the compensation payable to the injured workers, or their dependants, where permanent incapacity or death results from the injury, needs to be paid in the form of periodical payments; it may only be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly utilized. *The Committee*

therefore once again invites the Government to seize the opportunity of the ongoing reform so as to provide for the payment of the compensation in a lump sum only for injured persons with a slight degree of incapacity or for whom the competent authority is satisfied that the lump sum will be properly utilized. Other victims of occupational accidents suffering permanent incapacity or their dependents in cases of fatal accidents need to be provided with periodical payments.

Articles 9 and 10. *Medical, surgical and pharmaceutical aid free of charge.* Section 47 of WIBA provides that an employer must defray any expenses reasonably incurred by an employee as the result of an accident arising out of, and in the course of, the employer's employment in respect of, inter alia, dental, medical, surgical and hospital treatment, the supply of medicine and surgical dressing, as well as the supply, maintenance, repair and replacement of artificial limbs, crutches and other appliances and apparatus. *The Committee asks the Government to indicate the manner in which this provision gives effect to the principle of free of charge medical, surgical and pharmaceutical aid to the victims of occupational accidents without any participation, even temporary, to the cost of such aid by the victims. Please also clarify how the term "reasonable expenses" incurred by victims of occupational accidents is defined and applied in practice given that the Convention guarantees injured workers the right to such medical aid as is recognized to be necessary in consequence of their accidents.*

Malaysia

Peninsular Malaysia

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) *(ratification: 1957)*

For many years, this Committee as well as the Conference Committee on the Application of Standards have been drawing the Government's attention to the fact that the national legislation and practice need to be brought in full compliance with the principle of equality of treatment between nationals and non-nationals with regard to compensation for industrial accidents, in conformity with *Article 1, paragraph 1, of the Convention*. In 1993, foreign workers were transferred from the Employees' Social Security Scheme (ESS) which provides for periodical payments to victims of industrial accidents and their dependants to the Workmen's Compensation Scheme (WCS), which only guarantees the payment of a lump sum. In 1997, the Conference Committee concluded that the level of benefits granted under the ESS was significantly higher than that guaranteed by the WCS and insisted that foreign workers benefit from the same protection as Malaysian nationals. An ILO high-level technical advisory mission visited the country in May 1998 to examine ways of giving effect to the conclusions of the Conference Committee. As a result, the Government stated in its 1998 report that it was planning to review the coverage of foreign workers under the ESS and to propose amendments to the Social Security Act of 1969 in this regard. Since then, however, no information was provided by the Government with regard to the intended amendments.

The Committee recalls that, while foreign nationals residing in Malaysia on a permanent basis are treated equally compared to national workers and covered by the ESS, those working in the country for a period of up to five years are covered only by the WCS. In its latest report, the Government stated that the policy to separate foreign and local workers should not be viewed as a form of discrimination against foreign nationals working in Malaysia. Foreign workers were transferred from the ESS to the WCS when it was found that the system had to operate under great administrative and operational problems due to the extreme practical difficulties to obtain accurate vital information about the beneficiaries residing abroad. The decision to place foreign workers under the WCS was motivated by the desire to protect such workers by a scheme that would best serve their interests. It was accompanied by an increase of the quantum of lump sum granted as well as, since 1996, by an extension of the insurance coverage also to accidents occurring outside working hours. A new extension of the WCS to foreign maids in order to provide them with greater protection was also currently being examined. The Government therefore considered that the assumption that the level of benefits under the WCS is substantially lower than that provided under the ESS should no longer be entertained. It indicated that an in-depth study on the proposal to cover foreign workers under the ESS Act of 1969 brought to light several impediments in implementing the proposal mainly related to administrative considerations such as the control and monitoring of long-term periodical payments. Malaysia's experience reveals, according to the Government, that equal treatment through placing local and foreign workers under the same scheme is not only impossible to implement but also unfavourable to foreign workers themselves.

The Committee takes due note of the Government's explanations that in separating national and foreign workers into different schemes offering differential treatment it has acted in the best interests of foreign workers in the situation where administrative difficulties precluded them from the provision of long-term periodical payments. The Committee however wishes to point out that the objective of the Convention consists precisely in helping ratifying States to deal with such kind of situations promoting solutions based on the principle of equality and not on discrimination. Depriving foreign workers of the right to equal treatment invoking their best interest would twist the meaning of the Convention to the extent that it does not make sense anymore and serves no useful purpose for other ratifying States. Although the Government affirms that the compensation payable under the WCS is not inferior to that paid under the ESS, it does not give any

actuarial data comparing the benefits granted under these two schemes, which would demonstrate that the lump sums paid under the WCS correspond in each particular case (temporary or permanent incapacity, invalidity or survivors' rights) to the actuarial equivalent of the periodical payments granted under the ESS. The Committee is therefore bound to observe that the current situation is not substantially different from the situation in 1997 when the national law and practice were found to be in breach of the principle of equal treatment guaranteed by the Convention. With respect to the difficulties mentioned by the Government concerning the payment of compensation abroad, the Committee wishes to stress that measures in this respect need to be taken by way of special arrangements between the Members concerned in line with the *second paragraph of Article 1* of the Convention. Such arrangements are even more important in cases where the main countries supplying workforce to Malaysia are also parties to the Convention: among the 1.9 million foreign workers currently employed in Malaysia, more than 1.5 million come from the following countries: Indonesia (1.17 million), followed by India, Myanmar, Bangladesh, the Philippines, Thailand, Pakistan and China. ***Taking into account the large number of foreign workers concerned and the high accident rate among them, the Committee considers that the situation calls for special efforts from the Government of Malaysia to overcome administrative and practical difficulties which impede equal treatment of foreign workers who suffer industrial accidents. The Committee therefore asks the Government to report the steps undertaken to bring national law and practice in conformity with the Convention and wishes to recall the possibility for the Government to avail itself of the technical assistance of the Office in this respect.***

[The Government is asked to reply in detail to the present comments in 2010.]

Sarawak

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1964)

Please refer to comments made under Peninsular Malaysia.

Mauritius

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1969)

For many years, the Committee has been noting that the Workmen's Compensation Act (Cap. 220), which covers certain categories of workers excluded from the application of the National Pensions Act, 1976, does not contain any provisions giving effect to *Article 5* (the principle of the payment of compensation in the form of periodical payments in the case of permanent incapacity or death), *Article 7* (additional compensation for workmen injured in such a way as to require the constant help of another person), *Article 9* (free entitlement to the necessary medical and surgical aid), *Article 10* (supply and renewal of artificial limbs and surgical appliances) and *Article 11* (guarantees against the insolvency of the employer or insurer) of the Convention.

In this respect, the Government indicated in its 1999 report that the merger was envisaged of the Workmen's Compensation Act and the National Pensions Act to ensure the full application of the Convention. The Committee notes that, according to the Government's latest report, the formulation of the Bill is almost completed and that it will be submitted to the National Assembly in the near future. ***The Committee hopes that the Government will take all the necessary measures to make the required legislative amendment as soon as possible with a view to ensuring that all workers covered by the Convention receive the compensation guaranteed by this instrument in the event of an employment accident.***

[The Government is asked to reply in detail to the present comments in 2010.]

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1969)

Article 1 of the Convention. Equal treatment. For many years, the Committee has been drawing the Government's attention to section 3 of the National Pensions (Non-Citizens and Absent Persons) Order, 1978, as amended by the National Pensions Act (NPA), under which foreign nationals may not be affiliated to the insurance scheme unless they have resided in Mauritius for a continuous period of not less than two years. Foreign workers who do not meet this residence condition are covered by the Workmen's Compensation Act (WCA) which does not ensure a level of protection equivalent to that guaranteed under the national pensions scheme in the event of employment injury. The Committee has been recalling in this respect that under the terms of *Article 1, paragraph 2*, of the Convention, the nationals of other member States that have ratified the Convention as well as their dependants should be guaranteed equality of treatment in respect of industrial accidents without any condition as to residence.

In its reports since 2001, the Government indicates that section 3 of the Order of 1978 has not yet been amended, but that the observations made by the Committee of Experts will be taken into account in the process of revision of the National Pensions Act and its implementing regulations. The Government indicates in its last report that the delay in finalizing the necessary amendments is due to the fact that the Ministry of Social Security, National Solidarity and Senior

Citizens Welfare & Reform Institutions has embarked on a wider examination of the NPA with a view to amend it holistically, taking into account other issues requiring review such as the need to merge the WCA into the NPA. All the major issues have now been cleared and the legislative amendment is nearing completion. The draft will therefore be introduced in the National Assembly shortly. *The Committee trusts that the Government will be able to report progress in the very near future.*

[The Government is asked to reply in detail to the present comments in 2010.]

Norway

Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) (ratification: 1990)

The Committee notes the information furnished by the Government in reply to its previous observation and, in particular, that concerning the application of *Article 26 of the Convention*.

Article 21 of the Convention. Suspension of benefit. In the Committee's previous observation, the Government has been urged to review the guidelines of the Directorate of Labour and Welfare (LWS) so as to ensure that unemployed persons are not sanctioned for refusing to accept unsuitable job offers at least during the initial period of 26 weeks provided for in *Article 19(2)(a)* of the Convention. The Government emphasizes that during the first three months of unemployment, the jobseeker has the primary responsibility of finding a job, and will therefore determine which jobs the jobseeker finds suitable. However, as time passes, the jobseeker must be ready to adjust expectations and expand the job search. On the basis of the jobseeker's curriculum vitae and the labour market, the job request will be evaluated every third month. This evaluation can result in an agreement between the jobseeker and the LWS to expand the job search. The Committee understands from these explanations that, in practice, the suitability of jobs searched for and offered is being assessed for every new period of three months with a view to expanding the acceptable types of jobs by relinquishing certain criteria of suitability. It understands also that under this arrangement special rules apply for the initial period of unemployment of three months when the decision on the suitability of available jobs is largely left at the discretion of the jobseeker himself. *The Committee invites the Government to consider how the existing practice of giving unemployed persons primary responsibility for a job search during the initial three months of unemployment and therefore a certain discretion in the selection of job offers could best be reflected in the guidelines of the Directorate of Labour and Welfare. Such consideration would assist the implementation of section G.4.1 of the guidelines, which forbids applicants for employment to make reservations as regards the type of occupation they will work in and requires them to accept work even in occupations for which they are not trained or in which they have no previous experience.*

As regards sanctions imposed on unemployed persons, the Government reports that in 2007 less than 200 jobseekers got their benefit stopped during the first three months of unemployment because of refusal to accept: offered work, work in another part of the country or part-time work. *The Committee would like the Government to verify that in all these cases the jobseekers concerned were not sanctioned for having refused to take up jobs that were not suitable to their acquired professional status.* It therefore invites the Government, if necessary, to follow the example of Denmark where, in order to assess the extent to which the unemployed persons refuse job offers due to the job not being "suitable", the National Directorate of Labour, which deals with complaints and supervision in relation to the Unemployment Insurance Act, had in 2005 manually examined all cases (352 files) of sanctions for refusal to take up a job offer. The Committee hopes that the results of this verification would help the Government to decide whether or not the guidelines of the Directorate of Labour and Welfare need to be changed in order to ensure that the discretionary power to sanction the behaviour of the unemployed persons in the current labour market situation is being applied with due respect for their acquired professional and social status.

In this connection the Committee further notes the assurances of the Government that the unemployed will normally not get offered jobs from the Labour and Welfare Service, unless it is a job that corresponds to his or her education and qualifications. The LWS will initially devote a lot of time, to identify the jobseekers' qualifications, working experience and job requests. The goal is to help the unemployed to get a suitable job. When considering whether the work is suitable, the LWS should – according to the Directorate of Labour and Welfare's guidelines, section A, article 4.18 – also consider:

- how long the jobseeker has been unemployed;
- the probability of getting a job which corresponds to his or her qualifications;
- whether the offered job can give valuable working experience; and
- whether the remuneration offered for the job involves an unreasonable reduction of income compared to what the person is receiving by way of unemployment benefits.

The Committee would like the Government to explain how this last criterion, which requires the jobseeker to consider job offers remunerated at the level below the unemployment benefit, could still be retained in the guidelines of the Directorate of Labour and Welfare after the abolition since 1 January 2006 of the legal provisions, which previously made it possible to compel unemployed persons to accept jobs offering less income than the unemployment benefit.

Panama

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1958)

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

The Committee noted previously that, according to the information provided by the Government in its last report, the necessary measures to bring the provisions of the national legislation fully into conformity with the Convention had not yet been adopted. The Government indicates in this respect that it has not been in a position to adopt the necessary amendments in view of the lack of consensus between the social partners concerning an amendment to the national legislation. The Committee recalls that for many years it has been drawing the Government's attention to the need to amend certain provisions of the Labour Code and the social security legislation in relation to compensation for employment injury. When ratifying the Convention in 1958, the Government made a commitment to adopt all the necessary measures to give effect to its provisions. ***In these circumstances, the Committee deplores the lack of progress achieved in bringing the national legislation into conformity with the Convention and is bound to draw the Government's attention once again to the following points.***

Article 5 of the Convention (in conjunction with Article 2, paragraph 1). Payment of compensation in the form of periodical payments without limit of time. In its previous comments, the Committee emphasized the need to amend sections 306 and 311 of the Labour Code in order to provide for the payment of compensation in the form of periodical payments without limit of time in the event of an occupational accident resulting in permanent incapacity or death. Indeed, workers who are not covered by the compulsory social security scheme are governed by the provisions of the Labour Code respecting compensation for employment injury, which in such cases only guarantee them the provision of benefit for a period of 12 months at the expense of the employer.

Under the terms of *Article 2, paragraph 1*, of the Convention, all workers, employees and apprentices employed by any enterprise, undertaking or establishment of whatsoever nature, whether public or private, have to be guaranteed the protection afforded by the Convention, with the second paragraph of this Article enumerating limitatively the exceptions authorized by the Convention. Accordingly, workers covered by the Convention but who are not covered by the social security scheme also have to benefit from the protection afforded by the Convention. The Committee notes from the statistical data provided by the Government that the number of workers paying contributions to the social security scheme was around 730,000 in 2005. However, the Government does not specify the total number of employees in the country, as it was requested to do, so that the Committee could compare the number of persons covered by the social security scheme with the *total number of workers*. ***The Committee therefore once again requests the Government to provide this information with its next report and trusts that the Government will be in a position to align sections 306 and 311 of the Labour Code with the relevant provisions of the social security legislation respecting compensation for employment injury so as to guarantee the protection afforded by the Convention for all workers to whom it is applicable.***

Article 7. Provision of additional compensation to workers suffering employment injury when their condition requires the constant help of another person. In its previous comments, the Committee emphasized that neither the Labour Code nor the social security legislation concerning compensation for employment injury (Decree No. 68 of 31 March 1970) provides for the granting of additional compensation to injured workers whose condition requires the constant help of another person. In its report, the Government refers to the adoption, during the period covered by the report, of Act No. 51 of 27 December 2005 reforming the Constituent Act of the Social Security Fund. However, this new text has not taken into account the Committee's comments with regard to the need to bring the national legislation into conformity with this provision of the Convention in view of the lack of consensus on the subject between the social partners and the economic difficulties faced by the country. ***While taking due note of this information, the Committee once again hopes that the Government will be able to re-examine this matter and take the necessary measures to give effect to this provision of the Convention, which is intended to guarantee the provision of additional compensation to injured workers whose condition requires the constant help of another person.***

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

Peru

Unemployment Provision Convention, 1934 (No. 44) (ratification: 1962)

The Committee notes that, despite the Government's indication in its previous report of its willingness to establish an unemployment insurance system in order to conform to the provisions of the Convention, no actual measures have been adopted in this regard. ***In view of the many years which have passed since the Convention was ratified by Peru, the Committee once again expresses the hope that the Government will pursue the initiative to establish an unemployment insurance system in the country. To this end, the Committee invites the Government to do everything possible to undertake the actuarial studies in the near future which are an essential prerequisite to the establishment of such a system.*** In this regard, the Committee recalls that, in order to give effect to the Convention, ratifying States must guarantee to involuntarily unemployed workers benefits or allowances paid under a scheme which may be a compulsory insurance scheme, a voluntary insurance scheme, a combination of a compulsory and voluntary insurance scheme, or any of these alternatives combined with a complementary assistance scheme (*Article 1 of the Convention*).

[The Government is asked to reply in detail to the present comments in 2010.]

Rwanda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1962)

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

Article 2 of the Convention. Coverage of apprentices and casual and temporary workers against the risk of employment injury. The Committee notes from the information provided by the Government that the purpose of Act No. 06/2003 of 22 March 2003 was to amend and supplement certain provisions of the Legislative Decree of 22 August 1974 organizing social security. Following this amendment, section 2 of the above Legislative Decree provides, as it did previously, for the need to determine by ministerial order the arrangements under which apprentices and casual and temporary workers may benefit from the social security scheme in relation, among other matters, to compensation for employment injury. This provision also now indicates that the above order shall be made following the proposals put forward in this respect by the Executive Board of the Social Fund (CACS). In this respect, the Government indicates that it has taken due note of the comments that the Committee has been making for several years requesting it to take the necessary measures to extend protection against employment injury to apprentices and casual and temporary workers, in accordance with *Article 2* of the Convention. It adds that it will make efforts to adopt the text concerned. *The Committee notes this information and would be grateful if the Government would indicate in its next report whether, since 2003, the CACS has undertaken studies or made firm proposals as a basis for the extension of the social security scheme to apprentices and casual workers, or whether such studies or proposals are planned. It expresses the firm hope that in its next report the Government will be in a position to indicate the tangible progress achieved in the extension of the national legislation respecting employment injury to the above categories of workers.*

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

Sao Tome and Principe

Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1982)

The Committee notes the information provided by the Government in reply to its previous observation. According to the report, the change of administration prevented the finalization of the adoption of the schedule of occupational diseases which should have supplemented Act No. 1/90 on social security. However, the Government indicates that its programme includes the reactivation of this process and the reopening of dialogue with UNDP with a view to the adoption of a schedule of occupational diseases recognized in the country. *Recalling that it has been examining the issue of the establishment of the schedule of occupational diseases for many years, the Committee hopes that the Government will spare no effort for the adoption of a schedule of occupational diseases recognized in the country as soon as possible, including at least those enumerated in the schedule attached to Article 2 of the Convention. It also draws the Government's attention to the possibility of having recourse to ILO technical assistance in this respect.* This is a fundamental protection which, in accordance with the Convention, has to be guaranteed to men and women workers in the country engaged in certain industries and occupations involving exposure to the risk of contracting certain diseases, which must therefore be duly recognized and compensated by reason of their occupational origin.

[The Government is asked to reply in detail to the present comments in 2010.]

Sierra Leone

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1961)

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

Article 5 of the Convention. In its report, the Government indicates, in reply to the comments made for many years by the Committee, that a bill on Workmen's Compensation has been formulated but not adopted as yet. It further states that the abovementioned draft legislation reflects the provisions of the Convention concerning the payment of injury benefits throughout the period of contingency and that copy of the revised legislation will be communicated to the ILO as soon as it is adopted. The Committee notes this information as well as the Government's request for technical assistance from the Office in order to accelerate the implementation process of the revised legislation. *The Committee expresses the hope that the draft legislation will soon be adopted and requests the Government to provide a copy of it. On the basis of the new legislation, the ILO would certainly be able to discuss with the Government the terms of the requested technical assistance.*

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

Suriname

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1976)

In reply to the Committee's previous observation, the Government states that no changes have occurred in legislation and practice affecting the application of the Convention and that some of its principles are still not fully applied due, in particular, to the absence of a national social security scheme. The Ministry of Labour took the initiative once again to present to the relevant stockholders the importance of an institutionalized national social security scheme and hopes that there will be progress on this matter in the coming years. The comments of the Committee will be taken into consideration during the revision of the labour legislation of Suriname, including the Industrial Accidents Act.

The Committee recalls that benefits under branch (g) (employment injury), for which Suriname has accepted the obligations of this Convention, are not provided abroad and only granted to nationals and non-nationals subject to the condition of residence in Suriname contrary to *Articles 4 and 5 of the Convention*. **The Committee, therefore, once again hopes that, in revising the national labour legislation, the Government would also take care to amend section 6(8) of Decree No. 145 of 1947, so as to give full effect to the abovementioned provisions of the Convention.**

Uganda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1963)

The Committee notes the information provided by the Government reporting the adoption in 2000 of new legislation respecting workers' compensation. In this respect, it notes with satisfaction that, following the many comments that it has made for many years, the Government has taken the opportunity to adopt the above Act in order to bring the national legislation into conformity with certain principles set out in *Article 5 of the Convention*. This is one of the essential provisions of the Convention which establishes that the compensation payable in the event of employment injury resulting in permanent incapacity or death shall, in principle, be paid in the form of periodical payments and may only be paid in the form of a lump sum when guarantees are provided to the competent authorities of its proper utilization. This provision is intended to protect victims of employment injury or their dependants against the improper use of funds intended to compensate the permanent loss of income resulting from an employment accident.

The Committee accordingly notes that, under section 3(8) of the Workers' Compensation Act of 2000 (Chapter 225), compensation in cases of permanent incapacity or death shall, in accordance with the provisions of the Convention, be paid in the form of periodical payments. In cases of total or partial permanent incapacity, any compensation due shall be paid by the employer to the district labour officer, who then pays such sums to the beneficiaries concerned (section 26). In practice, nevertheless, according to the Government's report, payments are still in the form of a lump sum, except in the case of minors, who receive periodical payments. The Government adds that the Commissioner for Labour decides whether the compensation is to be paid wholly or partially, but no guarantees of the proper utilization of the compensation are usually required.

While welcoming the amendment of the national legislation establishing the principle of compensation due in the event of an employment accident resulting in death or permanent incapacity paid in the form of periodical payments, the Committee invites the Government to take the necessary measures (for example, through circulars addressed to the commissioners for labour in the various districts) to ensure compliance with this principle in practice and to provide information in this respect in its next report. The Committee also observes that, contrary to the provisions of the Convention, sections 5 and 6 of the Act of 2000 limit the amount of compensation to a sum equal to 60 months' earnings or to a percentage of this sum corresponding to the recognized percentage of loss of capacity. In this respect, it is bound to hope that the Government will make every effort to take the necessary measures in the near future to give effect in law and practice to Article 5 of the Convention, which provides in the case of both permanent incapacity and death for the payment of benefits in the form of periodical payments without limit of time.

United Kingdom

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1954)

The Committee notes the Government's reply to its previous comments, which refers to the information provided in the 40th annual report on the application by the United Kingdom of the European Code of Social Security.

Part III (Sickness benefit) of the Convention. The Committee notes the detailed information concerning the inclusion of the Child Tax Credit into the calculation of the replacement rate of the short-term benefits provided by the Government in reply to its previous conclusion. It also notes that the Government's next report will include full details on the implementation of the new Employment and Support Allowance which is to be introduced from 27 October 2008.

Part IV (Unemployment benefit). The Committee recalls that the system of social protection against unemployment in the United Kingdom comprises various social security benefits including contribution-based and income-based Jobseekers' Allowances (JSA), working tax credits, which make low-paid jobs more attractive for the unemployed, and a wide range of means tested social assistance benefits, which offer protection against poverty. ***The Committee would like the Government to show in its next report, on the basis of updated statistics, that the number of persons protected by the benefits included in the system attains the coverage required by Articles 5 and 21 of the Convention. Please indicate the amounts of these benefits which would be payable in the case of unemployment to a person having received the reference wage of an ordinary adult male labourer, determined under Article 66 of the Convention. The Committee would also be grateful to receive updated information for the same time period on the total number of unemployed persons in the country, the percentage of unemployed persons receiving the contribution-based JSA alone and the income-based JSA alone, as well as the average duration spent on these benefits before returning to work.***

Part V (Old-age benefit), Article 28(a) (level of benefit). In its previous comments, the Committee noted that the rate of retirement pension for a standard beneficiary in 2006, represented 32.06 per cent of the reference wage, which is far below the minimum replacement level of 40 per cent prescribed by the Convention. In view of the ongoing pension reform in the United Kingdom, the Government was asked to indicate the part of the replacement income in retirement which, in the forecasted time frame, would be provided by the Basic State Pension (BSP) and the Second State Pension (SSP), as well as the part which would be supplied from the savings in the personal account. In reply, the Government indicated that for the median earner gaining £24,440 in 2007/08 earning terms and reaching state pension age in 2055, total weekly retirement outcomes in the year of retirement would represent £223 and ensure the replacement level of 47.5 per cent. Of this total, BSP (£82) and SSP (£69) in 2055 will ensure the replacement level of only 32.16 per cent, the same as in 2006, which will remain below the level prescribed by the Convention. The Committee understands, therefore, that to reach the projected replacement level of 47.5 per cent, the Government is counting on the private savings accrued within personal accounts, which are expected to generate a private pension (£72) providing about one-third of total retirement income. ***The Committee wishes the Government to provide an actuarial forecast under the best possible scenario showing by which year private pensions of at least 50 per cent of all employees in the country would be such as to ensure, together with BSP and SSP, the total retirement income of these employees, which will attain the 40 per cent replacement level guaranteed by the Convention. Please also indicate whether the current financial crisis has made it necessary to introduce corrections in the ongoing pension reform as regards the sustainability of the state pension system and the expected growth of private pensions.***

Part X (Survivors' benefit), Article 63, paragraph 1(a) and paragraph 2(a), (Level of benefit). To receive 100 per cent basic rate Widowed Parent's Allowance (WPA), the late husband must have had qualifying years for about 90 per cent of the years in his working life. If the number of qualifying years is less than the number needed for a 100 per cent basic rate, the allowance is reduced accordingly; no allowance is payable if the number of qualifying years is less than a quarter of the number needed. The report states that, if 25 qualifying years yielded 100 per cent, the 15 qualifying years would equate to 69 per cent and five qualifying years would equate to nil. This explanation raises doubts that the above rule for calculating the qualifying period of the deceased husband for his wife's entitlement to the WPA would ensure the level of protection of the widow guaranteed by the Convention. While the condition of having 90 per cent of the years in the breadwinner's working life counted as qualifying years might be more favourable in case there were no, or very few, gaps in the breadwinner's working career, the situation would be reversed for widows whose late husband's working career has been considerably shorter than his working life. Thus, having 15 qualifying years out of 20 years of working life will result in 25 per cent reduction in the WPA, bringing it below the level required by the Convention, and having only five qualifying years, which should give entitlement to a widow's reduced benefit under *Article 63(2)(a)* of the Convention, will result in no benefit at all. ***The Committee would like the Government to show in its next report, on the basis of the updated calculations, that in all cases covered by the Convention, the protection offered to a standard beneficiary by the WPA and other relevant benefits will not be less than the minimum replacement level of 40 per cent fixed by the Convention.***

Anguilla

Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

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

In its earlier comments, the Committee had drawn attention to Ordinance No. 21 of 1955 on compensation for occupational injuries, which does not give full effect to certain provisions of the Convention. Thus, on the one hand, section 2(1)(a) of the Ordinance excludes from its scope manual workers whose earnings exceed a certain limit, contrary to *Article 2(2)(d)* of the Convention which only authorizes this type of exclusion for non-manual workers and, on the other hand, section 8(a), (b) and (c) of the same Ordinance provides that, in the event of death or permanent incapacity, compensation shall be paid to the victim in the form of a lump sum, while *Article 5* of the Convention guarantees compensation for the victim or his dependants in the form of periodical payments. Such compensation may however be wholly or partially paid in a lump sum if the competent authority is satisfied that it will be properly utilized.

In its report, the Government indicates that the draft legislation placing compensation for occupational injuries under the social security scheme has still not been implemented. However, sickness and survivors' benefits are granted to victims of

occupational accidents or their dependants under social security legislation without taking the occupational origin of the incident into account.

While noting this information, the Committee recalls that in its 1991 observation it drew the Government's attention to the fact that the right to sickness, disablement and survivors' benefits granted under the social security legislation (Social Security (Benefits) Regulations, 1981) is conditional upon a minimum qualifying period, which is contrary to the Convention. *Given these circumstances, the Committee hopes the Government will take all the measures necessary to ensure full application of Articles 2 and 5 of the Convention, either by establishing an employment industry benefit scheme under the social security scheme in conformity with the Convention, or by amending section 2(1)(a) and section 8(a), (b) and (c) of Ordinance No. 21 of 1955 on compensation for occupational accidents in the light of the above comments. The Committee trusts that the Government's next report will indicate progress achieved in this connection.*

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

Bermuda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

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

Article 5 of the Convention. Compensation in the form of periodical payments. Since 1994, the Government indicates in its reports that a complete revision of the Workmen's Compensation Act, 1965 (WCA), is projected in order to address the points covered by *Article 5* of the Convention. In its last report, the Government points out that the revision of the above Act is still under consideration and that it has been referred for review to a subcommittee of the Labour Advisory Council, an advisory group consisting of labour stakeholders.

While it takes due note of this information, the Committee recalls that the non-conformity of national legislation with the requirements of *Article 5* of the Convention has repeatedly been emphasized since 1978. *The Committee therefore hopes that, in the very near future, the Government will amend the WCA so as to give effect to this provision of the Convention by virtue of which the compensation payable to the injured workman, or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments provided that it may be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly used. The Committee requests the Government to indicate in its next report any progress achieved in this respect.*

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

Uruguay

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1973)

Article 21 of the Convention (review of the rates of long-term cash benefits). In its previous comments, the Committee recalled the need for the Government to provide the statistics requested in the report form in relation to the review of long-term benefits so that it could assess whether the rates of cash benefits are reviewed following changes in the general level of earnings where these result from substantial changes in the cost of living. *In view of the fact that the Government has once again failed to provide the requested information, the Committee is bound to hope that the Government will make every effort to include in its next report the requested statistics, as well as information on increases in the rate of benefits provided in the event of permanent incapacity or death. The Committee further requests the Government to provide information on the observations made by the Inter-Union Assembly of Workers–National Convention of Workers (PIT–CNT).*

[The Government is asked to reply in detail to the present comments in 2009.]

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1973)

Article 29 of the Convention. Review of periodical benefits currently payable. With reference to its previous comments, the Committee notes the information concerning increases of pension benefits in relation to the general level of earnings and the cost-of-living index corresponding to the 2001–05 period. It notes in particular that during that period the cost-of-living index was 61.71 per cent, while the index of earnings and the revised amount of cash benefits were 35.69 per cent and 26.89 per cent, respectively. *The Committee therefore hopes that the Government will adopt the necessary measures to revise the amount of cash benefits, at least up to the level of the index of earnings. It requests the Government to supply in its next report the statistical information required under article 29 of the report form. The Committee further requests the Government to provide information on the observations made by the Inter-Union Assembly of Workers–National Convention of Workers (PIT–CNT).*

The Committee is raising a number of other matters in a direct request to the Government.

[The Government is asked to reply in detail to the present comments in 2009.]

Bolivarian Republic of Venezuela

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1982)

The Committee notes the information provided by the Government in its report, including the statistical data on the population protected by the Venezuelan Social Security Institute (IVSS).

In its previous comments, the Committee noted the adoption of the new Organic Act on the Social Security System, and also of the laws regulating the pensions and health subsystems, which came into force on 30 December 2002 and 31 December 2001 respectively. It noted that section 1 of the new Organic Act states that the purpose of the Act is to institute the social security system, establish and regulate its mandate, organization, functioning and financing, the management of its benefit systems and the manner in which the right to social security is given effect to in respect of persons subject to its scope of application, as a non-profit public service. The Government indicates in its report that the laws adopted by the previous administration never came into force, since they were repeatedly deferred by the National Assembly. The Government reports, however, on the adoption in 2004 and 2005 of laws on health, working conditions and the work environment, which are at an initial stage of implementation. The Government indicates that, during the transition period from the old to the new system, some of the previous laws and their respective regulations remained in force, and are currently applied to cover the various contingencies of the social security system. Once the new system is fully operational, the Government will refer to the observations, and particularly as regards the articles to the non-observance which, has been highlighted by the Committee. **The Committee therefore requests the Government to specify the laws which are currently in force and indicate to what extent the new legislation enables effect to be given to each of the provisions of the Convention, supplying for this purpose the information, including statistics, requested in the report form in respect of Parts II and VIII of the Convention. It also requests the Government to provide the regulations giving effect to the new legislation.**

The Committee hopes that the next report will also contain information on the measures adopted to give effect to the following provisions of the Convention on which it has been making comments for many years: Articles 9 and 48 (scope of application of insurance in relation to medical assistance and maternity benefits); Article 10, paragraph 1(a) (specification in the legislation of the types of medical assistance that must be guaranteed for protected persons); Article 50 (in relation to Article 65); and Article 52 (duration of maternity benefit).

[The Government is asked to reply in detail to the present comments in 2010.]

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1982)

Referring to its comments under Convention No. 102, the Committee hopes that the Government's next report relating to Convention No. 118 will contain detailed information on the measures taken to give effect to the following provisions of the Convention on which it has been making comments for many years.

Article 5 of the Convention (in conjunction with Article 10) (concerning the following branches: (d) invalidity benefits; (e) old-age benefit; (f) survivors' benefit; (g) employment injury benefit). In its previous comments, the Committee pointed out that the conversion of pensions into a lump sum provided for in Regulation 173 of the General Regulations of the Social Security Act, as amended in 1990, and in section 50 of the Social Security Act, is not in itself sufficient to give full effect to Article 5 of the Convention. **The Committee requests the Government to indicate whether the above legal provisions remain in force and, if need be, to indicate the measures adopted to give full effect to the provisions of the Convention. It also requests the Government to provide information on the bilateral agreements concluded with regard to other countries, particularly those countries with a large number of nationals residing in Bolivarian Republic of Venezuela.**

With regard to the social security agreement concluded with Uruguay, the Committee notes that the Government is contemplating measures to resolve obstacles regarding its application. **It would be grateful if the Government would explain how articles 6(1), 6(2) and 25(b) of this bilateral agreement are applied in practice, under the terms of which: (i) the economic benefits recognized under the legislation of the contracting parties and provided for in the Convention cannot be reduced, suspended or abolished on the grounds that the beneficiary resides in the territory of the other contracting party; (ii) each party is required to provide the benefits due to beneficiaries from the other contracting party on a basis of equality, in cases where those beneficiaries are resident in a third country; and (iii) the competent authorities of the two contracting parties undertake to collaborate in the payment of benefits for the other party in a form to be determined.**

The Committee again recalls that Articles 5 and 10 require the Government to guarantee the payment of old-age, invalidity and survivors' benefits, as well as occupational accident and disease benefits, both for Venezuelan nationals and nationals of any other member State which has accepted the requirements of the Convention with respect to a corresponding branch, and also for refugees and stateless persons, in the case of the beneficiary being resident abroad, regardless of the new country of residence or the conclusion of any reciprocal agreement. **The Committee therefore hopes**

that the Government will shortly adopt the measures necessary to guarantee the full application of Articles 5 and 10 in law and in practice.

Articles 7 and 8. Agreements for the maintenance of acquired rights and rights in course of acquisition. The Committee again requests the Government to continue to supply information in future reports on any new agreement concluded between member States for whom the Convention is in force, with a view to guaranteeing the maintenance of acquired rights and rights in course of acquisition.

[The Government is asked to reply in detail to the present comments in 2010.]

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1982)

Referring to its comments under Convention No. 102, the Committee hopes that the Government's next report relating to Convention No. 121 will contain information on the measures adopted to give effect to the following provisions of the Convention on which it has been making comments for many years: Article 4 (scope of application); Article 7 (commuting accidents); Article 8 (list of occupational diseases); Article 10, paragraph 1 (specification in the legislation of types of medical care to be guaranteed to protected persons); Articles 13, 14, paragraph 2, and 18, paragraph 1 (in conjunction with Article 19) (amount of cash benefits); Article 18 (in conjunction with Article 1(e)(i)) (raising of age up to which minors have the right to a survivor's pension); Article 21 (review of long-term payments); Article 22, paragraph 1(d) and (e) and paragraph 2 (suspension of benefits).

[The Government is asked to reply in detail to the present comments in 2010.]

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1983)

Referring to its comments under Convention No. 102, the Committee hopes that the Government's next report relating to Convention No. 128 will contain information on the measures adopted to give effect to the following provisions of the Convention on which it has been making comments for many years: Articles 10, 17 and 23 (in conjunction with Article 26) (amount of invalidity, old-age and survivors' benefits); Article 21, paragraph 1 (in conjunction with Article 1(h), (i)) (raising of age up to which minors have the right to a survivor's pension); Article 29 (revision of benefits); Article 32 paragraph 1(d) and (e) and paragraph 2 (suspension of benefits); and Article 38 (employees in the agriculture sector).

[The Government is asked to reply in detail to the present comments in 2010.]

Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1982)

Referring to its comments under Convention No. 102, the Committee hopes that the Government's next report relating to Convention No. 130 will contain information on the measures adopted to give effect to the following provisions of the Convention on which it has been making comments for many years: Articles 10 and 19 (in conjunction with Article 5) (scope of application of insurance); Article 13 (specification in the legislation of medical assistance which has to be guaranteed to persons covered); Article 16, paragraph 1 (duration of medical assistance); Article 16, paragraphs 2 and 3 (continuation of medical assistance when the beneficiary ceases to belong to one of the groups of persons covered); Article 22 (in conjunction with Article 1(h)) (amount of sickness benefit); Article 28, paragraph 2 (suspension of sickness benefit).

[The Government is asked to reply in detail to the present comments in 2010.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 12** (Antigua and Barbuda, Croatia, Guinea-Bissau, Haiti, Rwanda, Serbia); **Convention No. 17** (Armenia, Bahamas, Bulgaria, Burundi, Cape Verde, Central African Republic, China: Macau Special Administrative Region, Guinea-Bissau, Haiti, Hungary, United Kingdom: St Helena, Zambia); **Convention No. 18** (Armenia, Bangladesh, China: Macau Special Administrative Region, Zambia); **Convention No. 19** (Bangladesh, Bolivia, Cape Verde, China, China: Macau Special Administrative Region, Denmark: Greenland, Dominica, Estonia, Guyana, Haiti, Islamic Republic of Iran, Nigeria, Philippines, Saint Lucia, Yemen); **Convention No. 24** (Colombia, Croatia, Haiti); **Convention No. 25** (Colombia, Haiti); **Convention No. 35** (France: French Guiana, France: Martinique, France: Réunion); **Convention No. 36** (France: French Guiana, France: Martinique, France: Réunion); **Convention No. 38** (Djibouti); **Convention No. 42** (Australia: Norfolk Island, Brazil, Burundi, France: French Guiana, France: Guadeloupe, France: Martinique, France: Réunion, Haiti); **Convention No. 44** (Bulgaria); **Convention No. 102** (Austria, Barbados, Croatia, France); **Convention No. 118** (Cape Verde, Democratic Republic of the Congo, Guinea, Uruguay); **Convention No. 121** (Finland, Netherlands: Aruba, Uruguay); **Convention No. 128** (Austria, Barbados, Uruguay); **Convention No. 130** (Finland, Netherlands, Uruguay).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 19** (Bulgaria, Hungary); **Convention No. 102** (Iceland, Senegal).

Maternity protection

Bahamas

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 2001)

Referring to its previous comment, the Committee notes with *satisfaction* the amendments made in 2003 to the National Insurance (Benefits and Assistance) Regulations which give full effect to the following provisions of the Convention.

Article 3, paragraph 6 (in relation to Article 4, paragraph 1), of the Convention. Extension of paid leave in the event of illness arising from confinement. Section 36 of the National Insurance (Benefits and Assistance) Regulations, as amended, now provides for the payment of maternity benefits for an additional six weeks in the event of illness arising from confinement.

Article 4, paragraphs 1 and 6. Maternity cash benefits. The rate of maternity cash benefits provided for under section 37, paragraph 1, of the National Insurance (Benefits and Assistance) Regulations, as amended, has been increased from 60 per cent to 66.66 per cent of the average weekly insurable wage, thereby guaranteeing the payment of maternity cash benefits that are equivalent to two-thirds of the woman's previous earnings, in accordance with these provisions of the Convention.

The Committee is raising other points in a direct request submitted to the Government.

Bolivia

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1973)

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

Article 1 of the Convention. The Committee notes the adoption on 9 April 2003 of Act No. 2450 regulating salaried domestic work. It notes with interest that this Act, at least to a certain extent, secures the application to women domestic workers of certain provisions of the Convention, including *Article 3* (maternity leave) and *Article 6* (protection against dismissal). However, the Committee notes that the implementing text concerning the affiliation of women domestic workers to the National Social Security Fund, as envisaged in section 24 of Act No. 2450, is still in draft form. ***The Committee therefore hopes that the necessary texts will be adopted in the near future to secure for this category of women workers in both law and practice the protection envisaged by the social security legislation, not only with regard to medical care, but also cash maternity benefits, under the conditions set forth in Article 4 of the Convention.***

The Committee also considers it necessary to supplement Act No. 2450 of 2003 on a number of points that it is raising in a request addressed directly to the Government.

In the absence of a reply by the Government to its previous comments concerning the protection of women agricultural workers, the Committee is bound once again to express the firm hope that the necessary measures will be adopted in the near future to ensure that all of these women workers benefit in law and practice from the maternity protection afforded by the national legislation (General Labour Act and Social Security Code).

Furthermore, the Committee requests the Government to provide detailed information with its next report, including statistics, on the application in practice of the social security scheme (the regions and municipalities covered, the number of employees covered in practice by the protection envisaged by the social security system in relation to the total number of employees) with regard to maternity care and maternity cash benefits.

Article 3, paragraph 2. The Government indicates in its report that it intends to promote the adoption in the near future of the necessary measures to prevent any contradiction between the various provisions of the legislation applicable in relation to maternity leave. ***The Committee therefore hopes that the relevant provisions of the labour legislation (section 61 of the General Labour Act and Supreme Decree No. 2291 respecting women workers in the public administration) will be aligned in the very near future with those respecting social security (section 31 of Decree No. 13214 of 24 December 1975) so as to establish explicitly and without ambiguity the right to maternity leave of at least 12 weeks, in accordance with the Convention. It considers the adoption of these measures all the more necessary as the social security legislation still does not apply to all the women workers covered by the Convention.***

Article 3, paragraph 4. The Government states once again that it intends to take measures in the near future to incorporate the Committee's recommendations into the national legislation. ***The Committee trusts that the Government will be in a position to provide information in its next report on the measures taken in practice to include in the General Labour Act, the Social Security Code and the legislation respecting the public administration a provision explicitly providing for the possibility of extending prenatal leave where confinement takes place later than the presumed date, without any reduction in the minimum period of post-natal leave of six weeks prescribed by the Convention.***

Article 4, paragraphs 1 and 3. The Committee notes the information concerning the development of a new national health policy and the adoption of the Act respecting universal health insurance for mothers and children (*Seguro Universal Materno Infantil – SUMI*) on 22 November 2002. It notes in this respect that the principal objectives of the new health policy include the improvement of health services and the proclamation of a right to health guaranteed by the State; with health no longer being considered an exclusive function of the health authorities, but as requiring the involvement of local authorities for the purposes of achieving broader participation by the population and better knowledge of its rights, while refusing the commercialization of the right to health. With regard to the SUMI, which forms part of the first phase of the reform process, the Committee notes that its primary objective is the rapid reduction of maternal and child mortality through the provision, throughout the territory and for all pathologies, of free and full medical care, including surgical care, medical examinations and medicine at all levels, to pregnant

women during their pregnancy and up to six months after confinement, and to children under 5 years of age, with specific attention to the particular needs of the rural population. According to the Government's report, the SUMI therefore constitutes one of the elements for securing the provision of health services that are constantly more accessible and leading up to the establishment of an integral and universal social security scheme, instead of the current situation in which only 24 per cent of the population are covered by the network of health funds of the social security system. *The Committee requests the Government to provide information on the implementation in practice of the SUMI, with the provision of statistics on the number of women workers in relation to the total number of employees and the number of women workers who have received care from the health services in the context of the SUMI, with an indication of the nature of the care received. Please also provide copies of the implementing regulations envisaged in section 10 of the Act of 22 November 2002. The Committee would also be grateful if the Government would provide information with its next report on the results achieved and the difficulties encountered in the implementation of the new national health policy.*

Article 4, paragraphs 4, 5 and 8. The Committee once again requests the Government to indicate the measures adopted or envisaged to ensure the provision of maternity benefits: (i) by means of public funds for women who are not yet covered by the social security scheme; and (ii) in the context of public assistance for those who fail to meet the qualifying conditions prescribed by the Social Security Code.

Article 5. The Committee is bound to request the Government once again to indicate in its next report the measures adopted or envisaged to supplement the legislation respecting conditions of employment in the public administration with a provision explicitly granting entitlement to nursing breaks for women workers in this sector.

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

Burkina Faso

Maternity Protection Convention, 1919 (No. 3) (ratification: 1969)

The Committee notes the adoption of Act No. 028-2008/AN of 13 May 2008 issuing the Labour Code and Act No. 015-2006/AN of 11 May 2006 establishing the social security scheme applicable to salaried employees and employees having equivalent status in Burkina Faso. Referring to its previous comments, it notes in particular and with *satisfaction* that section 147 of the new Labour Code prohibits employers from employing a woman, even with her agreement, during the six weeks following her confinement, thereby guaranteeing the compulsory nature of postnatal leave, in accordance with *Article 3(a) of the Convention*.

Ecuador

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1962)

Article 4 of the Convention. Maternity benefit. In accordance with the information provided by the Government, workers insured under the rural workers' social insurance scheme, part-time workers, workers in the *maquila* sector and public employees do not receive cash maternity benefits from the Ecuadorian Social Security Institute (IESS). *Recalling that these categories of workers are not excluded from the protection guaranteed by the Convention, the Committee invites the Government to indicate what medical and cash benefits are provided to these workers during maternity leave and requests it to provide a copy of the relevant legal provisions.*

Article 5, paragraphs 1 and 2. Right to nursing breaks. In reply to the Committee's previous comments on the need to explicitly guarantee the right of women workers to nursing breaks, the Government once again refers to the provisions of section 155 of the Labour Code. However, the Committee recalls that this provision, since it was amended by Act No. 133 of 1991, no longer provides for the right of women workers employed in enterprises with over 50 workers to interrupt their work to nurse their child in accordance with the Convention. It does provide, however, that these enterprises are under the obligation to provide their staff with a crèche, either individually or together with other enterprises. *The Committee emphasizes once again that, in accordance with this provision of the Convention, even where crèches are available at the workplace, to be able to use them, women must first have the right to one or more interruptions of work for the purpose of nursing, which should be guaranteed by the national legislation; furthermore, these interruptions are to be counted as working hours and remunerated accordingly.*

The Committee reiterates the hope that the Government will be able to supplement subsection 3 of section 155 of the Labour Code, under which women who are nursing their child shall benefit from a working day of six hours, by specifying that this reduced working day shall be counted as a full working day and remunerated accordingly.

[The Government is asked to reply in detail to the present comments in 2010.]

Ghana

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1986)

With reference to its previous comments, the Committee notes that there has been no change in legislation or administrative regulations regarding the application of the Convention, but that the Government has communicated the concerns raised by the Committee in its previous observation to the sector minister for consideration and possible amendment of the law. *The Committee expects the Government to take measures on the following points.*

Article 3, paragraphs 2 and 3, of the Convention (compulsory leave). To specify a period of compulsory leave of at least six weeks following confinement in the Labour Act.

Article 3, paragraph 4 (extended prenatal leave). To include a provision establishing an extension of the prenatal leave until the actual date of confinement when the confinement takes place after the expected date in the Labour Act.

Article 4, paragraphs 3, 4 and 8 (cash and medical benefits). To ensure that cash maternity benefits are provided by means of *compulsory social insurance* or out of *public funds* and not paid by the employers in the public and private sectors.

In this respect, the Committee notes with interest the information received from the Government on the Special Fund within the National Health Insurance Scheme (NHIS), which provides for free medical care before, during and after confinement for every pregnant woman, both in the formal and informal sector of the economy and irrespective of membership of the NHIS. ***The Committee asks the Government to inform the Committee in its next report about the implementing regulation of the Special Fund and the National Health Insurance Act, 2003 (No. 650), and to indicate whether they will shift liability for the costs of medical benefits from employers to a public fund or compulsory social insurance scheme, in conformity with the Convention.***

Article 6 (prohibition of dismissal). The Committee notes that section 57(8) of the Labour Act provides that an employer cannot dismiss a woman worker *because of her absence from work on maternity leave* and that section 63(2)(e) further provides that employment is terminated unfairly if the only reason for termination is the pregnancy of the worker or the absence from work during maternity leave. In contrast, the Convention does not allow notice of dismissal to be made on any ground *during* the protected period when a woman is absent from work on maternity leave, nor at such time that the notice would expire during such absence. ***The Committee invites the Government to consider amending sections 57(8) and 63(2)(c) of the Labour Act to bring it into conformity with this Article of the Convention.***

Latvia

Maternity Protection Convention, 1919 (No. 3) (ratification: 1926)

The Committee had previously drawn the Government's attention to the need to ensure that women are prohibited from being employed for at least six weeks following confinement. In this regard, the Government's report indicates that section 37(7) of the Labour Law was amended in 2004 in order to introduce a prohibition on employing a woman under any circumstances during the two weeks prior to and following her confinement. The Committee notes with interest the amendment which establishes the compulsory nature of postnatal leave. However, it recalls in this regard that *Article 3, paragraph (a), of the Convention* provides for compulsory postnatal leave of at least six weeks. ***The Committee would therefore be grateful if the Government would explain in its next report the reasons which led to the introduction of compulsory postnatal leave of only two weeks, instead of six weeks as required by the Convention.***

The Committee is raising a number of other points in a direct request to the Government.

Netherlands

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1981)

With reference to its previous observation and the conclusions of the Conference Committee in June 2004 which concerned the exclusion of certain categories of women from the compulsory insurance scheme, the Committee notes with *satisfaction* that under the Health Insurance Act of 1 January 2006 all persons legally residing or working in the Netherlands are obliged to take out health insurance and the insurers are required to insure anybody who applies for health insurance. The basic insurance package of essential health care is prescribed by law and includes prenatal, confinement and post-natal care. Additionally, the Act provides that women are not required to share in the costs of medical care before, during and after confinement, when this care is provided upon medical advice.

The Committee also welcomes the Government's intention to ratify the Maternity Protection Convention, 2000 (No.183), and hopes that the comments it is making below, will help the Government to do so.

Article 4, paragraph 4, of the Convention. Compulsory social insurance. According to the comments communicated by the Netherlands Trade Union Confederation (FNV) in August 2008, as the new health insurance system is a private scheme, the Government has no means to guarantee that all citizens in fact comply with their obligation to take out health insurance. More than 250,000 people have not, and therefore are not covered for maternity costs. ***The Committee would like the Government to provide information on the coverage of the categories of workers protected by the Convention for maternity medical benefits. Please also indicate whether medical benefits out of social assistance funds are provided to those who for valid reasons have not been able to take out private health insurance, in accordance with Article 4, paragraph 5, of the Convention.***

Article 6. Prohibition of dismissal. Section 7:760, subsection 2, of the Dutch Civil Code lays down a prohibition of dismissal during pregnancy, maternity leave and illness as a result of pregnancy or delivery up to six weeks after work is resumed. Section 7:670b, however, provides that this prohibition is not applicable during the probationary period or due to an urgent cause, unrelated to pregnancy, delivery or maternity (see sections 7:646 and 7:678, respectively). In the

publication of the Ministry of Social Affairs and Employment, *Verlof: Informatie over verlofregelingen voor werknemers*, April 2008, in the section on maternity leave it is stated that dismissal during pregnancy or maternity leave is allowed only in special cases, for example, due to reasons relating to the economical welfare of the business. In this context, the Committee recalls that *Article 6* prohibits an employer from dismissing or giving notice of dismissal to a woman who is absent from work on maternity leave on any ground whatsoever. **Therefore, the Committee asks the Government to provide information with respect to the practical application of these exceptions and to inform the Committee of the case law developed by the judicial authorities in this respect.**

The Committee would also draw the Government's attention to the Maternity Protection Convention, 2000 (No. 183), which is the most up to date international standard in this area and the spirit of which is close to Dutch law as regards protection against dismissal.

Nicaragua

Maternity Protection Convention, 1919 (No. 3) (ratification: 1934)

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

Article 3(c) of the Convention. (a). With reference to its previous comments, the Committee notes the report sent by the Government and the statistical information appended thereto. It notes in particular that at the end of 2000, the National Social Security Institute had 308,531 direct members and 894,740 dependants, i.e. a total of 1,203,271 persons covered. The Committee also notes a significant increase in the number of confinements covered by sickness and maternity insurance under the integrated scheme during the period from 1998 to 2000, and the increase, equally significant, in the number of insured persons who received maternity benefit. The Committee observes, however, that although it covers 76 per cent of workers the integrated social security scheme, which includes maternity protection, continues to apply to only part of the country. The Committee is therefore bound once again to point out that in the regions to which application of the integrated scheme has not yet been extended, the employer continues to bear directly the cost of cash maternity benefits, whereas the Convention requires these benefits to be provided either out of public funds or guaranteed by an insurance system. **The Committee therefore hopes that the Government will continue to do its utmost to extend the provision of maternity benefits by the social security scheme to the whole country in order to cover all the women workers protected by the Convention. It trusts that the Government will be in a position to indicate progress in this respect in its next report.**

(b). The Committee notes from the information in the Government's report that since 1999 six new medical establishments have been created to provide preventive and remedial care to women who belong to the integrated social security scheme, bringing the total number of such establishments in the country to 47. It also notes that according to the statistics sent by the Government, medical insurance establishments had 195,228 members in 2000, i.e. an increase of 9.6 per cent over the previous year, although these persons did not account for the total membership of the integrated insurance scheme. The Committee also notes the information supplied by the Government on the various types of care dispensed to pregnant women in 2000 by medical insurance establishments, showing a clear increase in the number of consultations and confinements as compared to previous years. According to the statistics sent by the Government, the medical insurance establishments covered 9,023 confinements in 2000, which appears to be a relatively small number in view of Nicaragua's population and birth rate. **In these circumstances, the Committee hopes that the Government's next report will contain information on the measures taken or envisaged to develop the medical infrastructure so that, in practice, all women workers covered by the Convention receive the free care prescribed by its provisions.**

The Committee also requests the Government to continue to provide information on the practical implementation of the social security scheme in respect of maternity benefits both in cash and in kind, including statistics on the regions covered and the number of employed persons covered by the scheme as compared to the total number of employed persons.

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

Panama

Maternity Protection Convention, 1919 (No. 3) (ratification: 1958)

The Committee notes that the Government's report in reply to its previous observation has not been received. It also notes the information provided in 2006 and 2007 by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) reporting cases of the non-renewal of fixed-term contracts of women who are pregnant and on maternity leave in the public sector, and the Government's reply to these comments. It further notes that new observations made by the above union organization were forwarded to the Government in October 2008. While awaiting the Government's reply to this communication from the union, and considering the Government's detailed report containing replies to the Committee's 2003 observation, the Committee has decided to examine all of this information at its next session and to reiterate its previous comments, which read as follows:

The Government confirms that the Labour Code and the social insurance legislation also apply to women workers employed in export processing zones. The Government's report also contains statistical information on the number of inspections carried out in the country and the cost of maternity benefits. Nevertheless, the Committee recalls that its previous observation concerned more specifically the manner in which the provisions relating to maternity protection (maternity leave, nursing breaks and protection against dismissal) contained in the Labour Code, as well as those relating to maternity benefits in the Organic Act respecting the Social Security Fund and its regulations, are applied in practice to women employed in export processing zones; it requested the Government to provide, for example, extracts of inspection reports or other official documents, statistics on the number of inspections carried out in export processing zones and the violations reported in the above zones. **The Committee**

therefore trusts that the Government's next report will not fail to include detailed information on this point and the statistics requested on the number of women employed in export processing zones who have received maternity benefits during the period covered by the report and the amount of such benefits.

A request on certain points is also being addressed directly to the Government.

Portugal

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1985)

Article 4, paragraph 5, of the Convention. Benefits out of social assistance funds. The Committee notes with **satisfaction** that, following the adoption of Legislative Decree No. 105/2008 of 25 June, the national legislation has been brought into conformity with this provision of the Convention which seeks to ensure benefits provided out of social assistance funds for women workers who fail to qualify for maternity benefits under the social insurance system. The newly adopted decree strengthens social protection in the case of maternity, paternity and adoption, and grants cash benefits to all those who, because they have not made sufficient contributions are not entitled to benefit from the social security system but are, at the same time, in a situation of financial vulnerability. It introduces maternity, paternity and adoption subsidies as well as a subsidy for specific risks for both Portuguese and foreign nationals and refugees residing in Portugal. Subject to the means test required for social assistance, the new subsidy is granted throughout the duration of maternity leave and amounts to 80 per cent of the social support index (IAS).

Sri Lanka

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1993)

Article 1, paragraph 4, of the Convention. Application of the Convention to women workers on plantations. In response to the Committee's earlier observation, the Government has submitted a brief report which indicates that, following a study carried out by the Department of Labour on the issue of alternative maternity benefits specified by the Maternity Benefits Ordinance No. 32 of 1939, no hospital has been granted permission to provide such benefits. Comments sent by the Lanka Jathika Estate Workers' Union (LJEWU) likewise state that the practice of granting alternative maternity benefits has been discontinued. ***In these circumstances, the Committee hopes that the Government will have no difficulty in repealing section 5(3) of the Maternity Benefits Ordinance and section 2 of its regulations, in order to bring the legislation into conformity with existing practice in the country and eliminate any differences between the maternity benefits granted to workers on plantations and those granted to other workers.***

Article 3, paragraphs 2 and 3. Distinction in the length of maternity leave based on number of children. The Committee notes the comments by the Ceylon Workers Congress (CWC) and the LJEWU on the distinction in length of maternity leave based on the number of children. The Committee also recalls that in its previous report the Government had indicated that measures were being taken in the public sector to ensure the same benefits to all female workers regardless of the number of their children and that in the private sector the matter was under consideration. It however notes the Government's statement that there have been no legislative changes or policy decisions taken and that it will report progress on the matter. The national legislation therefore continues to provide that maternity leave must not exceed six weeks after the third child, whereas the Convention provides for maternity leave of at least 12 weeks which must include a minimum period of six weeks postnatal leave to all female workers covered by the Convention irrespective of the number of their children. ***The Committee therefore strongly urges the Government to take appropriate steps to ensure that full effect is given to this provision of the Convention for all women workers regardless of the number of children they have.***

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

[The Government is asked to reply in detail to the present comments in 2010.]

Zambia

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1979)

The Government states in its report that the period of maternity leave was increased from 90 days to 120 days by Orders Nos 56 and 57 of 2006 on minimum wages and conditions of employment. ***The Committee notes this information with interest and requests the Government to supply copies of these Orders.***

However, the Committee regrets that, despite its previous comments, the Government has maintained the requirement of two years' continuous employment from the date of recruitment as a condition for maternity leave in its national legislation. It also notes that this condition has been reproduced in the text of a number of collective agreements which have been brought to its attention. ***The Committee therefore hopes that the Government will take the necessary steps, as soon as possible, to bring the national legislation, particularly section 15(A) of the Employment Act and section 7(1) of the Schedule to the Order of 14 January 2002, into conformity with Article 3, paragraph 1, of the Convention.***

The Committee is also constrained to note that the Government's report makes no reference to any progress made to ensure the full application of the following provisions of the Convention.

Article 3, paragraphs 2, 3 and 4. Compulsory nature of six-week postnatal leave. With reference to its previous comments, the Committee notes that sections 15(A) and 54(1) of the Employment Act, to which the Government refers in its report, do not provide for a compulsory six-week period of postnatal leave or that, when the confinement takes place after the presumed date, prenatal leave must be extended, in all cases, until the actual date of confinement and the period of compulsory postnatal leave must not be reduced. ***The Committee once again expresses the hope that the Government will be able to take the necessary steps to bring the national legislation into conformity with these provisions of the Convention.***

Article 4, paragraphs 4, 6, 7 and 8. Maternity benefits. The Committee recalls that, under these provisions of the Convention, the employer shall in no case be individually liable for the cost of maternity benefits in cash due to women employed by him. ***The Committee therefore requests the Government to ensure that these benefits are provided either by means of public funds or by means of compulsory insurance; the latter does not necessarily call for public financing but can be funded by employers' and workers' contributions.***

Article 5. Nursing breaks. The Committee notes that certain collective agreements provide for nursing breaks and considers in this respect that equal treatment must be given to women workers covered by these collective agreements and other women workers covered by the Convention. ***The Government is therefore requested to consider the possibility of incorporating provisions in its national legislation which provide for nursing breaks; these interruptions of work must be counted as working hours and remunerated accordingly.***

Article 6. Protection against dismissal during maternity leave. ***The Committee trusts that the Government will not fail to amend section 15(B) of the Employment Act (the content of which is reproduced in section 7(4) of the Schedule to the Order of 14 January 2002) by establishing a prohibition on the dismissal of a woman during maternity leave or on giving her notice of dismissal at such a time that the notice would expire during her absence, irrespective of the grounds for dismissal.***

The Committee also requests the Government once again to supply copies of any legal provisions enacted, instructions or directives which have been issued stating the nature and scope of the medical benefits which shall be guaranteed to women workers in conformity with Article 4, paragraphs 1 and 3, of the Convention.

[The Government is asked to reply in detail to the present comments in 2010.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 3** (Cameroon, China: Hong Kong Special Administrative Region, Colombia, Côte d'Ivoire, Guinea, Latvia, Mauritania, Nicaragua, Panama, Bolivarian Republic of Venezuela); **Convention No. 103** (Azerbaijan, Bahamas, Bolivia, Bosnia and Herzegovina, Ecuador, Equatorial Guinea, Mongolia, Montenegro, Papua New Guinea, Portugal, Russian Federation, San Marino, Serbia, Sri Lanka, Tajikistan, Uruguay, Uzbekistan); **Convention No. 183** (Albania, Belarus, Bulgaria, Hungary).

Social policy

Central African Republic

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1964)

Parts I and II of the Convention. Improvement of standards of living. The Committee notes the Government's report received in June 2008 in reply to its observation of 2007. The Government indicates, in particular, that measures designed to promote economic and social development have been incorporated in the Poverty Reduction Strategy Paper (PRSP) 2008–10, adopted in September 2007. The Committee notes that the PRSP includes a chapter on the social situation, including decent work and employment, from which it emerges that half of all households are living in poverty and the essential needs of more than two in five Central Africans are not being met. ***The Committee requests the Government to indicate in its next report how the implementation of the poverty reduction strategy has enabled the pursuit of the objectives of the Convention, which provides, in Article 1, that "all policies shall be primarily directed to the well-being and development of the population".***

Part IV. Remuneration of workers. In its reply to the Committee's previous observation, the Government indicates that the maximum amounts and the manner of repayment of advances on wages are laid down by order of the Minister of the Public Service. According to the Government, a new Labour Code was submitted to the National Assembly. ***The Committee hopes that the pending matters concerning the application of this provision have been taken into account in the new Labour Code and that the Government will be able to indicate, in its next report, the provisions of the Labour Code and of the Ministerial orders which have regulated the maximum amounts and the manner of repayment of advances on wages, in accordance with Article 12, paragraphs 2 and 3.***

Furthermore, the Committee notes the Government's first reports and is addressing a request directly to the Government on the application of Conventions Nos 122, 142 and 158, recently ratified by the Central African Republic.

Democratic Republic of the Congo

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1967)

The Committee notes with regret that the Government has provided no information on the application of the Convention since its first report, received in June 2002, which contained some information responding to the comments the Committee has been making since its session of November–December 1996. ***The Committee asks the Government to provide a report containing precise and up to date information responding in particular to the matters raised since 2005 on the following matters.***

Parts I and II of the Convention. Improvement of standards of living. The Committee noted previously that, with support from the World Bank and the International Monetary Fund (IMF), the Government had adopted measures to stabilize the macroeconomic situation and create a climate conducive to the development of the private sector. Access to the Heavily Indebted Poor Countries Initiative in July 2002 allowed the country to benefit from relief for its external financial debt. A Government Economic Programme (PEG), likewise set up with support from the IMF, was implemented from April 2002 to June 2005. ***The Committee asks the Government to provide information on the manner in which the provisions of the Convention calling for "all policies" to be "primarily directed to the well-being and development of the population" have been taken into account in the formulation and implementation of the measures taken in the context of its economic programmes and poverty reduction strategy.***

Part VI. Articles 15 and 16. Vocational education and training. The Government referred to the national education plan "Education for all by 2015" to ensure that children are able to profit from facilities for education. ***The Committee requests the Government to indicate the measures taken for the progressive development of education, vocational training and apprenticeship and for the preparation of children and young persons of both sexes for a useful occupation.***

Guatemala

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1989)

Parts I and II of the Convention. Improvement of standards of living. The Committee notes the detailed information provided in the report received in September 2008, which includes a very descriptive document from the Ministry of Economy on the Government's plans for 2008–12. Four strategic programmes stand out in the following areas: solidarity, governance, productivity and regionalism. To strengthen productive activity, an emergency plan has been established for the production of staple grains, leasing of land and the delivery of fertilizers at subsidized prices. Furthermore, the Government intends to devise an agricultural policy to meet the needs of domestic consumption and to market surpluses abroad. The Government has also communicated the main features of policy relating to monetary, foreign exchange and credit matters approved by the Bank of Guatemala. ***The Committee welcomes the information received and requests the Government to continue preparing reports on the application of the Convention, which will enable it to examine the***

manner in which it is ensured that “the improvement of standards of living” has been regarded as “the principal objective in the planning of economic development” (Article 2 of the Convention). Please specify whether the objectives set out in the Government’s plan for 2008–12 have been achieved and whether measures to promote productive capacity and improve the standards of living of agricultural producers have been successful (Article 4).

Part IV. Wages. In a direct request, the Committee asks the Government to provide information on the manner in which it ensures the application of Article 12 of the Convention on advances on the remuneration of workers.

Part VI. Education and training. The Committee notes the information provided by the Government on the courses offered by the Technical Institute for Training and Productivity (INTECAP). The Committee refers to the comments on the Employment Policy Convention, 1964 (No. 122) with regard to matching the education and training offered with employment policies.

Kuwait

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1963)

Parties I and II of the Convention. Improvements of standards of living. The Committee notes the brief information contained in the Government’s report received in August 2008 in reply to the observation of 2005. In particular, the Committee had wished to obtain information on the economic and social development of Kuwait. In this regard, the Government indicates that new data will be communicated as soon as possible. *The Committee recalls that under Article 1, paragraph 1, of the Convention, the Government must ensure that “all policies” are “primarily directed to the well-being and development of the population”. It hopes that the Government will send a report containing up to date information indicating how “the improvement of standards of living” are regarded as “the principal objective in the planning of economic development” in accordance with Article 2 of the Convention.*

Part III. Migrant workers. In reply to the previous observation, the Government indicates that the Labour Code affords protection to all workers in the private sector and that specialist bodies, such as the labour inspectorate and units attached to it, are responsible for monitoring the observance of the law by employers. The Central Department of Labour Relations and the units attached to it deal with complaints from workers who consider that their rights have been violated. The Government points out that, in accordance with Ministerial Ordinance No. 110 of 7 January 1995, employers are required to display the names of all their workers in a visible location in the work place, indicating their nationalities and their identity papers. Any employer who infringes this obligation is liable to be penalized by the competent labour department. *The Committee refers to the principles relating to the rights of all migrant workers set out in the ILO Multilateral Framework on Labour Migration published in March 2006, which provides in particular that “the protection of migrant workers requires a sound legal foundation based on international law”. The Committee hopes that the Government’s next report will contain information on the measures taken to ensure that migrant workers enjoy protection and advantages not less than those enjoyed by workers resident in the area of labour utilization (Article 8 of the Convention).*

Part IV. Remuneration of workers. The Government indicates that most provisions of the new Labour Code have already been examined by Parliament and refers once again to Ministerial Ordinance No. 110 of 7 January 1995, which provides that any wage of 100 dinars or more shall be paid into a Kuwaiti bank account. The Government’s report shows that there is no legal framework relating to advances on wages. *With reference to the comments which it has been making for many years, the Committee hopes that the new Labour Code will contain provisions relating to the fixing of minimum wages and advances on wages, in accordance with Articles 10 and 12 of the Convention. It requests the Government once again to indicate the measures taken to ensure the regular and prompt payment of all wages (Article 11), attaching copies of any relevant legislative texts. The Government is also requested to provide information on the application of such provisions to migrant workers.*

Portugal

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1981)

The Committee notes the detailed legislative information attached to the Government’s report for the period June 2003 to May 2008, including observations from the General Confederation of Portuguese Workers (CGTP-IN).

Parts I and II of the Convention. Improvement of standards of living. Article 2. The CGTP-IN observes, among other things, that standards of living, measured in terms of per capita GDP, remained stable between 2002 and 2006, with an improvement being recorded in 2007. Economic policies have hardly contributed to improving the well-being of the population. The increase in the standard of living was clearly lower than for the rest of the European Union. The CGTP-IN claims that when general public policies were formulated, their impact on the well-being of the population was not taken into consideration, with financial factors having been the key consideration. *The Committee reiterates its interest in*

examining a summary evaluation of the manner in which it is ensured that “the improvement of standards of living” has been regarded as “the principal objective in the planning of economic development”.

Part IV. Remuneration of workers. In response to the comments which have been made since the ratification of the Convention on the regulation of the maximum amounts and the manner of repayment of advances on wages, the Government indicates in its report that the national legislation has not been amended in this respect. The CGTP-IN confirms that the Labour Code does not provide for measures relating to advances on wages as required by *Article 12* of the Convention. The Government adds that outside the period covered by the report, an agreement was reached between employers’ confederations and a trade union confederation on the revision of the labour legislation, and these measures were incorporated into a legislative proposal to amend the Labour Code. The Government states that it will supply detailed information in its next report on the legislative amendment and the measures adopted to improve the aspects of the labour market situation referred to by the CGTP-IN – in particular, discrimination, growth of collective recruitment, reducing the instability of employment, combating hidden self-employment, boosting vocational training, academic and vocational qualifications of minors and the effectiveness of labour legislation. ***The Committee hopes that the legislative reform in progress has taken account of the comments which have been made since the ratification of the Convention. The Committee hopes that the Government will also be in a position to provide information on the measures taken to: (a) regulate the maximum amounts and manner of repayment of advances on wages; (b) limit the amount of advances which may be made to a worker in consideration of his taking up employment; and (c) establish that any advance in excess of the amount laid down by the competent authority shall be legally irrecoverable and may not be recovered by the withholding of amounts of pay due to the worker at a later date.***

[The Government is asked to reply in detail to the present comments in 2010.]

Zambia

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1964)

Parts I and II of the Convention. Improvement of standards of living. The Committee notes the reply provided by the Government to its 2006 observation in a report received in March 2008. The Government indicates that it has established a poverty reduction strategy through which it has been combating poverty and improving the living standards of the people. It further indicates its hope that when the Poverty Reduction Strategy Paper (PRSP) is implemented, it will significantly reduce poverty. In addition to the PRSP, the Government highlights a number of other initiatives introduced, such as training and job searching techniques for persons who have been dismissed which will assist them to gain access to employment opportunities. The HIV/AIDS pandemic threatens the country’s capacity-building efforts due to its indiscriminate effects on all productive age groups. Exploitation of the country’s natural resources in a sustainable manner would provide greater potential for economic growth and poverty reduction. The Committee recalls that, in the conclusions adopted at the 11th ILO African Regional Meeting (Addis Ababa, April 2007), the tripartite delegations reached consensus for an assessment of the impact on the generation and maintenance of decent work opportunities in development strategies aimed at poverty reduction and to adopt national targets for the creation of sufficient decent jobs to absorb new labour market entrants and reduce, by half, the numbers of working poor. ***The Committee refers to its 2008 observation on the application of the Employment Policy Convention, 1964 (No. 122), and hopes that in its next report on the application of Convention No. 117, the Government will include an up to date assessment of the manner in which it ensures that the “improvement in standards of living” has been regarded as the “principal objective in the planning of economic development” (Article 2 of Convention No. 117) as well as information on the results achieved in combating poverty.***

Part III. Migrant workers. In reply to the Committee’s previous requests, the Government indicates that, in 2000, the migrant workers made up 3.6 per cent of the total population in Zambia. Zambian health workers chose to go to other countries in Africa to find work opportunities more easily. More recently, they have also been choosing to go to some OECD countries, which has affected the health sector more than any other. The Government indicates that it has included issues of labour migration as a key area for intervention in the National Employment and Labour Market Policy in the Fifth National Development Plan with the aim of reducing the brain drain and effectively utilizing skills of migrant workers and skilled refugees. The Government recognizes the need to streamline issues pertaining to the management of migration even though this matter currently falls under the responsibility of both the Ministry of Home Affairs and the Ministry of Labour and Social Security. The Government’s management of the new Labour Market Information System will help to identify gaps in skills and to introduce appropriate policy measures. ***The Committee requests the Government to indicate the measures taken to ensure that the terms and conditions of employment of migrant workers within the national territory and abroad take account of their family needs and the increase in the cost of living, and facilitate the transfer of wages and savings (Articles 6 to 9 and 14, paragraph 3).*** The Committee draws the Government’s attention to the fact that it is difficult to prevent abusive practices in relation to migrant workers and emphasizes the urgency of affording effective protection to this category of particularly vulnerable workers. The Government may also wish to refer to the ILO Multilateral Framework on Labour Migration of March 2006, designed to improve the effectiveness of policies in respect of migration for employment.

Part VI. Education and training. In reply to the Committee's previous requests, the Government highlights several programmes that were set up to bring education and training requirements in line with the needs of the industry. The Government indicates that it reformed the process for the development of training curricula, and it used the Systematic Curriculum and Instruction Development format which used a competence- and outcome-based approach to education and training so that learners are appropriately prepared for the challenges of the world of work. It is also designing Training Quality Assurance Protocols with a view to enhancing the provision of quality training by training providers. The Ministry of Science and Technology and the Ministry of Labour and Social Security are jointly reviewing the Apprenticeship Act with a view to addressing training, both in the formal and informal sectors. Finally, the Government highlights that the Tevet qualification framework, a forerunner for national qualification networks, has been developed. ***The Committee requests the Government to provide further information on the impact of the measures adopted for the progressive development of education, vocational training and apprenticeship, and the manner in which the teaching of new production techniques has been organized as part of a social policy which gives effect to the provisions of Articles 15 and 16 of the Convention.***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 82** (Belgium, New Zealand: Tokelau, United Kingdom: Anguilla, United Kingdom: Bermuda, United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Gibraltar); **Convention No. 117** (Bahamas, Bolivia, Costa Rica, Ecuador, Guatemala, Guinea, Jamaica, Jordan, Malta, Nicaragua, Panama, Senegal, Spain, Sudan, Syrian Arab Republic).

Migrant workers

Barbados

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1967)

Articles 7 and 9 of the Convention. Free services rendered by public employment agencies and transfer of remittances. The Committee notes the communication from the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB), dated 19 June 2008, in which it expresses concerns relating to the Farm Labour Programme between Barbados and Canada, which still employs thousands of Barbadians. According to the CTUSAB, 25 per cent of the workers' earnings are being remitted to the Barbados Government directly from Canada, 5 per cent of which is retained by the Government for administrative expenses. The CTUSAB also maintains that the costs of going to Canada, as well as pension contributions for both Barbados and Canada and medical contributions in Canada are immediately deducted from their pay, which is creating hardship for the workers concerned. In the view of CTUSAB, the system must be reviewed so as not to disadvantage the workers under the programme.

The Committee notes that the Government has not replied to the comments from CTUSAB. The Committee recalls that under *Article 9* of the Convention, ratifying States undertake to permit the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire. Requiring migrant workers to remit 25 per cent of their earnings to the Government would, in the view of the Committee, be contrary to the spirit of *Article 9* of the Convention. Moreover, the Committee recalls that *Article 7(2)* of the Convention provides that services rendered by public employment services in connection with the recruitment, introduction and placing of migrants for employment are to be provided free of charge. The Committee draws the attention of the Government 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 urges the Government:**

- (i) *to undertake a review of the Farm Labour Programme between Barbados and Canada, in cooperation with the workers' and employers' organizations;*
- (ii) *to explain the reasons for requiring migrant workers under the programme to remit 25 per cent to the Government, including 5 per cent for administrative costs; and*
- (iii) *to ensure that purely administrative costs of recruitment, introduction and placement are not borne by the workers recruited under the programme, and that migrants for employment are permitted to transfer their earnings or such part of their earnings and savings as they desire.*

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

Benin

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1980)

Article 14(a) of the Convention. Restrictions on employment and geographical mobility. For a number of years the Committee has been requesting the Government to communicate to the Office the text repealing Decree No. 77-45 of 4 March 1977 issuing regulations respecting the movement of foreigners and requiring special authorization for foreigners to leave their town of residence. The Committee notes the Government's statement that the Minister of Labour and the Minister of Interior and Public Security are currently discussing the repeal of this Decree. The Committee recalls once again that *Article 14(a)*, while permitting during a preliminary phase certain restrictions on the free choice of employment of foreigners, these may not restrict the right to geographical mobility of migrant workers lawfully in the territory, which they must enjoy from the beginning of their stay in the same conditions as nationals (see also General Survey of 1999 on migrant workers, paragraph 397). **The Committee urges the Government to adopt without delay measures to repeal Decree No. 77-45 of 4 March 1977.**

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

[The Government is asked to reply in detail to the present comments in 2010.]

Burkina Faso

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1977)

Article 10 of the Convention. Equality of treatment with respect to trade union rights. The Committee recalls its previous comments in which it requested the Government to amend section 159 of the Labour Code which provided that members responsible for the management and administration of a trade union must be nationals of Burkina Faso or of a

state with which establishment agreements have been concluded requiring reciprocity of trade union rights. The Committee notes with interest that section 264 of the new Labour Code, 2004, now allows foreigners with five years of residence to become trade union officials.

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

Cameroon

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) ***(ratification: 1978)***

The Committee notes the Government's report and the comments transmitted by the General Confederation of Labour – Liberty of Cameroon (CGTL) concerning the application of the Convention, dated 27 August 2007, and the Government's reply to these comments. In this communication, the CGTL draws attention to the difficulties encountered in Cameroon in the application of *Article 9 of the Convention* for migrant workers whose contract of employment has been declared void in view of the absence of a visa issued by the Ministry of Labour. The CGTL also emphasizes the requirement of five years' residence in the country imposed on migrant workers to be able to join a trade union. The CGTL emphasizes the need to amend the Labour Code to bring it into conformity with the Convention. The Committee recalls that these two issues have already been addressed in its previous comments.

Article 9(1). Rights arising out of past employment. In its previous comments, the Committee noted that under section 27 of the Labour Code, contracts of employment of workers of foreign nationality have to be approved by the Ministry of Labour and that the absence of such approval renders the contract null and void. It therefore requested the Government to clarify the manner in which the law of Cameroon establishes that employed migrant workers who leave the country of employment are not deprived of their labour rights which have been lawfully acquired. In this respect, the Committee notes the Government's indication that any challenge relating to the rights of a migrant worker is referred to the assessment of labour inspectors. The Committee nevertheless considers that the possibility of recourse to labour inspectors does not afford migrant workers adequate protection in accordance with the terms of *Article 9(1)* of the Convention. The Committee wishes to draw the Government's attention to the fact that migrant workers in an irregular situation will find it difficult to claim their rights, as the irregular situation may deter them from having recourse to the judiciary for fear of making their situation known to the authorities and hence incurring the risk of being expelled (see General Survey on migrant workers of 1999, paragraph 302). ***The Committee requests the Government to provide detailed information on the number and nature of complaints submitted by migrant workers in an irregular situation to labour inspectors in relation to the rights deriving from past employment, and on their outcome. The Committee also requests the Government to indicate the other measures, including legislative provisions, which guarantee migrant workers who have not been able to regularize their situation and their families equality of treatment with that of migrant workers lawfully admitted into the country in respect of rights arising out of past employment as regards remuneration and social security.***

Article 10. Exercise of trade union rights. The Committee recalls that, pursuant to section 10(1) and (2) of the Labour Code, foreign nationals are required to have resided for not less than five years in the territory of the Republic of Cameroon before being allowed to promote a trade union or take responsibility for its administration or leadership. The Committee considers that it is not clear from section 10 whether the possibility for foreign nationals to join a trade union is also subject to this requirement. The Government's statement, according to which membership of a union is free for both nationals and migrant workers, does not provide the necessary clarifications in this respect. The Committee emphasizes in this regard that the Convention does not authorize any restriction on the rights of migrant workers to establish or join a trade union. ***The Committee therefore requests the Government to clarify the scope of section 10(2) of the Labour Code.***

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

[The Government is asked to reply in detail to the present comments in 2010.]

China

Hong Kong Special Administrative Region

Migration for Employment Convention (Revised), 1949 (No. 97) (notification: 1997)

Article 6 of the Convention. Equality of treatment between migrant workers, particularly domestic workers, and nationals. The Committee recalls its previous observation in which it continued its dialogue with the Government on the recommendations made by the Governing Body at its 288th Session (November 2003) concerning a representation made by the Trade Union Congress of the Philippines (TUCP), under article 24 of the ILO Constitution, alleging non-observance by China of Convention No. 97 with respect to the Hong Kong Special Administrative Region. In this observation, the Committee urged the Government as follows: (1) to review its proposal to apply a seven-year residence

requirement for eligibility for public health care, and its impact on the principle of equal treatment; (2) to provide information on the complaints received from “imported” workers and foreign domestic helpers by the Labour Department with regard to non-compliance with the social security provisions of the standard employment contract; (3) to assess the impact of the wage and levy policies on the equal treatment between nationals and imported and foreign domestic helpers; (4) to provide information comparing the number of underpayment claims received before and after the entering into force of the wage and levy policies in 2003, and on the claims that have resulted in compensation for underpaid wages of the foreign domestic workers concerned; and (5) to provide information on the measures taken to prevent and punish abuse of migrant workers, especially foreign domestic workers, and the impact of these measures on their conditions of work.

Equality of treatment with respect to social security

Access to public health care. The Committee notes the Government’s statement that “imported” workers, foreign domestic helpers and professionals are entitled to receive medical treatment in public hospitals and clinics, and that immigrant workers are charged the same subsidized rate as that for local residents. In 2006–07 an estimated 25,000 “imported” workers and foreign domestic helpers made use of the public medical services. The Committee notes with **satisfaction** that the Government has abandoned the plan to implement the proposed seven-year residence requirement for eligibility for public healthcare benefits in the foreseeable future. ***The Committee asks the Government to continue to report on the access of “imported” workers and foreign domestic helpers to public healthcare. With respect to complaints received on social security provisions in standard employment contracts, the Committee refers to its 2008 direct request on this Convention.***

Equality of treatment with respect to remuneration

The Committee notes that the Minimum Allowable Wage (MAW), which had been reduced from 3,670 Hong Kong Dollars (HKD) to HKD3,270 in 2003, has been subsequently increased to the current level of HKD3,580 (July 2008), and that the Employees Retraining Levy (ERL) has remained at HKD400. The Committee further notes that on 19 July 2006, the High Court of the Hong Kong Special Administrative Region, China, ruled in favour of the Government in an appeal lodged by a group of foreign domestic helpers against the Chief Executive Council, the Director of Migration and the Employees Retraining Board (Civil Appeal No. 218 of 2005) challenging the imposition of the ERL on foreign domestic helpers and the reduction of the minimum wage in 2003 by the same amount. However, the Committee also notes from information published by the Immigration Department of the Hong Kong Special Administrative Region, China, that in August 2008, the Government decided to suspend the obligation for employers of all “imported labour”, including foreign domestic helpers, to pay the ERL for employment of foreign domestic helpers from 1 August 2008 to 31 July 2010. The suspension was further extended to 31 July 2013, by the Employees Retraining Ordinance (Amendment of Schedule 3) (No. 2) Notice 2008 (Amendment Notice No. 2), which was tabled at the Legislative Council for vetting on 12 November 2008. The Committee notes that the levy suspension will apply to new employment contracts and the renewal of existing contracts of “imported workers” and foreign domestic helpers for whom visas are issued by the Immigration Department between 1 August 2008 and 31 July 2013, irrespective of the date on which the contracts are signed.

The Committee further notes that the Government has acknowledged that some employers with pre-existing contracts for foreign domestic helpers may terminate their contracts prematurely in order not to pay the levy as soon as the suspension takes effect. It has therefore introduced a new special arrangement as of 1 August 2008, whereby applications for advanced contract renewal involving the same employer and the same employee are accepted during the suspension period, without requiring the foreign domestic helper to leave the Hong Kong Special Administrative Region, China, after the existing contracts have been terminated. For existing contracts which are still in force with an outstanding levy, the employers have to settle the payment in the usual manner. If the contract is subsequently terminated prematurely with an unused levy balance, the balance shall not be reimbursed or carried forward until after the suspension period. Finally, the Committee notes that as of 31 July 2008, there were about 252,200 foreign domestic helpers, mostly women, and 1,330 “imported workers” such as care workers and farm workers in the Hong Kong Special Administrative Region, China, under the Supplementary Labour Scheme. Their employers will benefit from the levy suspension when they renew the contracts of their worker at any time during the five-year suspension period.

The Committee welcomes the measures to suspend the ERL for five years and the measures to reduce the risk of employers prematurely terminating pre-existing contracts, along with the subsequent increases in the MAW of foreign domestic workers, which constitute important progress in the application of *Article 6* of the Convention. Nevertheless, the Committee also notes that certain issues are still pending. Firstly, the Government’s policy that the overall expenses of the Employees Retraining Board should be primarily met by a levy and that employers of low-skilled “imported” labour should contribute towards the training and retraining of local workers, remains unchanged. Furthermore, it needs to be assessed whether foreign domestic workers whose visas have been issued before 1 August 2008 are at an increased risk of losing their employment prematurely because their employer wants to change his or her domestic worker in order to take advantage of the levy suspension; something which might not have happened if the levy suspension were applicable to all foreign domestic workers. ***In order to be able to assess that real progress is being made in the application of the principle of equal treatment enshrined in Article 6 of the Convention and that the principles of equity and proportionality are being applied to all foreign domestic workers, the Committee asks the Government to provide information on the following:***

- (i) *the reasons for applying the levy suspension only to new employment contracts and renewal of existing contracts;*
- (ii) *to examine, with a view to extending the levy suspension to all foreign domestic helpers, whether the levy suspension has significantly increased the premature termination of pre-existing employment contracts of foreign domestic workers without renewal, after 1 August 2008; and*
- (iii) *any further developments with respect to the suspension of the obligation for employers of foreign domestic helpers and “imported” workers to pay the ERL.*

Underpayment claims. With regard to the issue of underpayment of wages of foreign domestic helpers as a result of the wage and levy policies previously raised by the Indonesian Migrant Workers Union (IMWU) and the Asian Domestic Workers Union (ADWU), the Committee notes that there has been an increase in claims on alleged underpayment of wages handled by the Labour Department, involving 800 claims from 1 June 2004 to 31 March 2007. Of the 800 cases, 330 were settled with the assistance of the Labour Department and the remaining 470 were subsequently referred to the Labour Tribunal or the Minor Employment Claims Adjudication Board. According to the Government, the growing number of claims can be attributed to the increased awareness of foreign domestic helpers of their statutory and contractual rights as well as the avenues for submitting complaints. Apart from assisting “imported” workers or foreign domestic helpers to pursue their employment claims, the Department of Labour has also summoned 93 employers because of underpayment of wages or breaches of the Employment Ordinance Order, 92 of which resulted in a conviction and a fine. The Committee further notes that to enhance the deterrent effect against employers defaulting on wage payments, the maximum penalty for wage offences has been substantially increased from a fine of HKD200,000 and imprisonment for one year to a fine of HKD350,000 and imprisonment for three years since March 2006. ***The Committee asks the Government to continue to provide information on the claims submitted by foreign domestic workers for the underpayment of wages, including information on the number of any of the new claims, as well as those submitted since June 2004 that have actually resulted in compensation of the foreign domestic workers concerned.***

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

[The Government is asked to reply in detail to the present comments in 2010.]

France

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1954)

Articles 2, 3, 4 and 6 of the Convention. Measures to assist and inform migrant workers, promote their social and economic integration and address discrimination against them. The Committee notes that the Government has taken a series of measures relevant to the application of the Convention. In particular, the Act No. 2006-911 of 24 July 2006 concerning immigration and integration introduces a number of changes aimed at facilitating economic integration, such as the residency permit on competencies and talents and the residency permit for seasonal workers; the possibility for French placement agencies to propose temporary employment contracts; the establishment of lists of occupations for which there is a need for foreign workers and the opportunity for foreign students to seek employment during the six-month period after the completion of their Master’s degree, or to be engaged in wage employment. The Committee further notes that the Act 2007-1631 of 20 November 2007 concerning immigration control, integration and asylum further simplifies certain provisions of the Act of 24 July 2006. Furthermore, a new Ministry of Immigration, National Identity, Integration and Co-development was established in 2007 with the objectives of controlling migration flows, promoting French national identity, improving integration and encouraging co-development. In addition, a number of bilateral agreements have been concluded relating to the exchange of young professionals and work-holiday programmes. France is further proposing to certain migrant sending countries a new generation of bilateral agreements aimed at organizing regular migration, fighting against irregular migration and promoting co-development and cooperation.

Furthermore, the Committee notes that the Government’s policy on the reception and integration of migrants has become a priority since 2002 and that new measures have been taken to improve the reception and integration of migrants such as the creation of the National Agency for the Reception of Foreigners and Migration (ANAEM) and the contract of reception and integration (*contrat d’accueil et d’intégration*) (CAI). The Government has also been taking steps to improve housing conditions in France, such as the Plan to convert “Migrant Workers’ Houses” (*Foyers de Travailleurs Migrants*) into social residencies, measures to improve living and housing conditions of older immigrants and measures to combat discrimination in housing through the High Authority to Combat Discrimination and in Favour of Equality (HALDE) and the Act respecting the national housing commitment, 2006. The Committee notes in this regard the Government’s statement that with respect to housing the fight against discrimination remains one of the main difficulties especially due to the lack of data and the difficulty in proving that discrimination with respect to housing has occurred.

While acknowledging the efforts by the Government to facilitate the reception of migrants and promote their integration and equal opportunities, the Committee notes from the report of the UN Independent Expert on Minority Issues (A/HRC/7/23/Add.2, 4 March 2008) and the concluding observations of the Committee on Economic, Social and Cultural Rights (CESCR) (E/C.12/FRA/CO/3, May 2008), as well as the Committee on the Elimination of Discrimination Against Women (CEDAW/C/FRA/CO/6) that major problems continue to exist with respect to integration of the

immigrant population in French society, including a climate of suspicion and negativity, as well as widespread discrimination against migrant workers, having an impact on their general living conditions as well as their educational and employment opportunities. According to the CESCR, migrant workers and persons of immigrant origin “are disproportionately concentrated in poor residential areas characterized by low quality, poorly maintained large housing complexes, limited employment opportunities, inadequate access to health care facilities and public transport, under-resourced schools and high exposure to crime and violence” (E/C.12/FRA/CO/3, May 2008, paragraph 21). The UN Independent Expert states that “when poor immigrants arrive, those belonging to ethnic or religious groups are allocated to the poorest housing in specific neighbourhoods that have become highly ethnicized resulting in a discriminatory pattern of de facto segregation [...] Government officials acknowledge areas of some 70 per cent ‘foreign’ residents and the creation of what has become recognized as the ‘ghetto’ phenomenon” (A/HRC/7/23/Add.2, 4 March 2008). The Committee also recalls its comments in 2007 on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it had already raised concerns regarding the lack of progress made in addressing racial and ethnic discrimination against migrant workers.

The Committee is aware that the social and economic situation of migrant workers in the country is complex and that an effective strategy to promote the integration and equal treatment of migrant workers involves a combination of measures, some of which are required to achieve full application of this Convention. In particular, the Committee draws the attention of the Government to *Articles 2 and 4* of the Convention emphasizing the importance of adequate measures to assist and inform migrant workers and to facilitate their reception, and *Article 3* of the Convention requiring steps against misleading propaganda, including false information targeting the national population propagating stereotypes on migrant workers generating racism and discrimination. Most importantly, *Article 6(1)(a) to (d)* of the Convention aims to guarantee equality of treatment with respect to conditions of work, social security, trade union rights, accommodation and legal proceedings. With regard to accommodation, the Committee points out that segregating the migrant population from the national population may not be conducive to social integration (General Survey on migrant workers of 1999, paragraph 281). ***The Committee requests the Government to provide information on the following:***

- (i) ***the activities carried out by ANAEM to facilitate the reception and effective integration in French society of migrant workers from third countries, in accordance with Articles 2 and 4 of the Convention. Please also provide information on the impact of the CAIs on the integration of migrant workers;***
- (ii) ***the steps taken to combat the dissemination of misleading and false information, including on certain stereotypes relating to the educational and employment abilities of migrant workers as well as their being more susceptible to crime, violence and diseases, targeting both the national and foreign population. Please also provide any information on the impact of these measures on the incidence of discrimination against migrant workers;***
- (iii) ***the measures taken, and the results achieved, to ensure that migrant workers lawfully in the country and their families accompanying them are not being treated less favourably than nationals with respect to housing, whether in law or in practice. Such measures could include further steps to improve the housing and living conditions of migrant workers as well as measures to reduce their de facto segregation with respect to housing;***
- (iv) ***the measures taken to ensure that the principle of equal treatment between migrant workers lawfully in the country and nationals is also effectively applied in practice with regard to the other matters listed in Article 6(1), subparagraphs (a)(i) and (ii), (b), (c) and (d) of the Convention. Please include information on any measures particularly addressed to women migrant workers, as well as on any complaints by migrant workers regarding these matters that have been dealt with by HALDE, the courts, or other bodies competent to monitor the application of the relevant national legislation and the Convention.***

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

[The Committee is asked to reply in detail to the present comments in 2010.]

Israel

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1953)

The Committee notes that according to the Government, at the time of reporting, some 12,000 migrant workers were lawfully employed in the construction sector, 1,500 in manufacturing and 900 in restaurants. Data released by the Central Bureau of Statistics for 2007 suggest that migrant workers (excluding those from the occupied Palestinian territories) were employed in 69,900 jobs, out of which 10,100 were in construction and 23,900 in agriculture. The Committee understands that a large majority of foreign workers employed as caregivers are women. The countries from which the largest groups of migrant workers come to Israel are the Philippines, Thailand, Romania and China. ***The Committee requests the Government to provide updated statistical information on the actual number of temporary migrant workers present in Israel, disaggregated by sex and the sectors in which they work.***

Article 6 of the Convention. Equal treatment. The Committee notes the decision of the High Court of Justice in the case of Kav LaOved Workers Hotline and others v. Government of Israel (HCJ 4542/02) of 30 March 2006. In this case, the Court held that making the residence permits given to temporary migrant workers conditional upon the workers

working for a specific employer, which means that migrant workers leaving or losing their jobs automatically became illegal aliens, violates their dignity and liberty. The Court had before it information showing that the excessive power held by employers over temporary migrant workers under such a “restrictive employment relationship” resulted in situations where migrant workers are denied their rights under the labour legislation, including regarding remuneration and hours of work, with no possibility to seek redress without taking the risk of losing their jobs and residence permits. In considering relevant international law, the Court held that the Ministry of Interior, when making use of its power to determine conditions for giving a visa or residence permit is limited, inter alia, by the principle of non-discrimination between workers who are citizens and workers from foreign countries as enshrined in *Article 6* of the Convention.

The Committee recalls that *Article 6* requires ratifying States to apply, without discrimination in respect of nationality, race, religion or sex, to migrant workers lawfully within the country, treatment no less favourable than that which applies to its own nationals in respect of the matters referred to in *Article 6 (1)(a) to (d)*, including remuneration, hours of work, and legal proceedings relating to the matters referred to in the Convention. These provisions of the Convention envisage equal treatment of migrant workers in law, but also in practice. The Committee is concerned that the information considered by the High Court of Justice in its abovementioned decision indicates that many migrant workers apparently do not benefit from the rights and protection available under the legislation, in practice. The Committee considers that reducing the migrant workers’ dependency on individual employers and thus limiting the power exercised by employers over their foreign workers, is indeed an important aspect in ensuring that equal treatment is applied to migrant workers in practice, along with dissuasive sanctions and effective enforcement of relevant laws.

The Committee notes from the Government’s report that resolution No. 447-448 adopted by the Government on 12 September 2006 sets out new modalities for employing migrant workers in the care-giving and agricultural sectors with a view to increasing the protection of migrant workers and to simplifying the process of changing employers. Migrant workers who lose their employment may register with the Ministry of Industry, Trade and Labour for a placement with a new employer. The Government also introduced legislation prohibiting private agencies from charging migrant workers abusive recruitment fees and established an Ombudsperson to deal with complaints from migrant workers. Following investigations by the Enforcement Division of the Foreign Workers Department in the Ministry of Industry, Trade and Labour, administrative fines were imposed on employers in 5,861 cases for offences related to migrant workers in 2006, and 3,743 new cases were opened. The Ombudsperson received 449 complaints in 2006. These figures demonstrate the attention paid by the authorities to law enforcement, but also suggest a high level of non-compliance with the legislation. ***The Committee requests the Government to take further measures to ensure that the treatment extended to migrant workers employed in Israel under the Foreign Workers Act, is no less favourable than that which is applied to nationals, in law and in practice, with regard to the matters listed in Article 6(1)(a) to (d) of the Convention. In this regard, the Committee requests the Government to continue to provide information on the number and nature of violations of the relevant laws and regulations identified and addressed by the various responsible authorities, including indications as to the sanctions imposed. The Committee also requests the Government to provide information on the practical implementation of the modalities adopted by Resolution No. 447-448 regarding the agricultural and care-giving sector, as well as information on how the concern of reducing the migrant workers’ dependency on the employer is addressed in other sectors, such as construction or manufacturing.***

Equal treatment in respect of social security. The Committee further notes that under section 1D(a) of the Foreign Workers Act, the employer, at its own expense, is to arrange medical insurance for the foreign worker, which shall include the basket of services that the Minister of Health prescribes for this purpose by order. In this regard, the Committee notes that the Foreign Workers Order (Prohibition of Unlawful Employment and Assurance of Fair Conditions) (Health Services Basket for Workers), 5761-2001, lists in section 2 the services to be included in the insurance arranged for the foreign worker. Section 3 provides for certain entitlement exceptions and section 4 limits the entitlements regarding certain services for migrant workers, including entitlements related to pregnancy and medical conditions that existed before the migrant worker took up his or her employment in Israel. The Committee recalls that under *Article 6(1)(b)*, migrant workers have the right to treatment no less favourable than that which applies to nationals in respect to social security, including in relation to sickness and maternity. The Committee considers that the establishment of a separate health insurance system for migrant workers which excludes migrant workers from certain entitlements and which limits certain entitlements, may not be in conformity with *Article 6(1)(b)* of the Convention. ***The Committee requests the Government to clarify the reasons for establishing a separate health insurance system for migrant workers and for the exclusions and limitations provided for under sections 3 and 4 of the abovementioned Order. It also requests the Government to indicate how it is ensured that all migrant workers admitted to Israel under the Foreign Workers Act fully enjoy their right to treatment no less favourable than that which applies to Israeli nationals regarding social security in respect of sickness and maternity.***

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

[The Government is asked to reply in detail to the present comments in 2010.]

Italy

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) ***(ratification: 1981)***

Non-discrimination and protection of basic human rights of all migrant workers. The Committee notes the Government's report in which it reaffirms its commitment to fully protect and respect the rights and dignity of migrants on Italian soil. It notes in particular Legislative Decree No. 215, 2003, concerning equal treatment regardless of race and ethnicity intended to transpose European Community Directive No. 2000/43, in accordance with the 2001 European Community Act (Act. No. 39 of 1 March 2002), and the creation of the Office for the Promotion of Equality of Treatment and the Elimination of Discrimination based on Race and Ethnic Origin (UNAR) in November 2004. The UNAR is charged with promoting equality of treatment to eliminate all forms of discrimination on the basis of race or ethnic origin, to provide legal assistance to persons considering themselves to be victims of such discrimination, and to raise public awareness in relation to racial integration. In addition, the Government has established the Department of Rights and Equal Opportunities within the Office of the President of the Council of Ministers which has far-reaching competence in the area of the promotion of human rights and the prevention and removal of any form of discrimination.

Despite the existence of human rights and anti-discrimination legislation and the creation of administrative and advisory bodies, the Committee notes the apparent high incidence of discrimination and violations of basic human rights of the immigrant population in the country. It notes from the findings of the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) that racism and xenophobia affecting immigrants, asylum seekers and refugees – including Roma – persists in the country creating a negative climate concerning these persons. The ACFC also refers to the sometimes harsh conditions of detention of irregular immigrants, pending their expulsion to their country of origin (ACFC/INF/OP/II2005003, 25 October 2005). The Committee further notes the concluding observations of the UN Committee on the Elimination of Racial Discrimination (CERD/C/ITA/CO/15, March 2008) expressing concern at reports of serious violations of the human rights of undocumented migrant workers, in particular those from Africa, Eastern Europe and Asia, including ill treatment, low wages received with considerable delay, long working hours and situations of bonded labour in which part of the wages are being withheld by employers as payment for accommodation in overcrowded lodgings without electricity or running water. The CERD also refers to the ongoing racist and xenophobic discourse targeting essentially non-EU immigrants, instances of hate speech targeting foreign nationals and Roma, as well as reports of ill-treatment of the Roma, especially those of Romanian origin, by the police force in the course of raids in Roma camps, notably following the enactment of the presidential decree in November 2007, Law Decree No. 181/07 regarding the expulsion of foreigners.

In the same context, the Committee notes that the UN Special Rapporteur on racism, the UN Independent Expert on minority issues, and the UN Special Rapporteur on the human rights of migrants, issued a statement on 15 July 2008 in which they expressed their serious concern about recent actions, declarations and proposed measures targeting the Roma community and migrants in Italy, in particular the proposal to fingerprint all Roma individuals in order to identify those undocumented persons living in Italy. They also condemned the aggressive and discriminatory rhetoric used by political leaders explicitly associating the Roma to criminality, thus creating an overall environment of hostility, antagonism and stigmatization among the general public.

The Committee is deeply concerned by these reports on violations of basic human rights, especially of undocumented migrants coming from Africa, Asia and Eastern Europe, and of an apparently increasing climate of intolerance, violence and discrimination against the immigrant population, especially the Roma of Romanian origin. As these matters have an impact on the basic level of protection of the human and labour rights and the living and working conditions of the immigrant population in Italy, the Committee considers that they raise serious issues of non-application of the Convention. The Committee recalls the Government's obligation under *Article 1 of the Convention* to respect the basic human rights of all migrant workers, irrespective of their migrant status. Moreover, under *Article 9(1)*, the Government has the obligation to ensure that migrant workers, even those illegally employed, are not deprived of their rights in respect of the work actually performed as regards remuneration, social security and other benefits. The Committee also recalls the Government's obligation under *Articles 10 and 12* of the Convention to take measures that guarantee equality of treatment, with regard to working conditions, for all migrant workers lawfully in the country, as well as measures to inform and educate the general public aimed at improving awareness of discrimination in order to change attitudes and behaviour. These should not only cover non-discrimination policies in general but should ensure that the national population accepts migrant workers and their families as fully fledged members of society (General Survey of 1999 on migrant workers, paragraph 426).

The Committee hopes that the Government will be able to act effectively to address the apparent climate of intolerance, violence and discrimination of the immigrant population in Italy, including the Roma, and to ensure the effective protection in law and in practice of the basic human rights of all migrant workers, independent of their status. It hopes that the necessary measures will be taken to help the victims to assert their rights and to ensure that the provisions of the legislation concerning discrimination are better understood and observed, and breach of them more effectively penalized. The Committee hopes that the next report will contain full information on activities undertaken in this area, including activities by the Office for the Promotion of Equality of Treatment and the Elimination of

Discrimination based on Race and Ethnic Origin and the Department of Rights and Equal Opportunities. The Committee also refers the Government to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

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

[The Government is asked to reply in detail to the present comments in 2009.]

Malaysia

Sabah

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1964)

Article 6(1)(b) of the Convention. Equality of treatment with respect to social security. For over ten years, the Committee, as well as the Conference Committee on the Application of Standards, have been pursuing a dialogue with the Government regarding differences in treatment between nationals and foreign workers with respect to payment of social security benefits. The Committee had noted that, as of 1 April 1993, foreign workers in the private sector were no longer covered by the Employees' Social Security Act, 1969 (SOCSSO), which provided for periodical payments to victims of industrial accidents and their dependants. Instead they were transferred to the Workmen's Compensation Scheme (WCS) which only guarantees the payment of a lump sum. The Committee had considered that this change was not in conformity with *Article 6(1)(b)* of the Convention. A review of the two schemes had also shown that the level of benefits in the case of industrial accident provided under the Employees' Social Security Scheme (ESS) was substantially higher than that provided under the WCS.

The Committee recalls that foreign workers permanently residing in Malaysia (Sabah) continue to be covered by the ESS, while foreign workers working in the country for a period of up to five years are covered only by the WCS. The Committee notes the detailed comparison provided by the Government of the benefits awarded according to each system in identical circumstances. The comparison shows, however, that the level of benefits in the case of industrial accident provided under the WCS is substantially lower than that provided under the SOCSO. Moreover, the Committee notes that some other differences exist between temporary foreign workers and foreign workers permanently residing in the country and nationals in respect of, for example, the invalidity pension scheme and survivors' pension rehabilitation, as well as accidents outside work. The Committee further notes that the Government maintains its position that the system is reliable and suitable to the needs of the workforce of the country. The Committee notes from the UNDP–Sabah development statistics that in 2005, 24.8 per cent of the population were non-citizens. The Committee understands that the percentage of foreign workers has been increasing ever since, and that many of them are working in manufacturing, plantation work, domestic work, construction, services and agriculture.

The Committee recalls that *Article 6(1)(b)* of the Convention applies to all foreign workers, both those with permanent and temporary residence status, who shall not be treated less favourably than nationals in respect of social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme). The Committee also recalls *Article 10* of the Convention, providing that in cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities shall, where necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of the Convention. *With respect to industrial accidents, the Committee refers the Government to the comments made under the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), with respect to Peninsular Malaysia and Sarawak. With respect to other social security benefits, and taking into account the large number of foreign workers concerned, the Committee hopes that the Government will consider making every effort to take special steps, 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 other social security benefits. Noting from the Government's report for Sarawak and Peninsular Malaysia on Convention No. 19, that the Government is considering extending the Workmen's Compensation Scheme to domestic workers, please indicate whether domestic workers are covered under the Workmen's Compensation Scheme of Sabah.*

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

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

[The Government is asked to reply in detail to the present comments in 2010.]

Portugal

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1978)

The Committee notes the comments by the Confederation of Trade and Services (CCSO) and the General Union of Workers (UGT) dated 31 July 2007 emphasizing the importance of taking a transversal view of the problem of migration and promoting the integration of migrant workers, by enhancing their rights, and particularly by guaranteeing the right to family reunification.

The Committee notes with interest the comprehensive legislative and policy measures taken since the Government's last report to further strengthen its migration policy and the protection of the rights of migrant workers. The Committee notes in particular Act No. 23/2007 of 4 July 2007 and its implementing Decree of the same year which establish the legal framework for the entry, residence, departure and expulsion of foreign nationals, and provide for the possibility of granting a one-year residency permit to victims of trafficking. It also notes that new legislation has been adopted laying down the legal framework for combating discrimination on the grounds of race or ethnic origin, and further improving the right of equal treatment between migrant workers lawfully in the country and nationals with respect to social security benefits. In addition, the Committee notes the National Action Plan for Inclusion for the period 2006–08, and the Immigration Integration Plan (PII) intended to promote the integration of immigrants into the country through various measures in the fields of employment, vocational training, housing, social security, the prevention of discrimination and the promotion of gender equality. Finally, the Committee welcomes the establishment of a number of institutions and structures mandated to address migration-related matters and issues concerning migrant workers, such as the High Commissioner for Immigration and Ethnic Minorities (2002) and the Committee to Administer the Framework Programme for Solidarity and Management of Migration Flows (2006). *The Committee welcomes these measures and asks the Government to continue to provide information on the policies and legislation aimed at further improving the application of the Convention. The Committee also refers to its comments on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).*

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

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1978)

The Committee notes the comments by the Confederation of Trade and Services (CCSO) and the General Union of Workers (UGT) dated 31 July 2007, emphasizing the importance of taking a transversal view of the problem of migration and promoting the integration of migrant workers by enhancing their rights, and particularly by guaranteeing the right to family reunification. The CCSO also stresses the urgent need for a cross-cutting approach to immigration based on: (a) the regularization of all immigrants; (b) the facilitation of legal immigration; and (c) immigration based on effective integration policies.

The Committee notes with interest the comprehensive legislative and policy measures taken since the Government's last report to further strengthen its migration policy and the protection of the rights of migrant workers. The Committee notes in particular Act No. 23/2007 of 4 July 2007 and its implementing Decree of the same year which establish the legal framework for the entry, residence, departure and expulsion of foreign nationals, and provide for the possibility of granting a one-year residency permit to victims of trafficking, as well as the new legislation in the area of social security and non-discrimination. In addition, the Committee notes the National Action Plan for Inclusion for the period 2006–08, and the Immigration Integration Plan (PII) intended to promote the integration of immigrants into the country through various measures in the fields of employment, vocational training, housing, social security, the prevention of discrimination and the promotion of gender equality. According to the CCSO, the Plan provides a framework for the country's objectives and undertakings with regard to policies concerning the reception and integration of immigrants. The Committee further welcomes the establishment of the High Commissioner for Immigration and Ethnic Minorities (ACIME) (2002) and the Committee to Administer the Framework Programme for Solidarity and Management of Migration Flows (2006). *The Committee asks the Government to provide information on the measures taken or envisaged, including under the PII, to promote the effective integration of migrant workers, taking into account their concerns relating to family reunification, in accordance with Articles 12(e) and 13 of the Convention, and to facilitate migration for employment through legal channels. Recalling Article 9(4) of the Convention, the Committee also asks the Government to provide information on any measures taken or envisaged to regularize the situation of migrants in an irregular situation.*

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

Slovenia

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1992)

Article 6(1)(a)(i) and (b) of the Convention. Equality of treatment and non-discrimination with respect to conditions of work and social security. The Committee notes the comments by the Association of Free Trade Unions of Slovenia (AFTUS) attached to the Government's report on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), raising issues related to the application of the equality of treatment principle embodied in Convention No. 97. In its comments, the AFTUS draws attention to the annual report of the Labour Inspectorate of 2006 explicitly highlighting the constant violations of labour law provisions concerning limitations on overtime work and the method of ordering overtime work: orders for overtime are usually given orally. In addition, the AFTUS is concerned that the system under which migrant workers with an employment permit only have the right to work for the employer who obtained their work permit, increases the employers' opportunity to exploit migrant workers in terms of working time, payment, daily and weekly rest periods, and annual leave. In their view, linking a work permit to an employer constitutes indirect discrimination in employment based on ethnic origin or citizenship, which is prohibited under section 6 of Employment Relationship Act No. 103/2007. The Committee further notes from the Government's report that labour inspection activities over the past five years showed a considerable number of violations of the Employment and Work of Aliens Act, especially in the construction industry, including the practice of illegal trading of workers between employers. The reports also indicate that workers tend to leave their job arbitrarily because of unpaid wages and the employers' failure to make proper social security contributions. The Committee recalls that *Article 6(1)(a)(i)* requires ratifying States to apply, without discrimination in respect of nationality, race, religion or sex, to migrant workers lawfully within the country, treatment no less favourable than that which it applies to its own nationals in respect of remuneration, hours of work, overtime arrangements and holidays with pay. These provisions of the Convention envisage equal treatment of migrant workers in law, but also in practice. The Committee notes that the above information apparently indicates that many migrant workers, especially those in the construction industry, do not benefit from the rights and protection available under the legislation, in practice. The Committee further considers that a migrant workers' dependency on an individual employer may in practice bring about the risk of non-respect by the employer of labour law provisions concerning working time, payment, daily rest periods, weekly rest and annual leave. ***The Committee requests the Government to take additional measures to ensure that the treatment extended to migrant workers employed in Slovenia is no less favourable than that which is applied to nationals, in law and in practice with regard to the matters listed in Article 6(1)(a)(i) and (b) of the Convention. This could include, for example, examination of the conditions of work of migrant workers in the sectors in which they are primarily employed. The Committee also requests the Government to provide further information on the activities carried out by the labour inspection services to ensure the full application to migrant workers of the labour law provisions concerning remuneration, hours of work, overtime arrangements, rest periods and annual leave, as well as information on the nature and number of violations found and an indication of the sanctions imposed. The Committee also requests the Government to provide information on how the concern of reducing the migrant workers' dependency on one individual employer is being addressed.***

Article 6(1)(a)(iii). Equal treatment with respect to accommodation. The Committee further notes that the AFTUS raises concerns regarding substandard housing conditions of migrant workers, including imposed visiting hours in single-sex hostels where many migrant workers reside. Employers of migrant workers also appear to take advantage of the absence of minimum standards for housing. The AFTUS recalls in this regard that section 2 of the Principle of Equal Treatment Act, 2007, provides for equal treatment based on nationality, race, gender and religion with respect to access to and supply of goods and services which are available to the public, including housing. In the view of the AFTUS, there is a need to strengthen the supervision of the housing conditions of migrant workers, including the delegation of responsibilities and obligations to one or more state authorities for regular control of housing conditions of migrant workers, high penalties for potential violators and laying down minimum standards of living for migrant workers at national level. The Committee draws the Government's attention to the fact that under *Article 6(1)(a)(iii)* of the Convention, migrant workers lawfully in the country should not be treated less favourably than nationals with respect to accommodation. This includes the occupation of a dwelling to which migrant workers must have access under the same conditions as nationals. In its General Survey of 1999 on migrant workers, the Committee has also pointed out the importance of providing adequate housing arrangements for migrant workers, including by the employers, especially in the case of seasonal and time-bound work (paragraphs 281–282). At the same time, the Committee has also pointed out that the provision of migrant-specific housing, effectively segregating the migrant population from the national population, may not be conducive to social integration. ***The Committee requests the Government to provide information on the measures taken to ensure that in law and in practice migrant workers, especially those engaged in seasonal and time-bound work, are not being treated less favourably than nationals or other categories of migrant workers with respect to accommodation. In this regard, please also indicate the measures taken to address the concerns of the AFTUS such as strengthening the supervision of the housing conditions of migrant workers, imposing dissuasive penalties for potential violators and laying down minimum standards of living at national level for migrant workers. The Committee also refers to its comments on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).***

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

[The Government is asked to reply in detail to the present comments in 2010.]

**Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
(ratification: 1992)**

Articles 10 and 14(a) of the Convention. Equality of opportunity and treatment in employment and occupation. Free choice of employment. The Committee notes the comments by the Association of Free Trade Unions of Slovenia (AFTUS) attached to the Government's report, which also raise issues relevant to the application of the equality of treatment principle enshrined in the Migration for Employment (Revised) Convention, 1949 (No. 97). In its comments, the AFTUS raises concerns about the work permit system under which foreign workers issued with an employment permit are given the right to be employed only by the employer who obtained the work permit for them. Workers with an employment permit do not have the free choice of employment until they meet the conditions for obtaining a personal work permit valid for a period of three years or for an indefinite period of time. In the view of the AFTUS, this system is in conflict with article 49 of the Constitution which provides for freedom of work, as well as with the Equal Treatment Act, the Employment and Work of Aliens Act, the Aliens Act, the Employment and Insurance Against Employment Act and the Employment Relationship Act. Moreover, linking a work permit to a specific employer increases opportunities for the employer to exploit the migrant worker and as such constitutes indirect discrimination in employment based on ethnic origin or citizenship, which is prohibited pursuant to section 6 of the Employment Relationship Act (No. 103/2007).

The Committee notes that, pursuant to Government Resolution of 25 May 2006 citizens of the European Union and European Economic Area may be employed in Slovenia without a work permit. Third-country nationals are covered by the Employment and Work of Aliens Act (Acts Nos 66/00, 101/05 and 52/07, hereafter ZZDT) and require an employment permit. The Committee notes that pursuant to the ZZDT, a work permit can be issued as a personal work permit, an employment permit or a permit for work. It notes that a "personal work permit" may be issued for three years or for an indefinite period of time, is renewable and gives free access to the labour market. An "employment permit", on the contrary, is a work permit tied to the permanent employment needs of employers based on specific vacancies. This type of permit allows a foreigner to find employment only with the employer who applied for such a permit, and is issued for no longer than one year. However, the Government indicates that an employment permit may be issued for two or more employers after the worker has been employed by the first employer for at least six months on the condition that he or she has at least higher education. A "permit for work" is a permit with a time limit fixed in advance on the basis of which a foreigner may find temporary employment or work in Slovenia in accordance with the purpose for which the permit is issued. The Committee further notes from the Government's report that the foreigner who has at least vocational education and who was continuously employed with the same employer or his or her legal predecessor, as well as the "work migrant" who for two years prior to the application was continuously employed by the same employer may apply for a personal work permit.

The Committee recalls that *Article 10* of the Convention requires the State to declare and pursue a national policy designed to promote and to guarantee equality of opportunity and treatment between migrant workers lawfully in the country and nationals in respect of employment and occupation. *Article 14(a)* of the Convention allows the State to make the free choice of employment subject to temporary restrictions during a prescribed period which may not exceed two years. Based on the above, it appears that certain migrant workers, in particular third-country nationals without vocational or higher education, may not fully enjoy equality of treatment in respect of free choice of employment after a period of two years. ***In order to be able to assess fully the extent to which the principle of equality of treatment in respect of the free choice of employment is being applied to all migrant workers, the Committee asks the Government to specify under which conditions, with an indication of the applicable legal provisions, third-country nationals with an employment permit and without vocational or higher education enjoy equality of treatment with respect to access to employment, after a period of two years. Please also clarify whether a "work migrant" means a migrant to whom a "permit for work" has been issued. The Committee also refers to its comments on Convention No. 97.***

Articles 10 and 12. Equality of opportunity and treatment. Integration of migrant workers. The Committee notes that in its comment, the AFTUS raises concerns regarding the lack of institutions providing information essential for the integration of foreign nationals into Slovenian society. In the view of the AFTUS, integration of foreign nationals must take due account of intercultural dialogue and of the importance of giving information to migrant workers in their mother tongue. The AFTUS further maintains that the substandard housing and living conditions, especially in single-sex hostels, of migrant workers, as well as the frequent violations of the labour law provisions relating to hours of work show a total erosion of the cultural and social life of migrant workers in Slovenia.

The Committee notes the Government's confirmation in its report that it has not yet implemented systematic measures aimed at the integration of migrant workers and their families. However, the Government draws attention to section 82 of the Aliens Act (107/2006) which guarantees conditions to foreigners who have a resident permit for their integration into cultural, economic and social life, in particular by arranging for language courses, organizing courses and other types of advanced training and professional education, providing information that foreigners need for their integration, especially with regard to their rights and duties, the possibility of personal development and development in society, the familiarization of foreigners with Slovenian history, culture and constitutional order, and by organizing joint

events with citizens to encourage common knowledge and understanding. The Act further specifies that state bodies and other bodies, organizations and associations will provide protection against all forms of discrimination based on racial, religious, national, ethnic or other differences of foreigners. The Government further indicates that a draft amendment of the Aliens Act, which is in the process of being adopted, specifies the ministerial responsibilities for providing programmes to implement the aforementioned measures. A decree will also be prepared relating to the integration of foreigners. The Committee also notes that the Government has prepared a number of proposals on educational programmes, research on integration and programmes encouraging intercultural dialogue to be submitted to the European Fund for the Integration of Third-Country Nationals.

The Committee recalls that *Article 10* of the Convention requires proactive steps to be taken by public authorities to promote equality of opportunity between migrant workers lawfully in the country and nationals, in both law and practice. An active policy to secure the acceptance and observance of the principle of non-discrimination by society generally, and to assist migrant workers and their families to make use of the equal opportunities offered to them, is essential. *Article 12* of the Convention sets out the type of measures to be taken to promote the effective observance of a policy of equality of opportunity and treatment. These include the contribution made by employers' and workers' organizations and other appropriate bodies, measures to inform and educate the public, and other measures to assist migrant workers and their families to exercise their rights and share the advantages enjoyed by nationals. ***In order to be able to assess more fully how the principle of equality of opportunity is being applied in accordance with Articles 10 and 12 of the Convention, the Committee requests the Government to provide detailed information on the following:***

- (i) ***the measures taken aimed at the integration of migrant workers and to give effect to section 82 of the Aliens Act, as well as their impact on ensuring effective equality of opportunity and treatment of migrant workers, in law and in practice, not only with respect to access to employment and occupation but also with regard to the other matters listed in Article 10 of the Convention;***
- (ii) ***the specific measures taken to provide adequate and effective language courses to migrant workers, to promote intercultural dialogue, and to improve the general housing and living conditions of migrant workers as a means to promote their integration in society. The Committee also refers in this regard to its 2008 observation on Convention No. 97;***
- (iii) ***the progress made with respect to the further amendment of section 82 of the Aliens Act, and the adoption of the Decree on the Integration of Aliens.***

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

[The Government is asked to reply in detail to the present comments in 2010.]

Uganda

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1978)

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

The Committee recalls its previous observation in which it expressed concern over the slow progress made with respect to the adoption of legislation that would include measures against clandestine migration movements and provide for equal treatment and opportunity between migrant workers and nationals. The Committee had expressed the hope that the revised legislation would also impose penal sanctions against the organizers of clandestine movements of migrants or against those who employ such workers, in accordance with *Articles 3(b) and 6(1) of the Convention*, and that it would ensure that migrant workers have free choice of employment in accordance with *Articles 10 and 14(a) of the Convention*. The Committee notes the Government's statement that the new Employment Act, which is currently awaiting Presidential assent, will cover the concerns raised by the Committee, and that a copy of the text will be supplied to the Office. ***The Committee looks forward to receiving a copy of the new Employment Act and hopes that it will be able to note at its next session significant progress with respect to the matters raised above.***

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

Zambia

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1964)

In previous observations, the Committee had emphasized that, pursuant to *Article 6(1)(b) of the Convention*, equality of treatment with respect to social security should be ensured with regard to all foreign workers lawfully in the territory and not only to those permanently residing in the country. It had noted the Government's indication that the National Pensions Scheme Act, No. 60, 1996, has transformed the National Provident Fund into a national pension scheme, which became operational on 1 February 2000. The Committee notes that the Second Schedule, section 10, of the National Pensions Scheme Act, No. 9, of 2000, which should be read together with the National Pensions Scheme Act, No. 60,

1996, exempts employees of international organizations and employees of foreign governments with diplomatic or equivalent status who are not citizens of Zambia. It also notes that, pursuant to section 13(2) of the Act, the Minister may, by statutory instrument, vary or add to the list of employees in the Second Schedule. However, the Government indicates that the Act is again under review. *The Committee hopes that the Government, in revising the National Pensions Schemes Act, 2000, will take due account of the principle of equality of treatment in social security, embodied in Article 6(1) (b) of the Convention, and asks the Government to keep it informed of any further developments with respect to the revision of the Act. Please also indicate whether any statutory instruments have been adopted exempting other categories of employees from the National Pensions Scheme Act, No. 9 of 2000.*

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 97** (Albania, Barbados, Belgium, Belize, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, China: Hong Kong Special Administrative Region, Cyprus, Ecuador, France, Germany, Guyana, Israel, Italy, Madagascar, Malawi, Malaysia: Sabah, Republic of Moldova, Netherlands, Nigeria, Norway, Portugal, Saint Lucia, Slovenia, United Republic of Tanzania: Zanzibar, Trinidad and Tobago, United Kingdom, United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Guernsey, United Kingdom: Isle of Man, United Kingdom: Jersey, United Kingdom: Montserrat, Zambia); **Convention No. 143** (Albania, Benin, Bosnia and Herzegovina, Burkina Faso, Cameroon, Cyprus, Guinea, Italy, Norway, Portugal, San Marino, Slovenia, Sweden, Togo).

Seafarers

Guinea

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1977)

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

For many years, the Committee has been asking the Government to indicate the specific instruments that govern the prevention of occupational accidents of seafarers. The Government has so far indicated that appropriate regulatory texts were in preparation and would be reviewed with the technical assistance of the ILO to ensure their compliance with the provisions of the Convention. In its last report, the Government refers only to the provisions of the Labour Code and Merchant Navy Code, noting that they provide for the adoption of regulations on occupational safety and health. The Government further indicates that the authorities responsible for framing and supervising maritime regulations were also to draft a whole series of texts in this area. The Committee points out that Guinea ratified this Convention 31 years ago, in 1977. It also points out that the provisions of the national legislation are general in nature and do not always ensure that full effect is given to the provisions of the Convention. *Consequently, the Committee once again expresses the hope that the Government will make every effort to ensure that texts giving full effect to the Convention are adopted in the very near future. It requests the Government to provide a copy of them as soon as they have been enacted.*

Part IV of the report form. The Committee requests the Government to indicate whether the courts of law or any other tribunals have handed down decisions involving matters of principle pertaining to the application of the Convention and, if so, to provide copies of them with its next report.

Part V of the report form. The Committee also asks the Government to provide general information on the manner in which the Convention is applied, supplying extracts of reports by the inspection services, information on the number of workers covered by the legislation, and the number and nature of contraventions and of occupational accidents reported.

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

Honduras

Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1960)

Article 4 of the Convention. Seafarers' identity document. The Committee notes the specimen of the original of the seafarers' identity book, which the Government of Honduras sent to the International Labour Office.

The Committee also notes the observations by the Honduran Private Enterprise Council, providing further information on the application of the Convention.

The Committee notes with interest the communication from the General Directorate of the Merchant Navy, which has embarked on giving effect to the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and establishing a biometric system for the identification of seafarers. *The Committee requests the Government to keep the Office informed of all developments in this regard.*

Liberia

Seamen's Articles of Agreement Convention, 1926 (No. 22) (ratification: 1977)

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

The Committee notes the Government's statement in its report that the Committee's comments have been referred to the Bureau of Maritime Affairs with instructions that the commission should review the provisions of the maritime laws and regulations with the aim of having them conform with the provisions of the Convention. *The Committee hopes that the necessary measures will be taken to apply the Convention in law and in practice and that the Government will provide full particulars on any progress achieved, taking into consideration the Committee's comments since 1995 on Article 3, paragraph 4, Article 9, paragraph 2, Article 13 and Article 14, paragraph 2, of the Convention.*

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

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1960)

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

Article 1, paragraph 2, of the Convention. In reply to the Committee's previous comments, the Government refers to the provisions of section 51 of the Maritime Law concerning vessels which can be registered under Liberian law. *In this regard, the Committee wishes to draw the Government's attention to the fact that its comments concerned section 290-2 of the Law, which*

provides that persons employed on vessels of less than 75 net tons are not covered by the provisions of Chapter 10 of the Law relating specifically to the obligations of the shipowner in the event of seafarers' sickness or accident.

Article 2, paragraph 1. The Committee noted that section 336-1 of the Maritime Law provides for payment of the wages, maintenance and medical care of the seafarer in cases of sickness or accident while he or she is off the vessel provided that the seafarer is "off the vessel pursuant to an actual mission assigned to him by, or by the authority of, the master". **The Committee recalls that under this provision of the Convention the shipowner is liable in all cases of sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement.**

Article 6, paragraph 2. The Committee noted that, contrary to this provision of the Convention, the approval of the competent authority is not required when sick or injured seafarers have to be repatriated to a port other than the port at which they were engaged, or the port at which the journey commenced, or a port in their own country or the country to which they belong. Under section 342-1(b) of the Maritime Law, agreement between the seafarer and the master or shipowner suffices. The Government states that if there is agreement between the parties, administrative authorization is not necessary but that, in the event of disagreement, the parties may submit the matter to the Commissioner of Maritime Affairs by virtue of section 359 of the Law. **The Committee wishes to draw the Government's attention to the need to include provisions in its legislation making it compulsory to seek the approval of the competent authority when the parties agree to a port of repatriation other than those laid down in Article 6, paragraph 2(a), (b) or (c), of the Convention.** In fact, the provisions of this Article of the Convention are designed to protect a sick or injured seafarer by preventing the master or the shipowner imposing on him a port of repatriation other than the port at which he was engaged, the home port of the vessel or a port in his own country or the country to which he belongs, without the approval of the competent authority; in the event of disagreement between the parties, an appeal to a conciliation authority is not sufficient in itself.

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

Minimum Age (Sea) Convention (Revised), 1936 (No. 58) (ratification: 1960)

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

In its previous comments, the Committee noted that section 326(1) of the Maritime Law, as amended, sets 15 years as the minimum age for admission to employment or work on Liberian vessels registered in accordance with section 51 of the Maritime Law. Noting, however, that section 326(3) permits persons under the age of 15 to occasionally take part in the activities on board such vessels, the Committee has requested the Government in comments repeated since 1995 to indicate how such special employment is limited to persons of not less than 14 years of age, taking into account all the conditions set forth in *Article 2, paragraph 2, of the Convention*.

Noting that the Government has submitted the matter to the Commissioner of the Bureau of Maritime Affairs with the instruction that the necessary steps be taken to make the required information available, the Committee hopes that such information will soon be provided.

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

Accommodation of Crews Convention (Revised), 1949 (No. 92) (ratification: 1977)

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

Please refer to the comment made under the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).

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

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) (ratification: 1978)

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

At the 89th Session of the International Labour Conference (ILC) in June 2001, a Government representative indicated that the first report would be submitted to the Committee in the near future. In agreement with the findings of the Conference Committee on the Application of Standards during that session of the ILC, the Committee reiterates the crucial importance of submitting first reports on the application of ratified Conventions and urges the Government to submit the report for the attention of the Committee at its next session.

The Committee notes the Government's response to the comments made by the Norwegian Union of Marine Engineers (NUME) that alleges non-observance by Liberia of Convention No. 92 and Convention No. 133. The Committee notes, in particular, the Government's indication that the ship "Sea Launch Commander" serves as the command ship, i.e. "mission control", for the launching of rockets from the seagoing launch platform M/S Odyssey. The rockets are assembled in the assembly bay of the "Sea Launch Commander" while the ship is in port moored to a dock and then transferred to M/S Odyssey. The Government points out that the "Sea Launch Commander" neither transports cargo or passengers for the purpose of trade nor does it engage in other traditional commercial activity while seagoing. According to the Government, the primary functions of the "Sea Launch Commander" are to serve as the assembly facility for the rockets when the ship is moored to the dock in port and to serve as command ship for the launching of rockets from the M/S Odyssey when the ships are at sea.

The Government considers that, based on the nature of its operations, the "Sea Launch Commander" is not a seagoing vessel for the purpose of trade or commercial activity in the sense envisioned by the relevant ILO Conventions. Therefore, it is

the Republic of Liberia's determination that the aforementioned ILO Conventions do not apply to this ship and that the NUME complaint is neither appropriate nor applicable to the "Sea Launch Commander", and its "statement of claim" to the ILO is, therefore, without merit.

The Committee recalls that Convention No. 133 applies to every seagoing ship, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose, which is registered in a territory for which this Convention is in force (*Article 1, paragraph 1, of the Convention*). National laws or regulations shall determine when ships are to be regarded as seagoing ships for the purpose of this Convention (*Article 1, paragraph 2*). Under *Article 1, paragraph 1*, the Convention applies "to every seagoing ship ... employed for any other commercial purpose" and does not distinguish between traditional and non-traditional commercial activities.

Referring also to its 2002 observation, the Committee asks the Government to clarify: (i) whether the ship "Sea Launch Commander" under national laws or regulations is regarded as a "seagoing ship"; (ii) whether national laws or regulations contain the definition of the term "commercial activity"; and (iii) whether the launching of rockets from the seagoing launch platform M/S Odyssey is carried out for a commercial purpose.

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

Peru

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1962)

In its previous comments, the Committee had noted the trade union allegations on the persistent failure of employers to affiliate fishers to the supplementary insurance for hazardous occupational activities (SCTR), as well as the 2005 government statistics, according to which only 168 of 2,541 fishing enterprises had subscribed to the SCTR. The Committee therefore requested the Government to provide information on the penalties incurred by employers for failure to meet their obligations towards fishers as regards the SCTR (section 82 and Annex 5 of Supreme Decree No. 009-97-SA), and on the measures envisaged to secure observance by all maritime fishing companies of their obligations under the law. Furthermore, the Committee hoped that Supreme Decree No. 003-2007-PRODUCE of 2 February 2007, according to which large industrial fishing vessels must show a certificate attesting to payment of social security contributions (*constancia de no adeudo*) in order to be permitted to leave port, would, in practice, be an incentive to all shipowners to fulfil their obligations under the Convention and the national legislation, and requested the Government to keep the Office informed on any progress made in this area.

The Government indicates that, further to the above Supreme Decree No. 003-2007, the related Supreme Decree No. 019-2007-PRODUCE of 17 October 2007 specifies that permission to large fishing vessels to depart shall only be granted if the obligation to regularly pay the contributions under, inter alia, the SCTR is met. The Decree further provides that the competent authority shall transmit to the relevant ministries the list of the permissions granted to leave port as well as the list identifying the cases and reasons for which fishing vessels have not been authorized to leave port, for the purpose of adopting adequate supervisory and fiscal measures and imposing appropriate sanctions.

The Government also reports that, following a series of inspections performed in 2007 pursuant to communication No. 0170-2007-MTPE/2/11.4 of 23 March 2007, further inspections of 33 fishing enterprises with industrial vessels fishing anchovies have been carried out in June 2008 by 44 labour inspectors from the National Directorate for Labour Inspection at the request of the Ministry of Production. The scope of inspection specifically related to the SCTR and payslips (including information on remuneration and health and social security benefits). The Chamber of Commerce of Lima indicates that inspections have become more frequent and effective so that less and less employers take the risk to incur a penalty relating to the payment of the SCTR or other social security obligations.

The Committee requests the Government to indicate the impact of the above measures on the affiliation to the SCTR and payment of SCTR contributions by employers. In particular, the Committee asks the Government to supply, in its next report, up to date statistics on the cases where fishing vessels have been prohibited from leaving port under Supreme Decree No. 003-2007-PRODUCE, to describe the reasons invoked, and to indicate the penalties imposed against employers for not taking out SCTR or not paying SCTR contributions as well as other enforcement actions taken. Given that the inspection report has yet to be completed, the Committee further asks the Government to communicate, with its next report, a copy of the final inspection report containing the infringements detected and the sanctions imposed for not taking out SCTR or not paying SCTR contributions. Please also indicate the number of claims, in relation to occupational diseases or accidents, filed under the SCTR during the reporting period.

Moreover, the Committee notes from Report No. 030-2008-DPR.SA/ONP supplied by the Insurance Standardization Office (ONP) that, from the entry into force of the SCTR in 1997 until 17 June 2008, no claims for economic benefits arising from occupational diseases or accidents in the fishing sector have been filed under section 88 of Supreme Decree No. 009-97-SA, which provides for benefits by insurance institutions in the event of failure of employers to take out SCTR or pay contributions under the SCTR. In view of the above, the Committee understands that the provisions of national legislation guaranteeing the right to benefits in case of non-affiliation to the SCTR or non-payment of SCTR contributions by the employers have so far not been implemented in practice. *It asks the Government to indicate the manner in which workers whose employers have failed to affiliate them to the SCTR or to pay relevant contributions,*

have been granted the medical and cash benefits guaranteed by the Convention. Please indicate the number of such cases as well as any measures taken or envisaged to inform the workers concerned about their rights under section 88 of Supreme Decree No. 009-97-SA.

Lastly, the Committee requested the Government to provide information on the outcome of the legal proceedings against the company Atlantida for non-payment of social insurance contributions in respect of invalidity and death. According to the Government's report, a sanction amounting to a fine of 6,200 nuevos soles was imposed on the fishing company for non-payment of social insurance contributions in respect of invalidity and death in 36 cases. *The Committee asks the Government to indicate whether there are cases in which workers have lost their rights to medical and cash benefits as a consequence of the company's failure to pay the relevant contributions. If there are such cases, please provide information on the benefits received by the workers from the insurance institutions.*

Sickness Insurance (Sea) Convention, 1936 (No. 56) (ratification: 1962)

Articles 1 and 2 of the Convention. Cash benefits under compulsory sickness insurance scheme. The Government reports on the restructuring of the crisis-struck Fishers' Social Benefits and Social Security Fund (CBSSP), which has resulted in the medical benefits being transferred to the Social Health Insurance, whereas the payment of cash benefits to fishers affiliated to the CBSSP is directly assumed by the employers. While being aware of the difficulties encountered by the CBSSP, the Committee recalls that the Convention requires that seafarers shall be affiliated to a compulsory sickness insurance scheme, under which, if rendered incapable of work and deprived of wages by reason of sickness, the seafarers shall be entitled to cash benefits, which may be withheld only in the cases enumerated in *Article 2, paragraph 4. The Committee therefore hopes that the arrangement, according to which the payment of cash benefits is directly assumed by the employers, is only of a provisional nature, and requests the Government to take the necessary measures to ensure that compliance with the requirements of the Convention is re-established. In the meantime, the Committee requests the Government to: (i) provide information on the foreseen duration of the arrangements according to which the cash benefits are paid by the employer; (ii) specify how it ensures that the sickness insurance steps in, if the employer fails to pay the cash benefits; and (iii) indicate by what means it ensures that the payment of cash benefits for the minimum period of the first 26 weeks of incapacity as guaranteed by the Convention is, under all circumstances, maintained in practice. Please provide information on any court rulings concerning the non-payment of cash benefits during the prescribed minimum period of 26 weeks of incapacity.*

Article 4, paragraph (1). Payment to the family of cash benefit to which a seafarer would have been entitled if not abroad. In its previous comments, the Committee noted the information supplied by the Government regarding the possibility for a person who is abroad to authorize a third person to act on his or her behalf in Peru, in particular with the social security institutions. The Committee considered, however, that this procedure was not of a nature to give full effect to *Article 4* of the Convention in that the Article requires the payment, as of right, i.e. unconditionally, to the insured person's family of whole or part of the sickness benefit when the insured person is abroad and has lost the right to wages. In its latest report, the Government states that it has requested the relevant information concerning the rights of the family members of seafarers from the General Directorate for Harbour Masters and Coast Guards and from the CBSSP and that it will forward the reply as soon as received. *The Committee reiterates its request to the Government to re-examine the question and to indicate in its next report the measures taken or envisaged to ensure the unconditional payment to the seafarer's family of whole or part of the cash benefit to which the seafarer would have been entitled had he or she not been abroad, thus giving effect to this provision of the Convention. Please also provide the information requested previously in regard to the benefits paid in practice to the families of insured persons who are abroad and have lost their right to wages.*

Part IV of the report form. The Committee notes the information provided by the Government in response to its previous comment requesting details on the results of inspections performed pursuant to communication No. 0170-2007-MTPE/2/11.4 of 23 March 2007, and on the penalties applied. *It invites the Government to continue supplying information on action taken to supervise and enforce the application of the national legislation implementing the Convention.*

The Government further supplies information concerning the Ministerial Conference of OLDEPESCA of June 2008 in Lima, where members pledged to take measures to improve the quality of life of fishers in the region. In this context, the Committee wishes to recall the earlier suggestion made by the Trade Union of Fishing Boat Owners and Skippers of the Region of Puerto Supe to organize a national round table to find solutions to the problems of social security, health and industrial injury for workers in the industrial maritime fishing sector. *It asks the Government once again to indicate whether it would envisage convening a round table at national level to address social security issues in maritime fishing.*

The Committee raises other matters of a technical nature in a request addressed directly to the Government.

Seafarers' Pensions Convention, 1946 (No. 71) (ratification: 1962)

The Committee notes that the Government's report contains no reply to its previous observation of 2006. The Government refers to prior comments made by the Committee in 2002 and confines itself to repeating the wording of previous government reports of 2003 and 2005. The Committee must therefore repeat most of its previous observation which read essentially as follows:

1. *Effect of the new pension scheme on the application of the Convention.* In its previous comments, the Committee requested the Government to provide information on the impact of the new pension scheme on the application of the Convention, including the information specified in the report form on this Convention, for each Article of the Convention.

In its report, the Government indicates that the private pension system (SPP) is an individual capital accumulation scheme in which the amount of pensions depends directly on the workers' contributions, the earnings of the pension funds' investments and vouchers (Bono de Reconocimiento), where applicable. The SPP is self-financing, in other words the worker's future pension depends on his or her own contributions. The rate of compulsory contributions to the pension fund is worked out on the basis of technical criteria to achieve an adequate replacement rate. The pensions provided by the SPP are accordingly not determined in advance. The Committee takes note of this information. ***In view of the fact that under the private pension system it is not possible to determine the amount of benefits in advance, the Committee requests the Government to indicate how it ensures the application of Article 3(1)(a)(ii) of the Convention (minimum amount of pensions).***

On the subject of collective financing of benefits, the Government indicates that the SPP has a minimum pension which allows state subsidization for members of the scheme who meet the age and contribution requirements laid down in Act No. 27617 and who have not accumulated enough resources to finance a pension themselves. The minimum pension is financed directly by the Treasury. The Committee notes this information. It observes that, contrary to *Article 3, paragraph 2, of the Convention*, under the private pensions system both the cost of the pension and administrative costs are borne solely by the insured persons. In the Committee's view, the minimum pension which the State pays and which applies only to certain cases cannot be regarded as a contribution within the meaning of *Article 3, paragraph 1(b) and paragraph 2, of the Convention*. Peru's private pension system is, on the contrary, an independent scheme in which the resources for payment of the benefits are obtained by means of contributions from the insured members. ***The Committee again reminds the Government that according to Article 3, paragraph 2, of the Convention, seafarers collectively shall not contribute more than half the cost of the pensions payable under the scheme, and trusts that in its next report the Government will supply the statistics required by the report form under this Article of the Convention.***

2. *Payment of pensions to retired persons and former employees of the Peruvian Steam Ship Company (CPV).* In its previous comments, the Committee asked the Government to supply information on developments in the situation regarding the payment of pensions to retirees and former employees of the CPV. It also requested the Government to provide information on the situation (vis-à-vis the Convention) reported by the Association of Crew Members for the protection of CPV workers, of former pensioners of this enterprise who have been excluded from the Pension Fund and have been unable to obtain reinstatement through a court ruling.

With regard to the legal action brought by the former pensioners of the CPV, the Government states that a decision was adopted on 3 November 2004 in which the court requires the Insurance Standardization Office (ONP) to "establish equivalent public positions in each case for the purpose of paying pensions to workers who, in accordance with the exception expressly established in the law, may receive a pension under Legislative Decree No. 20530 and who did not have the status of public servant at the time of separation. The equivalent positions shall be established in accordance with this decision." The Committee takes note of this information and also notes that the ONP has filed an appeal against this decision, which has been admitted "without suspensive effect" but that appropriate measures have been taken to execute the abovementioned decision in accordance with the rules in force pending a ruling by the higher court on the abovementioned appeal. ***The Committee asks the Government to inform it of the outcome of the appeal and to provide any court decision pertaining to it.***

3. *Complaint by retirees of the National Ports Enterprise (ENAPU) seeking adjustment of their pensions.* In its previous comments, the Committee noted once again that the ONP had still not established internal procedures to implement the court decision in favour of the Association of Former Employees and Retirees of the National Ports Enterprise (ACJENAPU), and expressed the hope that the Government would take the necessary measures in this regard. The Committee asked for information on any further developments in this case and in particular: (i) whether the adjusted pensions are actually being paid to the retirees concerned; and (ii) whether the three persons whose pensions have not been adjusted by the ONP have had their pensions adjusted by the Ministry of Economic and Financial Affairs.

The Committee notes the report by the ONP on progress made regarding the action brought by the ACJENAPU. The Government indicates in this connection that the complaint brought by the ACJENAPU is now at the stage of the execution of ruling, the ONP having accepted the court's decision regarding the adjustment for the workers of ENAPU MATARANI, except in one case, in which the administrative file was still under the competence of the original entity. ***The Committee notes this information and requests the Government to report on the follow-up to this last case.***

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

Furthermore, the Committee notes that the Government has not provided any reply to the observations submitted in October 2006 by the Federation of Fishing Workers of Peru (FETRAPEP), which were transmitted to the Government in November 2006. The Committee is therefore bound to draw to the Government's attention the thrust of FETRAPEP's comments relating to the application of the Convention.

FETRAPEP criticizes that Supreme Decree No. 006-96-TR associates to force majeure the annual period of closed season for extraction and processing of marine species (*veda*), which can last from four to seven months per year. It indicates that the Decree thus authorizes employers to temporarily suspend the contracts of fishers during the *veda*, in conformity with section 48 of the Employment Promotion Act. According to FETRAPEP, given that the remuneration of fishers is usually suppressed during the temporary suspension of their contracts, no contributions are paid to the ONP, which has the effect of extending the contributory period required to have the right to pension. FETRAPEP believes that the temporary suspension of contracts during *veda* causes serious difficulties for the access of fishers to old-age benefits.

The Committee calls upon the Government to respond to the observations submitted by FETRAPEP as a matter of urgency. In particular, the Committee asks the Government to explain the application of the concept of force majeure to the annually recurrent and thus foreseeable period of veda, in order to authorize the temporary suspension of contracts under section 48 of the Employment Promotion Act. The Committee further reminds the Government that, under *Article 3, paragraph 1*, the State has to guarantee the minimum level of pensions established by the Convention to

workers having completed the prescribed period of sea service. *In view of the national legislation allowing for temporary suspension of the contracts of fishers during veda, the Committee requests the Government to indicate by what means it is ensured, as regards pensions provided to fishers, that full effect is given to the requirements of Article 3, paragraph 1, of the Convention.*

Seychelles

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) (ratification: 1978)

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

With reference to its previous comments, the Committee notes the information supplied by the Government in its report. According to this information, the proposals to amend the Merchant Shipping Act and its enabling regulations are shortly to be submitted to the National Assembly for adoption. The Government adds that it will send a copy of these texts as soon as they have been adopted. *The Committee consequently refers the Government to its observation and direct request of 2005 in which it pointed out where the national laws and regulations needed amending to bring them fully into conformity with the Convention. The Committee trusts that the texts adopted will enable all matters pending to be resolved.*

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

United Kingdom

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 1980)

The Committee notes the response of the Government to the observations submitted in 2005 by the Trades Union Congress (TUC), as well as the new observations submitted by the TUC in reply to the Government's comments. At present, the Government does not wish to add further comments to its original response. It assures, however, that the Maritime and Coastguard Agency will directly take up the points raised with Nautilus UK and will seek to answer their concerns at national level.

The Committee had previously requested information on the assertions made by the TUC concerning the non-regulation of social conditions, including working conditions, of seafarers on United Kingdom ships trading wholly or mainly outside of the United Kingdom territorial waters or seafarers not residing in the United Kingdom.

The Government states that all regulations made under the Merchant Shipping Act, 1995, governing various aspects of ship operation, shipboard conditions of employment and shipboard living arrangements are applicable to all seafarers on board United Kingdom ships, without restriction in terms of place of residence. As far as social security for seafarers serving on United Kingdom ships is concerned, the Government refers to Article 1, paragraph 2(d), of Convention No. 56, ratified by the United Kingdom, which places no obligation on Members to extend social security protection to persons not resident in its territory. As regards Conventions Nos 55 and 130, the Government takes the view that the social security measures in place are substantially equivalent to those Conventions. Furthermore, the Government points out that Conventions Nos 55 and 56 are listed in Article X of the Maritime Labour Convention, 2006 (MLC, 2006), and thus are to be revised on its coming into force. The Government does not anticipate having to amend national laws and regulations as far as MLC, 2006, social security protection requirements are concerned, to be in a position to ratify it in due course, considering that the United Kingdom's current provisions are fully in accordance with the requirements of Conventions Nos 56 and 147 in this respect.

In light of the Government's comments, the TUC acknowledges that Article 1, paragraph 2(d), of Convention No. 56, places no obligation on Members to extend social security protection to persons not resident in their territory. The TUC contests, however, the Government's view that the measures currently in place are substantially equivalent to Conventions Nos 55 and 130, as required under Convention No. 147.

The Committee, having due regard to Article 1, paragraph 2(d), of Convention No. 56, is mindful that the exclusion of non-residents may be used with an exaggerated effect on the coverage of the persons who should be protected under Convention No. 147. Without prejudice to *Article 1, paragraph 5, of Convention No. 147*, the Committee's approach to social security is to ensure that the requirements of Convention No. 147 are fulfilled in good faith, which would not be the case, if a large proportion of seafarers on nationally registered ships were actually not covered (see paragraph 50 of the Committee's General Survey of 1990 on labour standards on merchant ships). *The Committee thus asks the Government to indicate the proportion of seafarers excluded from social security measures taken under Article 2(a)(ii) of Convention No. 147.* In this context, the Committee wishes to point out that the MLC, 2006, in its Title 4.5, places responsibilities on States with regard to all seafarers on board ships flying their flag.

Since the United Kingdom is bound by Convention No. 56, there is no further room for examining substantial equivalence with Conventions Nos 55 and 130. The Committee, however, draws the attention of the Government to the fact that both Conventions Nos 55 and 56 have been updated and consolidated in the MLC, 2006.

With reference to the previous comments of the TUC that this Convention and its Protocol, as well as Convention No. 98, require the encouragement of collective bargaining, the Government considers that Article 4 of Convention No. 98 makes clear that measures to encourage and promote the full development and utilization of voluntary negotiation need only be taken where it is necessary and appropriate for national conditions to do so. The Government believes that there is nothing to prevent voluntary negotiations from taking place and that it is a matter to be left to the parties concerned to negotiate freely. The TUC reaffirms its view concerning the obligation emanating from Convention No. 147 and its Protocol as well as Convention No. 98. It contests the Government's position regarding Article 4 of Convention No. 98 and questions the argument in the light of the Trade Union Consolidation Act adopted in 1992. The TUC believes that the provision of what is referred to as a "workforce agreement" is at variance with the principle of encouraging and promoting collective bargaining. Furthermore, the TUC considers the assertion that nothing prevents such voluntary negotiations from taking place to be incorrect, since contracts of employment have been found to expressly forbid individuals from contacting a recognized trade union or the regulatory authorities. The Committee recalls that Convention No. 98, which is listed in the Appendix to Convention No. 147, has been ratified by the United Kingdom. ***For further comments concerning the issues raised by the TUC with respect to collective bargaining, the Committee, therefore, refers to its comments under Convention No. 98.***

The Committee had previously requested information on the Government's position regarding the recommendation of the TUC to ratify Conventions Nos 164 and 166. The Government indicates that the provisions of these Conventions are consolidated in the MLC, 2006, which the Government is committed to ratifying. Since work towards ratification is currently ongoing, the Government sees no point in ratifying Conventions Nos 164 and 166 separately, when there is a greater advantage for all concerned in ratifying the MLC, 2006, as a whole. While accepting some legitimacy in the argument of the Government, the TUC fears that provisions of Conventions Nos 164 and 166 could get lost during the process of translating the MLC, 2006, into United Kingdom national law. The Committee stresses that the content of Conventions Nos 164 and 166 is incorporated in the MLC, 2006, albeit partly in Part B of the Code, to which the Member is still obliged to give due consideration. ***In view of the Government's position regarding ratification of Conventions Nos 164 and 166, the Committee would be grateful if the Government would continue to provide information in its next report on further developments regarding the ratification of the MLC, 2006, which is the most up to date international instrument concerning minimum standards in merchant shipping and whose ratification would result in the automatic denunciation of the present Convention.***

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) (ratification: 2001)

Further to its previous comments, the Committee notes the discussions that have taken place at the 97th Session of the International Labour Conference (ILC) 2008, the written response of the Government to the observations submitted in 2005 by the Trades Union Congress (TUC), as well as the new observations submitted by the TUC in reply to the Government's comments. At present, the Government does not wish to add further comments to its original response. It assures, however, that the Maritime and Coastguard Agency (MCA) will take up the points raised directly with Nautilus UK and will seek to answer their concerns at national level. The Government also states that it continues to take its responsibilities under the Convention very seriously.

The TUC contends that the Government's reliance upon the introduction and implementation of the Maritime Labour Convention, 2006 (MLC, 2006), to address any problems in the application of the Convention is an admission of current deficiencies. The TUC is concerned that current practices might be used as an argument for the failure to fully implement the MLC, 2006, and, in particular, the detailed requirements of the Conventions to be revised by it, such as Convention No. 180.

Article 1, paragraphs 2 and 3, of the Convention. Commercial maritime fishing. In its 2005 observations, the TUC deemed the consultations with national fishing federations on the implementation of European Community (EC) Directive 2000/34/EC insufficient, since these federations did not represent fishers. In its previous observation, the Committee requested the Government to indicate whether consultations on the application of the provisions of the Convention to commercial maritime fishing have been held with the representative organizations of both fishing vessel owners and fishers.

The Government responds that the great majority of workers in the industry are self-employed, and there are no representative organizations of fishers in the traditional sense. The United Kingdom fishing federations are recognized as the consultative bodies representing both fishing vessel owners and others working in the fishing industry and were fully consulted about working-time regulation in the industry.

The TUC points out that the Government had accepted Nautilus UK as the recognized body for fishers and had endorsed the TUC nomination to attend the ILC in June 2007, which adopted the Work in Fishing Convention, 2007 (No. 188).

The Committee considers that, pursuant to the Convention, the competent authority is under the obligation to consult all representative organizations of both fishers and fishing vessel owners. ***The Committee asks the Government to take measures to ensure that all representative organizations of fishers are consulted on the applicability of Convention No. 180 to fishing.***

In its 2005 observations, the TUC further took the view that it was not sustainable to argue that the Convention need not be applied to fishing because there was an EC Directive making provisions for those employed in the fishing industry. The Committee thus requested the Government to indicate whether the application of the provisions of the Convention to commercial maritime fishing had been deemed impracticable.

The Government responds that, under the Convention, it is for a member State, after consulting the representative organizations of fishing vessel owners and fishers, to decide on the practicability to apply the Convention to the fishing sector. Following consultations, the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 were thus introduced in the United Kingdom to give effect to the implementation of European Union working-time rules, which reflected the fundamental provisions of Convention No. 180, by providing, inter alia, for minimum hours of rest. In the Government's view, a working time regime applicable to those employed in the fishing industry is thus already in place.

The Committee points out that, according to *Article 1, paragraph 2*, the competent authority shall, after consultations, apply the provisions of this Convention to commercial maritime fishing to the extent it deems practicable. In this case, the United Kingdom applies the essential provision of the Convention to the fishing sector by stipulating minimum hours of rest in accordance with the Convention.

Article 2, subparagraph (d). Definition of "seafarer". In its 2005 observations, the TUC stated that persons on a sail-training vessel, who are undergoing training or have no emergency safety responsibilities, are not defined as seafarers and are thus exempt from the Merchant Shipping (Hours of Work) Regulations, 2002. The Committee had requested the Government to indicate whether or not it considered sail-training vessels as ordinarily engaged in commercial maritime operations, and whether the organizations of shipowners and seafarers concerned were consulted before such determination was made.

In its response, the Government states that sail-training vessels are covered by the Convention. It refers, however, to *Article 2, subparagraph (d)*, of the Convention, which provides that "seafarer" means any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board. The Government believes that the definition of "seafarer" in the Hours of Work Regulations excluding persons who are training in, or not engaged in the navigation of, or have no emergency safety responsibilities on, a sail-training vessel, is fully in accordance with *Article 2, subparagraph (d)*, as it distinguishes between those persons on board who are seafarers in the accepted sense and those who clearly are not (i.e. volunteers and trainees). The Government explains that volunteers provide their services free of charge and typically spend no more than two or three weeks on board the vessel; trainees generally pay to experience life afloat on a sailing vessel and also typically spend no more than two or three weeks on board. Volunteers and trainees are not passengers and to classify them as such, as the TUC suggested at the ILC, would result in sail-training vessels being reclassified as passenger ships and having to meet current passenger ship requirements, which would mean those vessels having to cease operating. The Government points out that full consultation was undertaken with the organizations representing shipowners and seafarers when the Hours of Work Regulations were being developed, and this minor exemption was generally seen as a practical and commonsense application of Convention No. 180.

The TUC, however, does not believe that volunteers who assist trainees should be excluded from the provisions of the Convention, since they will invariably have emergency safety responsibilities. It believes it is vitally important that volunteers on these vessels are not exempted in the interests of both their own safety and the safety of the others to which they have charge. The TUC feels that the exclusion of those persons would amount to an opportunity to exploit labour.

The Committee understands that the Government does not regard volunteers and trainees as persons employed or engaged in any capacity on board a seagoing ship. ***It invites the Government to nevertheless consider extending the application of the Convention to volunteers and trainees.***

Article 2, subparagraph (e). Definition of "shipowner". The TUC had previously cautioned that the absence of a definition of the term "shipowner", and use of the word "employer" instead, had the potential to remove responsibility from the owner of the vessel. In its previous observation, the Committee pointed to the definition of the term "company" in section 2 of the Hours of Work Regulations, which reflects the wording of the Convention. The TUC, whilst acknowledging that others may have responsibility, feels that those may be difficult to trace and that it is, therefore, necessary to provide for access to the shipowner.

The Committee points out that section 2 of the Hours of Work Regulations defines the term "company" in the same manner as the term "shipowner" is defined in the Convention. According to section 4 of the Regulations, it shall be the duty of a company, an employer of a seafarer and a shipmaster to ensure that a seafarer is provided with at least the minimum hours of rest. Thus, the term "company" appears to be used as a synonym of the term "shipowner". ***The Committee asks the Government to clarify whether the term "company" used in the Hours of Work Regulations has the same scope and implications as the term "shipowner" utilized in the Convention.***

Article 4. Normal working hours' standard for seafarers. The TUC had previously contested the assertion of the Government that it was not required to apply *Article 4* through national legislation, and had highlighted the importance of that Article because seafarers should have no less rights than other workers.

The TUC contends that working of 91 hours per week, as permissible under the Hours of Work Regulations, i.e. the option preferred by the Government as opposed to prescribing a maximum of 72 hours of work, is injurious to the health

of workers in the long term and potentially life threatening in the short term to individuals, seafarers and passengers and damaging to the marine environment.

In its previous observation, the Committee requested the Government to indicate by what means it is ensured that, in light of the normal working hours' standard for seafarers, the prescribed minimum hours of rest retain an exceptional character.

The Government responds, with reference to *Articles 3 and 5(1)*, that the minimum hours of rest set out in the Hours of Work Regulations accord with the limits in the Convention. Separate health and safety legislation provides, however, for a duty of care and the requirement to ensure that work is organized so as not to compromise the health and safety of workers.

Although the Convention clearly allows establishing a scheme of minimum hours of rest rather than of maximum hours of work, a good-faith interpretation of the provisions of the Convention, including the agreement with the IMO, means that the application of the minimum hours of rest provisions does not per se imply that all hours not devoted to rest are to be considered as hours of work.

The Committee requests the Government to provide further information on how it is ensured in practice that minimum hours of rest are respected, as prescribed by the Hours of Work Regulations, and asks the Government to provide samples of relevant collective bargaining agreements, statistics of results of inspections on the issue and any other relevant documentation. It also asks the Government to indicate how the health and safety legislation, referred to by the Government, ensures that in practice work is organized so as not to compromise the health and safety of workers.

Article 5, paragraphs 1 and 2. Minimum hours of rest. In its previous observation, the Committee asked the Government to indicate any supporting measures taken or envisaged to facilitate application of the prescribed minimum hours of rest.

The Government responds that Merchant Shipping Notice MSN 1767(M), which has been issued to operate in conjunction with the Hours of Work Regulations, provides guidance to ensure proper understanding and application in practice. It also states that the MCA has recently issued a range of guidance on health and safety to the industry, including leaflets on issues associated with fatigue at sea and a leaflet on hours of work for seafarers on United Kingdom ships, and has also provided a 24-hour helpline to deal with public inquiries.

The TUC considers that the Government has not issued sufficient guidelines with respect to the phrases "in a 24-hour period" and "in any seven-day period". While "any seven-day period" may be construed on a basis from midnight to midnight, the phrase "in any 24-hour period" has been and is still misunderstood as going from midnight to midnight. To prevent continuous working on each side of midnight, it is essential to know that, as one hour is added, one hour is subtracted.

The Committee notes the supporting measures taken by the Government to ensure the proper understanding and application of relevant national legislation. ***It asks the Government to indicate what additional means are contemplated to prevent the term "in a 24-hour period" from being misinterpreted as described by the TUC.***

Hours of rest in the two-watch system. In its previous comment, the Committee had also asked the Government to clarify whether currently there are ships registered in the United Kingdom operating on a system where the watchkeeping responsibilities are undertaken by only two officers (e.g. six hours on, six hours off) and, if so, to indicate: (i) what measures have been taken to avoid infringements resulting from additional duties of officers outside their watchkeeping routine; (ii) whether the examination of the records of such ships has revealed infringements; and (iii) what measures have been taken to avoid any future infringements.

The Government confirms that there are currently United Kingdom ships operating with a six hours on, six hours off system. It indicates that, to avoid infringements resulting from additional duties, proposed schedules of duties are carefully checked before a safe manning document is issued to ensure that hours of rest requirements can be complied with in full, and that account is taken of all duties, not simply those relating to watchkeeping. In addition, hours of work records are checked by MCA surveyors for compliance with the Regulations, and, again, all work on account of the ship is considered to be working time. The Government further states that, where deficiencies in records have been identified, those are notified to the shipowner and appropriate remedial action is required to be undertaken. Shipowners are firmly reminded that continuing failure to comply with the requirements of the Regulations will result in enforcement action. As with any inspection item, they are aware that this may include issue of a prohibition notice, an improvement notice or in the most serious case, detention of the vessel.

The TUC believes that the safe manning document should be issued following guidance in IMO Resolution A.890(21), as amended by Resolution A.955(23) and the Principles of Safe Manning. However, the TUC cautions that proposed schedules of operation of a vessel change, and this is not reflected in the safe manning document, which remains for the lifetime of the vessel. Furthermore, since the adoption of Resolution A.955(23) concerning additional duties under the International Ship and Port Facility Security (ISPS) Code, no safe manning documents of vessels registered in the United Kingdom were amended. The TUC also claims that the Government has taken no substantive action against shipowners, has only made recommendations to ship managers and, to date, has imposed no sanctions.

The Committee asks the Government to indicate, in order to avoid infringements of the requirements (the rest hour limits) of the Convention, the measures envisaged to ensure: (i) that safe manning documents reflect the additional work which officers have to perform outside their watchkeeping routine, especially duties under the ISPS Code; and (ii) that, when serious or repeated deficiencies are identified, prompt enforcement action is taken.

Article 5, paragraph 5. Safeguard. The TUC had previously pointed out that, in the absence of a collective agreement or arbitration award, no provision was made by the competent authority to determine provisions to ensure that the seafarers concerned have sufficient rest. Noting that sections 5(3) and (4) of the Hours of Work Regulations essentially repeat *Article 5, paragraphs 3 and 4*, the Committee, therefore, asked the Government to specify concrete measures taken to ensure compliance with the Convention.

The Government informs the Committee that it is for companies and employers to determine precisely how these requirements are met on a day-to-day basis. Checking and comparison of work schedules and records by inspectors as part of routine checks would indicate where any planned rest period had been disturbed because of events such as lifeboat drills, and should indicate where compensatory leave had been given. Failure to comply with these requirements is an offence under the Regulations and provision is made for substantial penalties, on conviction, for any master guilty of failing to comply with these requirements.

The TUC contends that the Government has failed to specify concrete measures taken to ensure that seafarers required to work during their normal rest periods are adequately compensated. The TUC finds it unacceptable to state that it is for companies and employers to determine precisely how these requirements are to be met on a day-to-day basis. This is particularly important where there is no collective agreement, and the workforce is not resident in the United Kingdom and thus may be subject to intimidation. The TUC also states that, whilst the Government acknowledges that checking and comparison of work schedules and work records by inspectors carrying out routine checks would indicate whether disturbances have been compensated, the Government fails to state that such checks are inadequate and abuses continue unchecked.

The Committee reiterates that *Article 5, paragraph 5*, calls for further implementing measures as regards *paragraphs 3 and 4*. Such measures may be taken either through collective agreements or arbitration awards, or in their absence, through government determination. The Committee considers that section 5(3) and (4) of the Hours of Work Regulations, which essentially repeat *Article 5, paragraphs 3 and 4*, constitute framework legislation for further concrete measures to be taken or guidance to be provided. ***The Committee, therefore, asks the Government to specify concrete measures taken to ensure that the prescribed musters, firefighting and lifeboat drills shall be conducted in a manner which minimizes the disturbance of rest periods and does not induce fatigue (Article 5, paragraph 3), and that seafarers required to work during their normal period of rest are given an adequate compensatory rest period (Article 5, paragraph 4).***

Article 5, paragraph 6. Exceptions to the hours of rest. The TUC had previously deplored that the concept of “workforce agreements” allowed for exceptions to the limits on hours of rest. The Committee requested the Government to take the necessary measures to ensure that there are no exceptions to the determined minimum hours of rest other than those permitted by authorized or registered collective agreements.

The Government responds that *Article 5, paragraph 6*, does not define what is meant by a “collective agreement”. It argues that the workforce agreement is, in effect, equivalent to a “collective agreement” where the workforce does not belong to a trade union, given that, in the United Kingdom, there is no obligation for workers to belong to a union, and freedom of association is deemed to include the right not to be unionized. According to the Government’s report, the concept of workforce agreements is well recognized in United Kingdom legislation, and this provision was fully covered in consultation during the development of the Regulations and generally accepted as according with United Kingdom custom and practice.

The TUC believes that the provision for “workforce agreements” is at variance with the principle of encouraging collective bargaining. It advocates that the mathematically possible 91 hours of work, which may already be considered a minimalist approach to the restriction of working hours designed to ensure safety of life at sea, should not be exceeded by the concept of “workforce agreements”. The rationale for only allowing exceptions to the limits on hours of rest by means of collective agreements, rather than permitting an opt-out by an individual or a group of individuals, is to avoid intimidation of such individuals or groups of individuals, thus seeking to recognize the potential unique dangers of marine transport and to ensure not only the safety of the individual but also of all persons on board a vessel including passengers. The addition of “workforce agreements” affords the opportunity for intimidation of sectors of the workforce and seeks to undermine maritime trade unions, so as to gain an unfair competitive advantage, which would endanger life at sea. The TUC contends that workforce agreements are in direct contravention with the Convention.

The Committee recalls that the only instruments that may permit exceptions to the limits set out in *paragraphs 1 and 2* of this Article, are collective agreements authorized or registered in accordance with *Article 5, paragraph 6*. Concerning the Government’s statement that Convention No. 180 does not define the term “collective agreement”, the Committee stresses that the existing body of international labour standards needs to be viewed in a holistic and integrated manner.

In the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), collective bargaining is understood as the voluntary negotiation between employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Collective Agreements

Recommendation, 1951, (No. 91), defines the notion “collective agreements” as all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organizations on the one hand, and: (i) one or more representative workers’ organizations, *or*, (ii) in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other.

Workforce agreements are not negotiated between employers or employers’ and workers’ organizations, but are signed between the employer and the duly elected representatives of the workforce and, thus, appear to fall under the second category. According to Schedule 1 to the Hours of Work Regulations, workforce agreements apply to all of the “relevant members of the workforce”, i.e. “employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement”.

The Committee considers that agreements between one or more employers or employers’ organizations, on the one hand, and representatives of the workers duly elected and authorized by them in accordance with national laws and regulations on the other hand, can only be deemed collective agreements *in the absence of workers’ organizations*. Thus, the Committee agrees that, if there are no trade unions, duly elected representatives of the workforce may negotiate and conclude workforce agreements permitting exceptions to the determined minimum hours of rest, in accordance with *Article 5, paragraph 6*. For further comments concerning collective bargaining, the Committee refers to its comments under Convention No. 98. ***The Committee, therefore, requests the Government to take the necessary measures to ensure that there are no exceptions to the fixed minimum hours of rest other than those permitted by duly authorized or registered agreements concluded between one or more employers or employers’ organizations, on the one hand; and one or more workers’ organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other.***

In addition, the Committee had asked the Government to describe, by way of example, the exceptions permitted to the prescribed limits on hours of rest. The Government responds that a very limited number of exceptions have been authorized in respect of specialized ships, in particular dredgers and tugs, which may only occasionally operate at sea and which, by virtue of the operations they perform, cannot always operate on the basis of standard watchkeeping patterns. It indicates that exceptions are dealt with by individual MCA Marine Offices around the country and records are not held centrally.

The TUC further informs that United Kingdom regulatory authorities have also authorized an exception with respect to ferry operation. It criticizes the fact that the Government fails to identify the number of exceptions authorized, that exceptions are dealt with by individual MCA marine officers around the United Kingdom and are not held centrally.

The Committee recalls that *Article 5, paragraph 6*, enables the Member to allow for exceptions through “a procedure for the competent authority to authorize or register collective agreements permitting exceptions”. The rationale of the procedure to be established by the competent authority to authorize or register the relevant collective agreements is to permit an overview over the collective agreements and the exceptions contained therein. ***The Committee asks the Government to describe the procedure envisaged by the competent authority to authorize or register collective agreements permitting exceptions to the prescribed limits and to ensure that such agreements are accessible by the competent authority.***

Article 11. Safe manning on ships of less than 500 GT. With reference to section 5(1) of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations, 1997, the Committee had asked the Government, in its previous comment, to indicate by what means it is ensured that ships of less than 500 GT are sufficiently, safely and efficiently manned.

The Government responds that all ships are subject to inspection including inspection to ensure that they are adequately manned. The Government adds that, while no safe manning document is required for ships less than 500 GT, the adequacy of the manning levels will nevertheless be considered within the general inspections regime. The TUC believes that the Government’s reply is inadequate and demonstrates ineffective policing.

The Committee, while taking note of the Government’s response, asks it to supply information on the application of this Article in practice with respect to ships under 500 GT, e.g. number and nature of infringements reported, measures taken, sanctions imposed, results obtained, etc.

Article 13. Responsibility of the shipowner. The TUC had previously felt that relevant national legislation failed to address the explicit obligation placed upon the shipowner in this Article of the Convention. The Committee therefore asked the Government to indicate by what means it is ensured that the shipowner has the basic responsibility to enable the master, by providing the necessary resources, to implement the requirements of the Convention.

The Government states, with reference to section 4 of the Hours of Work Regulations, that, if sufficient resources were not provided, particularly in terms of staff, it would not be possible to comply with the requirements of the Regulations concerning hours of rest and manning, which would constitute an offence under those Regulations, with appropriate penalties. The Government states that other relevant legislation also needs to be taken into account, particularly the IMO International Safety Management (ISM) Code, under which shipowners are required to have systems in place providing for the safe operation of their ships, including ensuring provision of the necessary resources to meet the provisions on hours of rest contained in ILO Conventions.

The TUC reiterates that sections 4, 7 and 9 of the Hours of Work Regulations and section 5 of the Safe Manning Regulations fail to address the explicit obligation placed upon shipowners by the Convention by enabling them to escape all responsibility through a series of corporate veils. With reference to the Government's statement that, if insufficient resources were provided by the shipowner, it would be impossible to comply, which in turn would constitute an offence, the TUC contends that there is no mechanism in place to ensure that sufficient resources were provided, other than the limited inspections undertaken under Convention No. 178. While deficiencies have been found following such inspections, to date there have been no prosecutions against shipowners. The TUC finds it unacceptable that the Government states that Regulations provide for substantial penalties, on conviction, for any master guilty of failing to comply with the requirements, because it shifts the burden onto the master who is also an employee, and away from the shipowner. In the TUC's view, this demonstrates a mindset that no action has been or will ever be taken against a shipowner who seeks not to comply with the Hours of Work Regulations.

The Committee recalls that *Article 13* requires the shipowner to ensure that the master is provided with the necessary resources for the purpose of compliance with obligations under this Convention. Section 4 of the Hours of Work Regulations provides that it is the duty of a company, an employer of a seafarer and a ship master to ensure that a seafarer is provided with at least the minimum hours of rest. The Committee considers that, in the absence of sufficient resources supplied by the shipowner, a master cannot possibly ensure compliance with the relevant requirements. ***The Committee asks the Government to indicate by what means it is ensured that, in case of non-compliance due to lack of resources, the shipowner, and not the master, is subject to prosecution.***

Articles 9 and 15, subparagraph (b), and Part V of the report form. Inspection. In its previous comments, the Committee asked the Government to specify how often the MCA examines the records of hours of work or rest, to give a general appreciation of the manner in which the Convention is enforced in the United Kingdom, and to supply information on its practical application.

The Government responds that a full programme of inspection is in place for all United Kingdom registered ships in accordance with Convention No. 178, and that the social partners were fully involved in developing relevant implementing procedures. Since July 2004, all 870 United Kingdom flag ships have been inspected under Convention No. 178. The MCA has trained 120 surveyors involved in survey and inspection work including ILO inspections, and carries out all inspections in-house (including ships joining the United Kingdom Register) at approximately two-and-a-half year intervals but not exceeding three years (and, where practical, more frequently). Inspections are planned to coincide with ISM Code audits to minimize inconvenience to shipowners, officers and crew; freestanding inspections are also undertaken, where there is insufficient time for a combined visit or specific ILO issues are identified. Inspection times per ship vary according to ship type. Within hours of work deficiencies, recordkeeping was a significant issue. In some cases, seafarers were not completing their records properly or there was no on-board system for verifying records.

The TUC deems unacceptable the Government's position that adherence to Convention No. 178, an inspection regime covering 16 specific areas of a seafarer's working and living conditions, one of which is hours of work, is sufficient to satisfy the requirements of Convention No. 180. The TUC believes that two hours (average time of inspections under Convention No. 178) at approximately two-and-a-half year intervals is inadequate when seeking to determine excessive work hours on a monthly basis. MCA inspectors suggest that a significant number of hours are required to detect abuses with respect to the Hours of Work Regulations through careful inspection of paperwork (e.g. records of hours of work or rest, logbooks, etc.) and questioning of seafarers. The TUC, therefore, contends that, with working weeks frequently in excess of 100 hours, the Government has failed to ensure effective implementation of Convention No. 180 because of inadequate policing and lack of allocated resources to the regulatory authority, namely the MCA. As to the finding during inspections that seafarers were not completing their records properly, the TUC indicates that they are intimidated into falsifying records, and inspectors have insufficient time to drill down to determine excessive working hours and non-compliance with Convention No. 180.

The Committee considers that inspections under Convention No. 180 may well be carried out in the framework of the inspection regime established under Convention No. 178, as long as sufficient resources, particularly in terms of time and human capacity, are foreseen to effectively verify compliance with relevant national legislation. ***The Committee requests the Government to indicate by what means it is ensured that allocated time and staff permit the examination and endorsement of records of seafarers' daily hours of work or rest, as well as the checking of other evidence in such a manner as to prevent practices such as double bookkeeping or falsification of records, and thus guarantee effective monitoring of compliance with the provisions governing hours of work or hours of rest that give effect to the Convention.***

Article 15, subparagraph (c). Complaints procedures. The TUC had previously stated that consultations with respect to the procedures to investigate complaints relating to matters contained in the Convention were inadequate. The Committee, therefore, asked the Government to indicate the consultations held on the issue. The Government responds that the procedure for investigating complaints in Merchant Shipping Notice MSN 1769(M) was drawn up following full and detailed consultation with the social partners. The Committee notes the information supplied by the Government.

The Committee had also asked the Government to provide further details as to the procedures to investigate complaints. The Government responds that Merchant Shipping Notice MSN 1769(M) concerning the implementation of

Convention No. 178 and Recommendation No. 185 contains details of the procedure to investigate complaints relating to working time as well as other living and working conditions.

The TUC states that Merchant Shipping Notice 1769(M) is specifically directed towards Convention No. 178, and that there is no complaints procedure with respect to Convention No. 180. Furthermore, complaints are unlikely to come from seafarers not domiciled in the United Kingdom who are not members of a trade union, from fear of retribution and exclusion from employment, which makes it essential to have an appropriate investigating unit so as to ensure full implementation of Convention No. 180. The TUC also indicates that it has knowledge of complaints received by the MCA, which have been notified to the company or agent without respecting the confidentiality of the individuals.

The Committee notes that section 4 of MSN 1769(M) provides for the procedures to follow in case of crew complaints concerning all living and working conditions on board ship, including hours of work or rest. The Committee considers that complaints relating to matters contained in Convention No. 180 may well be submitted in the framework of the complaints mechanism established under Convention No. 178. The Government would, however, need to ensure that all seafarers on board ships registered in the United Kingdom, regardless of domicile, are able to submit complaints relating to hours of rest without incurring retribution and exclusion from employment. ***The Committee requests the Government to indicate by what means it is ensured that complaints relating to hours of rest submitted by any seafarer on board ships registered in the United Kingdom are treated and investigated in a strictly confidential manner, to avoid victimization.***

Anguilla

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)

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

For a number of years the Government has failed to reply to the Committee's comments concerning the application to Anguilla of section 37 of the 1979 United Kingdom Merchant Shipping Act, which amended section 15 of the 1970 United Kingdom Merchant Shipping Act, removing the possibility to deprive seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons and cargo.

The Committee therefore hopes that the Government will indicate in its next report the measures taken to extend to Anguilla the application of section 37 of the 1979 United Kingdom Merchant Shipping Act, so as to guarantee to seafarers the payment of an unemployment indemnity for a period of at least two months without restriction in the event of loss or foundering of the vessel, in conformity with the Convention.

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

Isle of Man

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Articles 1 and 2, of the Convention. Scope of application of the Convention. In its previous comment, the Committee noted the observations submitted in 2005 by the Trades Union Congress (TUC) alleging that the Isle of Man did not afford full employment rights protection to non-resident seafarers and did not regulate the social conditions including working conditions of all seafarers on ships registered in the Isle of Man. Recalling the broad scope of application of the Convention, the Committee, therefore, asked the Government to provide full information on the assertions made by the TUC.

The Committee notes the Government's response indicating that Isle of Man legislation applies equally to all seafarers serving on board Isle of Man registered vessels and covers conditions of employment for all seafarers on Isle of Man ships mainly through the Merchant Shipping (Masters and Seamen) Act, 1979 and regulations made under that Act.

With regard to social security, the Government indicates that the Isle of Man has a reciprocal agreement with the United Kingdom, which ensures that Isle of Man legislation is in line with the United Kingdom. ***In this respect, the Committee refers to its observation regarding the United Kingdom.***

Article 2, subparagraph (b). Exercise of effective jurisdiction. In its previous comments, the Committee noted that Isle of Man legislation limits access to employment tribunals to those employees resident on the island, and asked the Government to ensure the effective exercise of jurisdiction, as required by this provision of the Convention.

The Government states that access to an employment tribunal in the ship's flag State is not understood to be a common route of redress for complaints from seafarers, due to the impracticality to a seafarer who is unlikely to be near to that country. The Government also points out that the Isle of Man registry has a seafarers' complaint procedure as part of its ISO 9001 accreditation, which, in practice, deals with and resolves seafarers' complaints effectively: in 2007–08, five seafarers' complaints from seafarers resident in four different countries outside of Isle of Man have been investigated and resolved. Yet, the Government recognizes the need to formalize those systems which have, in some cases, developed as good practices. It indicates that the Isle of Man will write new legislation designed specifically to give effect to the

Maritime Labour Convention, 2006 (MLC, 2006); on this occasion, good practices will be formalized into legislation and will provide for clear implementation of the MLC, 2006.

The Committee considers, however, that the availability to seafarers on ships registered in the Member's territory, of legal procedures enabling their claims submitted under private law to be examined, are a component of the effective exercise of jurisdiction required by *Article 2, subparagraph (b), of the Convention* (General Survey "Labour standards on merchant ships", 1990, paragraphs 240 and 242). In this context, the Committee wishes to draw the Government's attention to Article V(2) and Regulation 5.1.5(3) of the MLC, 2006. Article V(2) of the MLC, 2006, builds upon *Article 2, subparagraph (b), of the present Convention*, which requires each Member to effectively exercise its jurisdiction *or* control over ships that fly its flag. The MLC, 2006, goes further in that it requires each Member to effectively exercise its jurisdiction *and* control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws. Moreover, according to Regulation 5.1.5(3), the provisions of the MLC, 2006, concerning on-board complaints are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate. ***The Committee would appreciate further information on developments ensuring the effective exercise of jurisdiction, in conformity with Article 2, subparagraph (b), of the Convention and in view of the planned implementation of the MLC, 2006.***

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

The Committee notes the information provided by the Government in response to its previous comments concerning Article 5, paragraph 1 – Hours of rest in the two-watch system. In particular, the Committee notes with *satisfaction* that, after the examination of records of ten ships operating with a two-watch system has revealed one infringement of requirements of the Convention, one safe manning document was reissued with increased numbers, to avoid any future infringements.

In addition, the Committee is raising certain matters of a technical nature in a request addressed directly to the Government.

Montserrat

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)

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

According to the Government's indications, the provisions of section 37 of the 1979 United Kingdom Merchant Shipping Act, which amends section 15 of the 1970 United Kingdom Merchant Shipping Act, removing the possibility to deprive seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons, and cargo, have not been extended to Montserrat. ***The Committee hopes that the Government will be able to re-examine the question and indicate, in its next report, the steps taken to extend to Montserrat the application of section 37 of the 1979 United Kingdom Merchant Shipping Act, so as to guarantee to seafarers the payment of an unemployment indemnity for a period of at least two months without restriction in the event of loss or foundering of the vessel, in conformity with the Convention.***

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 8** (Nigeria, Serbia); **Convention No. 9** (Bosnia and Herzegovina, Serbia); **Convention No. 16** (Albania, Bosnia and Herzegovina, Kyrgyzstan, Serbia); **Convention No. 22** (Bosnia and Herzegovina, Iraq, Serbia, Seychelles, United Kingdom: Anguilla); **Convention No. 23** (Bosnia and Herzegovina, Iraq, Kyrgyzstan, Serbia, United Kingdom: Anguilla); **Convention No. 53** (Bosnia and Herzegovina, Liberia, Serbia, Turkey); **Convention No. 55** (Belize, Turkey); **Convention No. 56** (Bosnia and Herzegovina, Peru, Serbia); **Convention No. 69** (Bosnia and Herzegovina, Kyrgyzstan, Serbia); **Convention No. 73** (Bosnia and Herzegovina, Kyrgyzstan, Serbia); **Convention No. 74** (Bosnia and Herzegovina, Serbia); **Convention No. 91** (Bosnia and Herzegovina); **Convention No. 92** (Belize, Bosnia and Herzegovina, Kyrgyzstan, Serbia, Slovenia); **Convention No. 108** (Iraq, Kyrgyzstan, Saint Lucia, Turkey, Ukraine, United Kingdom: St Helena); **Convention No. 133** (Belize, Kyrgyzstan, Latvia, Lebanon); **Convention No. 134** (Belize, Kyrgyzstan, Turkey); **Convention No. 146** (Germany, Luxembourg, Turkey); **Convention No. 147** (Barbados, Estonia, Ghana, Iraq, Jordan, Kyrgyzstan, Liberia, Portugal, Trinidad and Tobago, Ukraine); **Convention No. 164** (Bulgaria, Italy, Turkey); **Convention No. 166** (Germany, Turkey); **Convention No. 178** (Albania, Bulgaria, Ireland, Nigeria, United Kingdom: Isle of Man); **Convention No. 179** (Croatia, Ireland, Nigeria); **Convention No. 180** (Germany, Ireland, Latvia, United Kingdom: Isle of Man).

Fishers

Liberia

Minimum Age (Fishermen) Convention, 1959 (No. 112) (ratification: 1960)

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

The Committee notes that, under section 291 of the Liberian Maritime Law – Title II of the Liberian Code of Laws – a vessel means any vessel registered under Title II and a fishing vessel means a vessel used for catching fish, whales, seals, walrus and other living creatures at sea. Under section 326(1) of the Maritime Law the minimum age for admission to employment or work on Liberian vessels is 15 years.

The Committee notes that vessels eligible to be documented include, by virtue of section 51 of the Maritime Law, inter alia, vessels of 20 net tons and over engaged in coastwise trade between ports of Liberia or between those of Liberia and other West African nations; and seagoing vessels of more than 1,600 tons engaged in foreign trade. The Committee recalls in this connection that the Convention applies to fishing vessels which under the terms of *Article 1 of the Convention* include all ships and boats, of any nature whatsoever, whether publicly or privately owned which are engaged in maritime fishing in salt waters. *The Committee hopes that the Government will provide information on measures taken or envisaged to apply the Convention to all fishing vessels coming under the purview of Article 1 of the Convention.*

The Committee also draws the Government's attention to the new Work in Fishing Convention, adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing, including Convention No. 112. *The Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.*

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

Medical Examination (Fishermen) Convention, 1959 (No. 113) (ratification: 1960)

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

For many years the Committee has asked the Government to indicate whether certain provisions applicable to merchant vessels, i.e. the Requirements for Merchant Marine Personnel (RLM-118) and Maritime Regulation No. 10.325(2), also apply to fishing vessels. *The Committee again expresses the hope that the Government will provide full explanations regarding the applicability of the Liberian Maritime Laws and Regulations to the medical examination of fishermen. The Government is requested to indicate whether consultations with the fishing-boat owners' and fishermen's organizations concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate as required by Article 3, paragraph 1, of the Convention and to provide particulars on how the age of the person to be examined and the nature of the duties to be performed are taken into account in prescribing the nature of the examination as required by Article 3, paragraph 2.*

The Committee also draws the Government's attention to the new Work in Fishing Convention, adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing, including Convention No. 113. *The Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.*

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

Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1960)

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

The Committee notes the Government's earlier indication that the Committee's comments have been submitted to the Commissioner of the Bureau of Maritime Affairs for immediate action. *Referring to its previous comments, the Committee requests the Government to provide information on any possible reaction by the Commissioner. It also urges the Government to provide full information on each of the provisions of the Convention and each question in the report form approved by the Governing Body.*

The Committee also draws the Government's attention to the new Work in Fishing Convention, adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing, including Convention No. 114. *The Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.*

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

Russian Federation

Accommodation of Crews (Fishermen) Convention, 1966 (No. 126) (ratification: 1969)

The Committee notes the Government's report which is practically a repetition of general information already submitted in previous reports in 2003 and 2000. The Committee recalls its detailed comment addressed in 2005 and again in 2006 in which it requested the Government to clarify the state of law and practice and supply full particulars on the application of numerous provisions of the Convention. *In the absence of any specific replies, the Committee is bound to ask once more the Government to supply concrete information, including copies of relevant laws, regulations or administrative instructions, on relevant measures taken or envisaged in relation to the following points: penalties for violations of the relevant legislation (Article 3(2)(d),(e) of the Convention); periodical and complaint-based inspection of fishing vessels (Article 5); bulkheads being watertight and gastight (Article 6(3)); prohibition of heating on board by open fires (Article 8(3)); indication of maximum sleeping room capacity (Article 10(9)); one wash basin for every six persons or less (Article 12(2)(c)); quality of soil and waste pipes and facilities for drying clothes (Article 12(7),(11)); sickbay required for vessels of 45.7 metres in length or over (Article 13(1)); alterations to existing vessels to ensure conformity with the Convention (Article 17(2)–(4)).*

In addition, the Government is again requested to explain how the application of the following provisions is ensured: Article 6(2), (4), (7), (9)–(11), (13), (14); Article 8(2); Article 9(5); Article 10(1), (5), (13)–(26); Article 11(7), (8); and Article 16(6).

Furthermore, the Committee notes that the Government makes renewed reference to Order No. 30 of 2001 of the State Committee for Fishing regarding regulations on the registration of fishing vessels and their entitlements at maritime fishing ports, as providing for the monitoring of the application of the Convention through systematic inspections. The Committee notes, however, that the abovementioned Order, as amended by Order No. 176 of 2003 of the State Committee for Fishing, does not appear to contain any specific provisions concerning inspection of fishing vessels. *It accordingly requests the Government to provide additional explanations in this regard.*

Part V of the report form. The Committee notes that according to statistical information published by the UN Food and Agriculture Organization (FAO), in 2002, the offshore fleet comprised 2,500 fishing vessels, 17 per cent of which were large vessels over 64 metres in length, 51 per cent were medium-sized vessels or 34–65 metres in length, and 32 per cent were small vessels, or 24–34 metres in length. According to the same information, the fishing fleet in the last decade contracted by almost 40 per cent, especially larger vessels, while two-thirds of the fleet is very old. Finally, the fishing industry is believed to provide employment to more than 150,000 people, representing 1 per cent of total industrial employment. *The Committee would appreciate if the Government would provide up to date information on the practical application of the Convention, including, for instance, statistics on the size of the fishing fleet broken down by vessel category and age, estimated employment, the number of enterprises active in the sector, the importance of fisheries in the national economy and current trends in fisheries, copies of official reports or studies of the State Committee for Fishing or other competent bodies, etc.*

Finally, the Committee seizes this opportunity to draw the Government's attention to the new Work in Fishing Convention, 2007 (No. 188), which revises and brings up to date in an integrated manner most of the existing ILO fishing instruments. The new Convention provides a modern and flexible regulatory framework covering large fishing operations but also addressing the concerns of small-scale fishers. In particular, Annex III of the Work in Fishing Convention essentially reproduces the provisions of Convention No. 126 adding a new length–tonnage conversion rate (24 metres equivalent to 300 gross tonnage) and also the possibility to introduce, under certain conditions, limited “alternative requirements” as regards headroom, floor area per person, berth size and sanitary facilities. *The Committee invites the Government to give due consideration to the new comprehensive standard on fishers' working and living conditions and to keep the Office informed of any decision it may take as regards its ratification.*

[The Government is asked to reply in detail to the present comments in 2009.]

Sierra Leone

Fishermen's Competency Certificates Convention, 1966 (No. 125) (ratification: 1967)

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

The Committee has been commenting for a number of years on the absence of laws and regulations giving effect to the Convention. The Government stated in its last report that progress was being made in this respect and that a national workshop on the formulation of fishing policies was organized. The Government also indicated that copies of the new legislation and the texts defining the new policies would be communicated to the ILO as soon as they were adopted.

The Committee asks the Government to provide detailed information on the outcome of the national workshop on the formulation of fishing policies and on any concrete progress made in respect of the adoption of national laws implementing the Convention. The Committee understands that the Office remains ready to offer expert advice and respond favourably to any

specific request for technical assistance in this regard. *Finally, the Committee would appreciate receiving up to date information concerning the fishing industry, including statistics on the composition and capacity of the country's fishing fleet, the approximate number of fishers gainfully employed in the sector, etc.*

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 113** (Guinea, Serbia); **Convention No. 114** (Bosnia and Herzegovina, Serbia); **Convention No. 125** (Djibouti); **Convention No. 126** (Djibouti, Serbia, Sierra Leone).

Dockworkers

Congo

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1986)

The Committee notes the information provided by the Government according to which a national advisory technical committee on occupational safety and health has been set up pursuant to Decree No. 2000-29 of 17 March 2000 which gives effect to *Article 7 of the Convention*. It also notes, however, that the information requested concerning *Articles 2, 4, 5, 6 and 11–36* are to be provided by the Government subsequently. As regards the further information the Committee has requested the Government to provide, the Committee notes with regret that the Government has either not replied to questions raised by the Committee in its previous comments or it has provided information that is applicable to enterprises in general. The Government appears to imply that dockworkers should be treated in the same manner as other workers and ports be treated like any other enterprise. ***With reference to Articles 4–7, the Committee wishes to recall that the Government is required to take measures to give effect to the specific provisions in the Convention. The Committee must therefore once again repeat its previous observation which read as follows:***

The Committee draws the Government's attention to the absence of specific health and safety provisions for dock work. The Committee noted previously that a draft Order on safety and health in dock work had been prepared by the technical departments of the Ministry of Labour and Social Security. In its report for the period ending 30 June 1993, the Government repeated this information and added that the draft had been submitted for adoption. The Committee hopes that the provisions of this text will ensure the application of the following provisions of the Convention: Article 4 (objectives and areas to be covered by measures to be established by national laws and regulations, in accordance with Part III of the Convention); Article 5 (responsibility of employers, owners, masters or other persons as appropriate, for compliance with safety and health measures; duty of employers to collaborate whenever two or more of them undertake activities simultaneously at one workplace); Article 7 (consultation of and collaboration between employers and workers). ***It asks the Government to provide a copy of the above Order as soon as it has been adopted.***

In its previous reports, the Government referred to Orders No. 9033/MTERFPPS/DGT/DSSHT on the organization and functioning of the socio-medical centres of enterprises in the People's Republic of the Congo and No. 9034/MTERFPPS/DGT/DSSHT laying down the procedures for the establishment of socio-medical centres which are common to several enterprises in the People's Republic of the Congo. ***Since these texts have not been received, the Committee would be grateful if the Government would provide a copy of them.***

The Committee asks the Government to provide additional information on the following points.

Article 6 of the Convention. The Committee notes from the Government's report for the period ending 30 June 1993 that briefings are to be organized to inform workers about safety provisions in the place of work at which heads of establishment can alert them about the dangers arising from the use of machinery and the precautions to be taken. ***The Committee asks the Government to provide a copy of the provisions concerning the organization of these briefings and the measures taken to give effect to paragraph 1(c) of this Article.***

Article 8. The Committee notes the Government's statement in its report for the period ending 30 June 1993 that all safety measures are provided for in Chapter II of Order No. 9036 of 10 December 1986. The Committee notes that the above part of the Order provides for general protective measures whereas the Convention requires the adoption of measures specific to dock work. ***It asks the Government to indicate which provisions require the adoption of effective measures (fencing, flagging or other suitable means including, when necessary, cessation of work) to ensure that when the workplace has become unsafe, workers are protected until it has been made safe again.***

Article 14. The Committee notes from the Government's report for the period ending 30 June 1993 that the application of this Article is ensured by labour inspectors by means of inspections in enterprises. ***The Committee asks the Government to indicate which provisions ensure that electrical equipment and installations are so constructed, installed, operated and maintained as to prevent danger, and which standards for electrical equipment and installations have been recognized by the competent authorities.***

Article 17. The Committee notes that section 41 of Order No. 9036, cited by the Government in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention, includes specific measures only for the use of lifting gear in particular weather conditions (wind). ***The Committee asks the Government to indicate the measures taken to ensure that the means of access to a ship's hold or cargo deck are in conformity with the provisions of this Article.***

Article 21. The Committee notes the provisions of sections 47 to 49 of Order No. 9036 which the Government cites in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention. It notes that the above sections provide for protective measures for some machinery or parts of machines which can be dangerous. ***It asks the Government to indicate the measures taken or envisaged to ensure that all lifting appliances, every item of loose gear and every sling or lifting device forming an integral part of a load comply with the provisions of the Convention.***

Articles 22, 23, 24 and 25. Further to its previous comments, the Committee notes that, in its report for the period ending 30 June 1993, the Government refers to the certification of machinery, including lifting appliances, which is conducted by technical inspectors and advisory bodies, as a general measure to ensure that lifting appliances are sound and in proper working order. However, these Articles of the Convention provide for a set of measures to ensure that appliances and loose gear can be used by workers without any danger or risk: testing of all lifting appliances and loose gear (every five years in ships); thorough examination (at least once every 12 months); regular inspection before use. ***The Committee asks the Government to indicate the provisions requiring the above measures to be taken in respect of all lifting appliances – on shore and on board – and of all loose gear.***

Article 30. The Committee notes that section 43 of Order No. 9036 referred to by the Government, does not relate to the attaching of loads to lifting appliances. ***It asks the Government to indicate which provisions relate to this matter.***

Article 34. The Committee asks the Government to provide a copy of the instructions concerning the wearing of personal protective equipment referred to by the Government in its report for the period ending 30 June 1993.

*Article 35. Further to its previous comments, the Committee notes that section 147 of the Labour Code regulates the evacuation of injured persons who are able to be moved and who are not able to be treated by the facilities made available by the employer. It notes that the Government also refers in its reports to Orders Nos 9033 and 9034 mentioned in paragraph 2 above. **The Committee asks the Government to indicate the measures taken either under the above texts, or otherwise, to ensure that adequate facilities, including trained personnel, are available for the provision of first aid.***

*Article 37, paragraph 1. The Committee recalls that, under this provision of the Convention, committees which include employers' and workers' representatives must be formed at every port where there is a significant number of workers. **Recalling the Government's statement that the health and safety committees provided for by the law have not been formed, the Committee asks the Government to indicate the measures taken to ensure the establishment of such committees in ports with a significant number of workers.***

*Article 38, paragraph 1. The Government indicates in its report that, in the absence of health and safety committees, instruction and training are entrusted to a specialist in the matter within the enterprise. **The Committee asks the Government to provide information on the activities of these specialists.***

*Article 39. The Committee notes that section 61 of Act No. 004/86 of 25 February 1986 establishing the Social Security Code gives effect in part to this Article of the Convention. **It asks the Government to indicate the provisions which ensure that this Article is applied to occupational diseases.***

*Article 41, paragraph 1(a). Further to its previous comments, the Committee notes that the Government refers to Order No. 9036 of 10 December 1986 as being the text which lays down general obligations for the persons and bodies concerned with dock work (ports being treated as any industrial enterprise) and that no specific measures have been taken in respect of dock work. **The Committee asks the Government to indicate the measures taken or envisaged to set out the specific obligations taken for the persons and bodies concerned with dock work.***

In the absence of any information on the application of the above provisions, the Committee asks the Government to indicate the specific measures which give effect to the following provisions of the Convention.

Article 9, paragraphs 1 and 2. Safety measures with regard to lighting and marking of dangerous obstacles.

Article 10, paragraphs 1 and 2. Maintenance of surfaces for traffic or stacking of goods and safe manner of stacking goods.

Article 11, paragraphs 1 and 2. Width of passageways and separate passageways for pedestrians.

Article 16, paragraphs 1 and 2. Safe transport to or from a ship or other place by water, safe embarking and disembarking, and safe transport to or from a workplace on land.

Article 18, paragraphs 1, 2, 3, 4 and 5. Regulations concerning hatch covers.

Article 19, paragraphs 1 and 2. Protection around openings and decks, closing of hatchways when not in use.

Article 20, paragraphs 1, 2, 3 and 4. Safety measures when power vehicles operate in the hold; hatch covers secured against displacement; ventilation regulations; safe means of escape from bins or hoppers when dry bulk is being loaded or unloaded.

Article 26, paragraphs 1, 2 and 3. Members' mutual recognition of arrangements for testing and examination.

Article 27, paragraphs 1, 2 and 3. Marking lifting appliances with safe working loads.

Article 28. Rigging plans.

Article 29. Strength and construction of pallets for supporting loads.

Article 31, paragraphs 1 and 2. Operation and layout of freight container terminals and organization of work in such terminals.

Article 38, paragraph 2. Minimum age limit for workers operating lifting appliances.

Hoping that the Government will make every effort to take the necessary measures in the very near future, the Committee invites the Government to solicit the technical assistance of the ILO to resolve any problems related to the application of this Convention.

[The Government is asked to report in detail to the present comments in 2009.]

Ecuador

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1988)

The Committee notes with regret that, for several years, the Government's report has contained no response to the Committee's comments and that there have been no significant changes to report. The Committee notes the Government's repeated statement that it plans to update existing standards on safety and health in dock work, that the *Handbook of Standards on Safety and Risk Prevention for Dockworkers* is being revised and that the Committee's more specific comments have been forwarded to the directorate-general of the merchant navy and that the Government is awaiting information. **Against this background and the numerous comments the Committee has been making since 1993, the Committee urges the Government to take all necessary action to bring its national law and practice into compliance with the Convention, to complete the revision of the Handbook of Standards on Safety and Risk Prevention for Dockworkers and to provide copies of all relevant legislation and other relevant texts as soon as they have been adopted.**

Part V of the report form. Application in practice. The Committee requests the Government to provide extracts from the reports of the inspection services, information on the number of workers covered by the legislation, the number and nature of the contraventions reported and any other information that would enable the Committee to assess how the Convention is applied in practice. The Committee reminds the Government that it may avail itself of ILO technical assistance in aligning its legislation with the Convention and ensuring its application in practice.

[The Government is asked to reply in detail to the present comments in 2009.]

Honduras

Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27) (ratification: 1980)

The Committee notes that, following its 2007 general observation, the Private Enterprise Council of Honduras (COHEP) indicates in its comments communicated to the Government in September 2008 that it is fully in favour of a revision of the Convention to take into account developments in the methods of transporting loads. The COHEP adds that it is participating in the current revision of the Regulations of the Central American Uniform Customs Code. *The Committee requests the Government to provide any relevant information in its next regular report due in 2012 in reply to the 2007 direct request and the comments of the COHEP, with an indication of any difficulties encountered in the application of the Convention in relation to modern methods of handling loads, and particularly containers.*

Pakistan

Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1947)

The Committee notes the information provided by the Government in its report, including on the amendment of the Pakistan Dock Labourers Regulations, 1948, promulgated under SRO 302(I)/2006, dated 28 March 2006.

With reference to its previous observation based on the comments made by the Fishing Vessels Employees' Union concerning the working conditions of coastal fishermen, the Committee notes the Government's statement that the updated Pakistan Merchant Shipping Ordinance, 2001, was still in the process of being approved. *The Committee reiterates its hope that the Pakistan Merchant Shipping Ordinance, 2001, as well as subsequent rules, will be adopted in the near future and requests the Government to provide a copy of this legislation as soon as it has been adopted.*

Point V of the report form. Application in practice. The Committee requests the Government to provide up to date statistical information on the number of inspections carried out, violations noted and penalties imposed as regards issues covered by the Convention.

The Committee also takes this opportunity to recall that the Governing Body of the ILO has invited parties to Convention No. 32 to consider ratification of Convention No. 152, which revises Convention No. 32 (GB.268/LILS/5(Rev.1), paragraphs 99–101). Such ratification would automatically entail an immediate denunciation of Convention No. 32. *The Government is requested to keep the Office informed of any developments in this respect.*

The Committee also wishes to bring to the Government's attention to the ILO code of practice on safety and health in ports, Geneva, 2005. This code of practice is available, inter alia, through the ILO's web site by following the link, www.ilo.org/public/english/protection/safework/cops/english/index.htm.

Sweden

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1980)

The Committee notes the brief report submitted by the Government including reference to information provided in the context of its application of the Dock Work Convention, 1973 (No. 137). It also notes the information that the following new legislation has been adopted which give further effect to the present Convention: *Provisions on Dock Work (AFS 2001:9); Use of Work Equipment (AFS 2006:4); Use of Trucks (AFS 2006:5); Use of Lifting Gear and Lifting Equipment (AFS 2006:6); and Temporary Personnel Hoists using Cranes and Trucks (AFS 2006:7).*

With reference to observations submitted by the Swedish Transport Workers' Union (STUW) in 2002, the Committee notes that the Government has not yet commented on the concerns expressed by the STUW regarding increasing work-related stress in the ports due to increased efforts to improve the productivity and efficiency of dock work. In the STUW's view all dock work on and around ro/ro vessels has become more hazardous as the requirement of swift handling makes it impossible for work to be done according to the regulations. *In view of the potential dangers that the required speed in handling could cause, the Committee would be grateful if the Government would provide its comments on the STUW observations.*

Part V of the report form. Application in practice. The Committee takes this occasion to bring to the Government's attention a newly adopted ILO code of practice on safety and health in ports, Geneva, 2005. This code of practice is available, inter alia, through the ILO's web site by following the link, www.ilo.org/public/english/protection/safework/cops/english/index.htm. ***In the light of the foregoing, including the observations by the STUW and the new legislation, the Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied in the country, and to attach extracts from the reports of the inspection services, information on the number of workers covered by the legislation, the number and nature of contraventions reported and the resulting action taken, as well as the number of occupational accidents and diseases reported.***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 27** (Angola, Bosnia and Herzegovina, Denmark, Estonia, France, France: French Guiana, France: Guadeloupe, France: Martinique, France: Réunion, Pakistan, Papua New Guinea, Peru); **Convention No. 32** (Bangladesh, Bulgaria, Nigeria, Slovenia); **Convention No. 137** (Costa Rica, France, Guyana, Kenya, Norway, United Republic of Tanzania); **Convention No. 152** (Guinea, Russian Federation, Turkey).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 27** (Slovakia, Slovenia); **Convention No. 152** (Norway).

Indigenous and tribal peoples

General observation

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

On the eve of the 20th anniversary of the adoption of the Convention, the Committee notes that the establishment of appropriate and effective mechanisms for the consultation and participation of indigenous and tribal peoples regarding matters that concern them is the cornerstone of the Convention, yet remains one of the main challenges in fully implementing the Convention in a number of countries. Given the enormous challenges facing indigenous and tribal peoples today, including regularization of land titles, health and education, and the increased exploitation of natural resources, the involvement of the indigenous and tribal peoples in these and other areas which affect them directly, is an essential element in ensuring equity and guaranteeing social peace through inclusion and dialogue.

The Committee notes that the Convention refers to three interrelated processes: coordinated and systematic government action, participation and consultation. It notes that *Articles 2 and 33 of the Convention*, read together, provide that governments are under an obligation to develop, with the participation of indigenous and tribal peoples, coordinated and systematic action to protect the rights and to guarantee the integrity of these peoples. Agencies and other appropriate mechanisms are to be established to administer programmes, in cooperation with indigenous and tribal peoples, covering all stages from planning to evaluation of measures proposed in the Convention. The Committee recalls that pursuant to *Article 7* of the Convention, indigenous and tribal peoples have the right to decide their own development priorities and to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. *Article 6* sets out the Convention's requirements regarding consultation.

The Committee notes that in many countries genuine efforts have been made regarding consultation and participation with the aim of implementing the Convention. However, these efforts have not always met the expectations and aspirations of indigenous and tribal peoples, and also fell short of complying with the requirements of the Convention. In certain cases agencies have been established with responsibility for indigenous or tribal peoples' rights, however, with little or no participation of these peoples, or with insufficient resources or influence. For example, the key decisions affecting indigenous or tribal peoples are in many cases made by ministries responsible for mining or finance, without any coordination with the agency responsible for indigenous or tribal peoples' rights. As a result, these peoples do not have a real voice in the policies likely to affect them. While the Convention does not impose a specific model of participation, it does require the existence or establishment of agencies or other appropriate mechanisms, with the means necessary for the proper fulfilment of their functions, and the effective participation of indigenous and tribal peoples. Such agencies or mechanisms are yet to be established in a number of countries that have ratified the Convention.

The Committee cannot over-emphasize the importance of ensuring the right of indigenous and tribal peoples to decide their development priorities through meaningful and effective consultation and participation of these peoples at all stages of the development process, and particularly when development models and priorities are discussed and decided. Disregard for such consultation and participation has serious repercussions for the implementation and success of specific development programmes and projects, as they are unlikely to reflect the aspirations and needs of indigenous and tribal peoples. Even where there is some degree of general participation at the national level, and ad hoc consultation on certain measures, this may not be sufficient to meet the Convention's requirements concerning participation in the formulation and implementation of development processes, for example, where the peoples concerned consider agriculture to be the priority, but are only consulted regarding mining exploitation after a development model for the region, giving priority to mining, has been developed.

With regard to consultation, the Committee notes two main challenges: (i) ensuring that appropriate consultations are held prior to the adoption of all legislative and administrative measures which are likely to affect indigenous and tribal peoples directly; and (ii) including provisions in legislation requiring prior consultation as part of the process of determining if concessions for the exploitation and exploration of natural resources are to be granted. The form and content of consultation procedures and mechanisms need to allow the full expression of the viewpoints of the peoples concerned, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and a consensus could be achieved, and be undertaken in a manner that is acceptable to all parties. If these requirements are met, consultation can be an instrument of genuine dialogue, social cohesion and be instrumental in the prevention and resolution of conflict. The Committee, therefore, considers it important that governments, with the participation of indigenous and tribal peoples, as a matter of priority, establish appropriate consultation mechanisms with the representative institutions of those peoples. Periodic evaluation of the operation of the consultation mechanisms, with the participation of the peoples concerned, should be undertaken to continue to improve their effectiveness.

The Committee encourages governments to continue their efforts, with the participation of indigenous and tribal peoples, in the following areas, and to provide information in future reports on the measures taken in this regard:

- ***developing the measures and mechanisms envisaged in Articles 2 and 33 of the Convention;***
- ***establishing mechanisms for participation in the formulation of development plans;***

- *including the requirement of prior consultation in legislation regarding the exploration and exploitation of natural resources;*
- *engaging in systematic consultation on the legislative and administrative measures referred to in Article 6 of the Convention; and*
- *establishing effective consultation mechanisms that take into account the vision of governments and indigenous and tribal peoples concerning the procedures to be followed.*

Argentina

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2000)

The Committee notes that the Government's report was received on 30 September 2008, therefore the Committee will examine it at its next session. The Committee notes a communication from the Educational Workers' Union of Río Negro (UNTER), received on 28 July 2008 and forwarded to the Government of Argentina on 25 August 2008. The Committee notes that the Government has not yet provided any reply to this communication. The Committee will examine the communication in more detail next year together with the Government's reply. The Committee notes that the communication refers to the following issues.

Legislation. According to the communication, as from the constitutional reform of 1994 and the adoption in January 2007 of National Act No. 26,197 on the "provincialization" of hydrocarbons, it is the provinces that issue permits for prospecting and concessions for the exploitation and transport of hydrocarbons and oversee compliance. The above Act was not submitted to consultation and contains no provisions on the right of consultation and participation laid down in the Convention. Furthermore, Provincial Act No. 3,266 of 1999, regulating the procedure for evaluating environmental impact, is inconsistent with the right of consultation and participation laid down in *Articles 6, 7, 15(2) and 17(2) of the Convention*. The same criticism is directed to Provincial Act No. 2,669 on Protected Natural Areas (ANPs), as amended by Act No. 3,193.

Bidding and consultation procedures. The communication indicates that the Province of Río Negro has jurisdiction over four geological basins (Neuquina, Colorado, Niriñau and Cañadon Asfalto Meseta de Somuncurá). Bidding processes for prospecting are well under way, and the Neuquina basin has been under intense exploitation for decades. The communication lists the communities living on the lands under exploitation or for which bidding is in progress. It also indicates that further to the Provincial Hydrocarbons Prospection Plan 2006–07, 14 new areas have been pre-awarded in three geological basins without the consultation and participation required by *Articles 6, 7 and 15(2) of the Convention*.

Protected Natural Areas. According to the communication, to designate an area as an ANP does not imply protection of the lands and the natural and cultural resources of the indigenous peoples, and the Auca Mahuida ANP in Neuquén has been devastated by the work done on oil prospecting and exploitation. The communication states that the ANPs were created on ancestral lands of the Mapuches (Wall-Mapu) and lists them, citing Meseta de Somuncurá, Río Azul-lago Escondido and the Guaitecas cypress forest. It asserts that the right of participation and consultation laid down in the Convention was not observed when the ANPs were created and their management plans drawn up. Although the management plans are required by law to set forth the human necessities to be satisfied, there are no specific bodies or mechanisms for implementing the right of participation and consultation of the indigenous peoples living on lands designated as ANPs.

Representation GB.303/19/7. The Committee notes that in November 2008, the Governing Body adopted the report on the representation made under article 24 of the ILO Constitution by the UNTER, alleging the non-observance of certain provisions of the Convention. The report examines the issues of consultation at national level as well as issues of consultation, participation and performance of traditional activities of indigenous peoples in the province of Río Negro. The Committee notes that it has been requested to follow up on the implementation of the recommendations of the Governing Body set out in paragraph 100 of the abovementioned report, in which the Governing Body requested the Government to:

- (a) continue making efforts to strengthen the Council for Indigenous Participation (CIP) and ensure that, when elections of indigenous representatives are held in all the provinces, all the indigenous communities and all institutions considered by the communities themselves to be representative are invited to participate;
- (b) carry out consultations with regard to the bills referred to in paragraphs 12 and 64 of the Governing Body's report and to establish mechanisms to ensure that consultations with indigenous peoples take place whenever legislative or administrative measures that may directly affect them are being considered. The consultations should be carried out sufficiently early so as to be effective and meaningful;
- (c) ensure that, in implementing Act No. 26,160, all communities and truly representative institutions of the indigenous peoples likely to be directly affected are consulted and able to participate;
- (d) ensure that, in accordance with the principle of concurrent powers of national and provincial authorities, effective consultation and participation mechanisms are established in the Río Negro Province involving all the truly

representative organizations of the indigenous peoples, as set out in paragraphs 75, 76 and 80 of the Governing Body's report, in particular in the process of implementing national Act No. 26,160;

- (e) in implementing Act No. 26,160 to make substantial efforts, in consultation with, and with the participation of, the indigenous people of Rio Negro Province, to clarify: (1) the difficulties in the procedures for regularizing land, with a view to developing a rapid and accessible procedure that meets the requirements of *Article 14(3)* of the Convention; (2) the question of the levy for land use referred to in paragraph 92 of the Governing Body's report; (3) any problems in obtaining legal personality; and (4) the issue of dispersed communities and their land rights; and
- (f) make efforts to ensure that measures are adopted in Rio Negro Province, including interim measures, with the participation of the indigenous people involved, to ensure that indigenous stockbreeders have easy access to marks and signs certificates and carry on their activities in conditions of equality, and to strengthen that activity in accordance with the terms of *Article 23* of the Convention.

The Committee requests the Government to provide any additional information regarding the issues raised in the representation and those raised in UNTER's communication, in particular regarding consultation and participation, so that the Committee may fully examine these matters in 2009.

[The Government is asked to reply in detail to the present comments in 2009.]

Brazil

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2002)

The Committee notes a communication received on 27 August 2008 and sent to the Government on 5 September 2008, containing observations on the application of the Convention from the Union of Rural Workers of Alcántara (STTR) and the Union of Workers of Family Agriculture of Alcántara (SINTRAF). It also notes another communication from the Single Confederation of Workers (CUT) received at the ILO Office in Brasilia on 1 September 2008 and sent to the Government on 18 September 2008. This communication also attaches comments made by the following indigenous organizations: the Coordinating Committee of the Indigenous Peoples of the North-East, Minas Gerais and Espírito Santo (APOINME), the Indigenous Council of Roraima (CIR), the Coordinating Committee of the Indigenous Organizations of Brazilian Amazonia (COIAB) and the Warã Brazilian Indian Institute. The Committee notes that the Government's report was received on 31 October 2008, and it was therefore too late for it to be fully examined at this meeting. The Committee notes that the Government has not yet replied to the abovementioned communications. The Committee notes the communication dated 18 September 2008 from the Workers Union of the Federal University of Santa Catarina (SINTUFSC), which it will examine next year together with any comments the Government wishes to make.

Article 1(1)(a) of the Convention. Scope of application. Black rural Quilombola communities. Both communications refer to the Quilombola communities and maintain that the remaining Quilombola communities constitute tribal peoples within the meaning of *Article 1(1)(a)* of the Convention. They indicate that these are social groups whose origins lie in the resistance movement to slavery in Brazil and to racial discrimination, and whose ethnic identity is based on common ancestry and a differentiated way of life. The Brazilian Constitution of 1988 guarantees to Quilombola communities their right to ownership of their lands and recognizes the importance of such communities for the cultural heritage of Brazil. The CUT indicates that, even though the executive and judicial authorities have recognized in documents or rulings that the Convention applies to the Quilombola communities, the Government merely provides information in its report on the situation of the indigenous peoples covered by *Article 1(1)(b)* of the Convention. The CUT claims that there is a pressing need to include information on the realities of life for the Quilombola communities in the Government's report with reference to *Article 1(1)(a)* of the Convention and guarantee the effective application of the Convention to these communities. The General Land Registry of the Remaining Quilombola Communities, under the responsibility of the Palmares Cultural Foundation, has registered the existence of 1,228 Quilombola communities, but the National Coordinating Committee of the Black Rural Quilombola Communities, indicates the existence of more than 3,000 communities scattered over all the regions of the country.

Article 1(2). Undermining of the application of the criterion of self-identification. The CUT also states that the criterion of self-identification established in *Article 1(2)* of the Convention was incorporated in national law by means of Decree No. 4887/2003, which regulates the procedure for granting titles regarding lands occupied by the remaining Quilombola communities. Nevertheless, the Government is allegedly undermining self-identification by means of subsequent legislation (Decree No. 98/2007), thereby preventing issues regarding land titles from being settled since doing so depends on registration of communities. It is, according to the trade union, more and more difficult to obtain registration and thus secure the application of other rights, in particular with regard to land. The violation of the criterion of self-identification is also visible in the dispute between the Quilombola community of Isla de Marambai and the Navy. The communities identify themselves as indigenous and claim the protection afforded by the Convention. Although occurring less frequently, the indigenous identity of the Indians of the North-East is sometimes not recognized either, and this makes the recognition of their rights to the lands they have traditionally occupied more difficult. In the light of the information received, the Committee considers that the Quilombola communities appear to meet the requirements laid down by *Article 1(1)(a)* of the Convention, according to which the Convention applies to "tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community,

and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations". *Article 1(2)* states that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups for which the provisions of this Convention apply". ***The Committee requests the Government to provide information on the application of the Convention to the Quilombola communities, and should the Government consider that these communities do not constitute tribal peoples within the meaning of the Convention, the Committee requests the Government to state the reasons for its viewpoint.***

Communication from the CUT

Articles 2, 6, 7 and 33. Consultation and participation. The communication indicates that although there has been an increase in social dialogue, the effectiveness of such forums is questioned by the indigenous peoples because of their defining features (places which are difficult to access, convocations issued with little notice or superficial discussions) and the impression exists that the sole purpose of such consultations with the peoples, when they are actually held, is to rubber-stamp public policies. The Committee reminds the Government, as it has done repeatedly, that consultation and participation must not just be formal and devoid of content but must constitute a genuine dialogue, by means of appropriate mechanisms, so that they can result in projects including those in which the peoples covered by the Convention may participate in their own development. ***The Committee requests the Government to examine the existing mechanisms for consultation and participation, in cooperation with the indigenous organizations, so as to ensure that they are in conformity with the Convention, and to supply information in this respect.***

Article 6. Consultation and legislation. The communication indicates that no consultation takes place with regard to the legislative and administrative measures referred to in *Article 6* of the Convention. Examples of this are Decree No. 98/2007 concerning the Palmares Cultural Foundation referred to above, the draft Act concerning mining on indigenous lands (PL No. 1610/1996) and draft Decree No. 44/2007, which suspends the application of Decree No. 4887/2003 regulating the procedure for granting titles regarding Quilombola lands. ***The Committee notes that governments have the obligation to consult the peoples covered by the Convention whenever consideration is given to legislative or administrative measures which may affect them directly, and requests the Government to supply information in this respect.***

Article 14. Lands. The CUT points out that the Constitution guarantees for Indians and Quilombola communities the right to the lands which they occupy but, although there are 343 indigenous territories and 87 Quilombola territories which are registered, land titles have still not been regularized for most of the lands; 283 indigenous lands and 590 Quilombola lands are the subject of administrative proceedings and 224 indigenous lands have not even reached this stage. The number of indigenous persons who have been killed has increased, particularly in Mato Grosso do Sul, as a result of unresolved land disputes. ***The Committee requests the Government to supply information on the application of Article 14 of the Convention with regard to the Quilombola communities.***

Articles 6, 7 and 15. Participation, consultation and natural resources. Detailed reference is made to five projects in which there has been no participation or consultation: (1) the Belo Monte hydroelectric project, (2) diversion of the River San Francisco, (3) draft Act No. 2540/2006, which proposes authorization for a hydroelectric project at the Tamanduá Falls on the River Cotingo in the Raposa Serra do Sol indigenous territory, (4) the Guaraní-K'iwóá indigenous territory, where 12,000 indigenous persons live confined to reserves such as Dourados, living in abject poverty, with projects and policies implemented without any consultation or participation, (5) mining in the Cinta Larga indigenous territory, which will be severely affected by the draft law on mining, regarding which there has been no consultation with the peoples concerned. ***The Committee expresses its concern regarding the allegations and reminds the Government that, under the terms of Article 7, it must ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities. The Committee requests the Government to supply detailed information regarding the cases referred to above.***

Communication from the STTR and SINTRAF

Quilombola communities of Alcântara. This communication alleges a blatant failure to comply with the Convention with respect to the Quilombola communities of Alcântara in the state of Maranhao on the part of the Brazilian Space Agency (AEB) and Alcântara Cyclone Space (ACS), a bi-national company jointly owned by Brazil and Ukraine, on account of the establishment and expansion of the Alcântara Launch Centre (CLA) and the Alcântara Space Centre (CEA) on territory traditionally occupied by Quilombola communities, without their being consulted and without their participation.

The Government of the state of Maranhao is alleged to have expropriated 52,000 hectares via Decree No. 7320 during the 1980s, and in 1991, by another Decree of the Presidency of the Republic, the area expropriated for the space centre was increased by 62,000 hectares. Agrarian communities were forcibly displaced, without any technical assistance in agriculture being provided or access to the sea being granted. Fishing represents a substantial part of their economy. In order to reach the sea, they have to travel 10 kilometres and cross the enclosed area of the space centre. Twenty years on, they are living in conditions of extreme poverty and the remaining communities which were able to stay do not have titles in respect of their lands and suffer from the impact of the space centre's activities. No environmental impact study was carried out with regard to the activities resulting from the establishment of this centre. The Government approved the

addition to the initial launch site of another six commercial launch sites, which would occupy 14,303 hectares superimposed on the areas currently used by the Quilombola communities for farming, housing, stock rearing, worship and religious events.

In particular, the communication alleges that two agreements were signed with Ukraine without previous consultation which will have strong repercussions on the communities. The first of these is the “Technological safeguards agreement” connected with the launch centre, signed in January 2002 and promulgated by Decree No. 5266 of 2004. The other is the “Treaty on long-term cooperation in the use of the Cyclone-4 launch vehicle”, signed on 21 October 2003 and promulgated by Decree No. 5436 of 2005.

According to the communication, since 1999, the Chief Federal Public Prosecutor of Maranhao is reported to have been questioning the environmental aspects of the expansion of the space centre and the failure to issue land titles to the communities in respect of the lands they occupy. In September 2006, an agreement was signed between the Chief Federal Public Prosecutor and the Federal Government in the context of judicial proceedings, which determined that the process of granting land titles should be initiated and concluded within a period of 180 days. The land titles proceedings were launched by the National Institute for Settlement and Agrarian Reform (INCRA) and this was due to be completed on 31 October 2007. To the present date, the technical study on identification and demarcation has not been published. Only from the date of publication of this study are the parties concerned able to launch an appeal. However, the Government is reported to have already started activities to establish and expand the centre.

The organizations also state that in May 2008, the Chief Federal Public Prosecutor of Maranhao instituted legal proceedings against the AEB, ACS and the Foundation for the Application of Critical Technologies (ATECH) to “guarantee the rights of the Quilombola communities of Alcântara against actions committed by the defendants, which represent damage to the integrity of possession of ethnic territories and affect the environmental resources of the region and also the activities and way of life of the members of the ethnic groups”. The Chief Federal Public Prosecutor’s Office also stated that companies must refrain from prospecting, drilling or demarcation operations until the process of identification, recognition, delimitation and granting of land titles is completed.

The communication from the organizations highlights the intrinsic connection between lands, environment, life, religion, identity and culture. It repeats the request that the rights of these peoples to the lands should not be considered only from the point of view of ownership but also in terms of interdependence with other rights, as provided for by *Article 13* of the Convention.

The Committee refers to the points made in the second paragraph of this observation, according to which the communities in question appear to meet the requirements for being covered by the Convention and they identify themselves as tribal peoples within the meaning of *Article 1(1)(a)* of the Convention. The Committee points out that, in as much as these communities appear to be covered by the Convention, the Government is required to apply *Articles 6, 7 and 15* on consultation and natural resources and *Articles 13 to 19* on land. The Committee refers in particular to *Article 7(3)*, which requires the Government to ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities. The Committee also draws the Government’s attention to its obligation laid down in *Article 4(1)* of the Convention to adopt special measures as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned. ***The Committee hopes that the Government will supply detailed information in this regard. The Committee requests the Government to send its comments on these communications, together with its reply to the present comments. Noting that the Government’s report does not provide a reply to the questions posed by the Committee in its 2005 direct request, it requests the Government to also include a reply to the 2005 comments.***

[The Government is asked to reply in detail to the present comments in 2009.]

Colombia

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1991)

In its observation of 2007, the Committee noted a communication from the Workers’ Trade Union Confederation for the Oil Industry (USO), received on 31 August 2007, following up on a situation under consideration by the Committee pertaining to the application of the Convention to the Afro-descendent communities of Curvaradó and Jiguamandó in the Pacific coastal area. The abovementioned communication was prepared in conjunction with the Curvaradó and Jiguamandó community councils, the Interdenominational Justice and Peace Commission, the Colombian Commission of Jurists and the José Alvear Restrepo Lawyers Collective. On 28 August 2008, the Office received a further communication from the USO, forwarded to the Government on 9 September 2008. The Committee notes that a reply has not yet been received. The Committee notes with regret that the Government makes no comment on the serious issues raised by the Committee in its observation of 2007, or on the USO’s communication of 2007.

Observation of 2007: Jiguamandó and Curvaradó

In its observation of 2007, of the matters raised by the USO, the Committee examined only those which it deemed to be serious and urgent and which could have irreversible consequences, and sought the Government’s views before

examining the communication as a whole. The Committee expressed deep concern at the allegations of threats and violations of the right to life and the personal integrity of the communities' inhabitants. It referred in particular to the following allegations contained in the communication: (1) the presence of paramilitary groups in the community territory, including those known as "Aguilas negras" and "Convivir" and the assertion that they are tolerated by the official forces, especially army brigades XV and XVII. According to the USO, the paramilitary forces established themselves in community lands in 2007 and have made threats against the inhabitants of the communities, accusing them of belonging to the guerrilla forces which, given the situation in the country, places their lives at grave risk. The communication also indicates that intimidation of this kind is a result of the cultivation of the African palm and that anyone obstructing the production of palm oil in Curvaradó and Jiguamandó would be "cleaned up"; (2) impunity for violations of the fundamental rights of members of the communities such as the disappearance and murder in 2005 of Orlando Valencia, an Afro-Colombian Jiguamandó leader; (3) the "judicial persecution" of the victims of violations of human rights and members of supporting organizations. The USO further indicates that although guerrilla presence in the region is sporadic, it must be remembered that the communities are civilian populations and that they have decided to establish humanitarian zones, which have been recognized by the Inter-American Court of Human Rights. In 2007, the Committee urged the Government to take specific measures and provide information. ***The Committee again expresses deep and growing concern at the USO's allegations and at the lack of a response on the Government's part to the allegations concerning the right to life of the indigenous peoples. It again urges the Government to take without delay all necessary steps to guarantee the life and physical and moral integrity of the members of the communities, to put an end to all persecution, threats or intimidation and to ensure implementation of the rights laid down in the Convention in a climate of security. It again asks the Government to provide information on the measures taken on these matters and to reply to the comments the Committee made in its last observation. In commenting on the USO's communication of 2007, the Government is asked to provide detailed information on the manner in which the provisions of Article 14 of the Convention are applied with respect to the lands of the Jiguamandó and Curvaradó communities.***

Communication of 2008 from the USO

In its communication, the USO alleges that the Government is in breach of the provisions of the Convention in its treatment of the Emberá Katío y Dobida peoples, who live on the Pescadito and Chidima reservations in the municipality of Acandí and belong to the association of Kuna, Emberá and Katío Indigenous Councils of North Chocó (ACIKEK). The USO asserts that the Emberá people belong to a large indigenous family known as the Chocó and lists the areas in which they live. The Emberá people include the Katío and Dobida families. The Emberá Dobida live on riverbanks and their main activity is fishing. The Emberá Katío live in wooded mountain areas.

Murder and forced displacement of indigenous people. The USO refers in particular to acts of violence ranging from death threats to murder and including forced displacement, violation of the right to land, failure to consult, prospecting for natural resources without consultation or participation. The USO refers in general to an increase in the forced displacement of indigenous peoples and cites documents of the United Nations High Commissioner for Refugees reporting that between 1996 and 2002, 997 indigenous persons were murdered and 16,362 forcibly displaced, and that between 2004–07, 519 were murdered and 30,000 forcibly displaced. Regarding the Pescadito and Chidima reservations, it refers specifically to instances of displacements and of indigenous people who attempted to enter Panama, where there are inhabitants belonging to the same people. Some were unsuccessful, while others obtained refugee status.

Lands. Chidima and Pescadito reservations. The USO states that in 2001, the Colombian Institute for Agrarian Reform (INCORA) issued resolutions Nos 005 and 006 establishing the indigenous reservations known as Chidima, for the Katío indigenous people, and Pescadito for the Dobida. The USO reports that "reservations" have been set up for the Dobida that are so small that, according to indigenous witnesses, "it's like being in jail". Furthermore, the Chidima reservation consists of three separate plots that are non-adjacent, so that it is easy for settlers to invade the third one. The USO reports that settlers arrived with dredgers and power saws, burned the grass and issued death threats. The Katío, claiming that they have traditionally occupied the entire territory including the areas between the plots, have asked that the three plots be combined in a single reservation, and although the Government at first undertook to do this, subsequently nothing was done. The USO attaches a letter from the Colombian Institute of Rural Development (INCODER), stating that "there is no budget for regularization for 2006". The USO reports that when the indigenous people sought protection against such invasion, INCODER replied that once a title has been issued for the reservation, it would be up to the indigenous communities to prevent the territory from being invaded. The Committee reminds the Government that according to *Article 14(2)*, it has a duty to ensure effective protection of the rights of ownership and possession of the indigenous people and that pursuant to *Article 18*, it must take measures to prevent unauthorized intrusion upon, or use of, the lands of the peoples concerned. ***Consequently, the Committee urges the Government to take steps as a matter of urgency to put an end to all intrusion upon the lands of the Katío and Dobida peoples, particularly plot 3 of the Chidima reservation, where, according to the USO, there is currently intrusion, and to provide information on the measures taken in this regard. It also asks the Government to take measures to join the three plots into one, in so far as there has been traditional occupation of the land concerned, in order to make the reservation viable, and to provide information on the measures taken in this regard.***

Natural resources and development projects. The USO refers to the construction of new roads that cross the Chidima and Pescadito reservations; to a bi-national electricity interconnection, on which field studies are being carried

out; and to a mining concession in the municipality of Acandí covering an area of 40,000 hectares. For none of these projects has there been participation and consultation. The USO also states that according to the Government, decree No. 1320 on consultation requires prior consultation only for exploitation, and allows prospecting and exploration without consultation. The Committee recalls that *Article 7* of the Convention provides that the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use and shall participate in the formulation, implementation, and evaluation of plans and programmes for national and regional development which may affect them directly. In the case of natural resources and development projects, the requirement to consult must be part of the broader process of participation set forth in *Article 7* of the Convention. In the case of natural resources belonging to the State, the consultation procedure set in *Article 15(2)* shall apply to lands within the meaning of *Article 13(2)* (total environment of the areas which the peoples concerned occupy or otherwise use), and not only reservations. The Committee recalls that pursuant to *Article 14*, Governments have a duty to identify the lands which the peoples concerned traditionally occupy and to guarantee effective protection of their rights of ownership and possession. Accordingly, in the case of the reservations, which cover not the total area but only a delimited part of it to which the indigenous peoples hold title, pursuant to *Article 14* the Government should guarantee the rights of ownership and possession and all other rights deriving therefrom, and not only the right to consultation and participation. ***The Committee accordingly asks the Government fully to guarantee effective protection of the rights of ownership and possession of the peoples concerned, as required by Article 14(2) of the Convention, to take steps to protect the other lands traditionally occupied with a view to recognition of ownership and possession, and to suspend activities arising from concessions granted for exploration and/or infrastructure projects, pending the enforcement of Articles 6, 7 and 15 of the Convention. The Government is asked to provide information on the measures taken in this regard.***

Decree No. 1320. The Committee recalls that at its 282nd Session (November 2001), the Governing Body found the process of prior consultation as established in Decree No. 1320 to be inconsistent with *Articles 2, 6, 7 and 15* of the Convention, and requested the Government to amend Decree No. 1320 of 1998 so as to align it with the Convention, in consultation with, and with the active participation of, the representatives of the indigenous peoples of Colombia, in accordance with the provisions of the Convention (document GB.282/14/3, paragraphs 79 and 94). ***The Committee notes with regret that in 2008 the Government has still not applied the Governing Body's recommendation. It therefore urges the Government to do so and to provide information on the measures taken in this regard.***

The Committee reiterates its request of 2007 for information about the implementation of the Governing Body's recommendations made in November 2001 in two reports it adopted on representations alleging non-compliance with the Convention by the Government of Colombia (GB.282/14/3 and GB.282/14/4).

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

[The Government is asked to reply in detail to the present comments in 2009.]

El Salvador

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1958)

Articles 11 to 14 of the Convention. Land rights. The Committee recalls that a communication was received in September 2003 from the Sindicato Integración Nacional de Indígenas Organizados (INDIO), a workers' organization registered in the country, which noted with regret that the indigenous populations of the country were losing their land rights, in particular, due to the construction of a hydroelectric dam, and that they had been unable to obtain land rights in other contexts as well. The Committee notes the Government's statement, in reply to its previous observation on this subject, to the effect that the indigenous populations were allocated lands, as shown by data from the Salvadorean Institute for Agrarian Reform (ISTA). The Committee also notes that, according to the Government's report, there were no cases of displacement of indigenous populations. However, the Committee notes the comments made by the United Nations Committee on the Elimination of Racial Discrimination (CERD) concerning the vulnerable situation of indigenous populations with regard to land ownership (CERD/C/SVL/CO/3, 4 April 2006, paragraph 11). The Committee also observes that the indigenous populations of Panchimalco and Izalco filed a complaint on the pollution and sale of their lands with the Office of the Procurator for the Protection of Human Rights (newsletter of the Inter-American Institute of Human Rights, 23 January 2008). The Committee also draws the Government's attention to the profile of the indigenous populations of El Salvador, drawn up with the support of the World Bank and the participation of indigenous representatives, published in June 2003. According to this profile, the indigenous populations are suffering an alarming degree of poverty as a result of the dispossession of their lands (p. ix). ***The Committee urges the Government to take all necessary steps to recognize and promote the rights of the indigenous populations with regard to lands traditionally occupied by them in order to put an end to their current vulnerable situation and requests the Government to supply detailed information in this regard. The Committee also requests the Government to provide information on the state of the proceedings instituted with respect to the complaint submitted by the indigenous populations of Panchimalco and Izalco, including information on resolutions and decisions issued and results achieved.***

Recalling that in its general observation of 1992, it invited governments to seriously consider the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Committee encourages the Government to consider this possibility and to provide information on any progress made in this regard.

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

[The Government is asked to reply in detail to the present comments in 2010.]

Ghana

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1958)

The Committee recalls its 2005 comments which noted the Government's will to ensure respect for the equal rights and customs and traditions of all ethnic groups and invited the Government to examine the possibility of ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which revised the Indigenous and Tribal Populations Convention, 1957 (No. 107). The Committee notes from the Government's report that a recommendation in support of ratification of Convention No. 169 by Ghana had been made to the responsible minister and that the matter was under consideration. *The Committee welcomes this development and requests the Government to provide information on the steps taken with a view to a possible ratification of Convention No. 169. The Committee also encourages the Government to seek any technical assistance necessary from the ILO in this regard.*

Guatemala

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1996)

The Committee notes the comments made on the application of the Convention by the Union Movement, Guatemalan Indigenous and Agricultural Workers for the Defence of Workers' Rights, of which the General Confederation of Workers of Guatemala (CGTG) forms a part; the Trade Union Confederation of Guatemala (CUSG); the National Trade Union and Peoples' Coordinating Body (CNSP); the National Federation of Trade Unions of Public Employees of Guatemala (FENASTEG); the Trade Union Federation of Farm Workers (FESOC); the Trade Union of Health Workers of Guatemala; the Eastern Distribution Workers' Union and the Trade Union Confederation of Guatemala (UNSITRAGUA). These comments were received on 31 August 2008 and forwarded to the Government on 17 September 2008. The Committee notes that the Government has not yet provided its comments on this communication. The Committee also notes that the Government's report was received on 25 September 2008, too late to be fully examined at this session, and that the report replies to its comments of 2006, but not to those of 2007, in which the Committee requested information on the effect given to the Recommendations made by the Governing Body in its report of June 2007 (document GB.299/6/1) on the lack of prior consultation regarding exploratory mining activities and the lack of land regularization.

Sacatepequez and cement company. State of emergency. The communication refers to the award of a licence in the Sacatepequez case, in which a cement company is trying to forcibly implement a mining project, despite the fact that exploratory mining was totally rejected by the community, with 8,936 votes against and four in favour. It indicates that, due to the opposition of the indigenous peoples, the Government has declared a state of emergency and deployed armoured vehicles and 300 police officers and soldiers. They also indicate that, with regard to the same company and region, the Kaqchikel ethnic group is opposing exploitation without consultation in Los Trojes due to the major environmental impact that exploitation would have, affecting that population. The communication also indicates that, under Presidential Decree No. 3-2008, a state of emergency was declared for the second time in order to impose the establishment of a cement plant without consultation. Such measures allowed the suspension of fundamental rights such as the right of assembly and the right not to be detained without an order by a competent court. As a result, the unions considered that social protest was criminalized. The Committee notes that the issues raised relate to the imposition of a mining project, apparently without consultation, and the imposition of a state of emergency with liability on fundamental rights and guarantees. With regard to mining, the Committee considers that, in order for any exploitation of natural resources to be consistent with the Convention, the rights to participate and be consulted as laid down in *Articles 6, 7 and 15 of the Convention* have to be applied before decisions are taken. *The Committee requests the Government to provide information on the manner in which Articles 6, 7 and 15 were applied in this case. With regard to the state of emergency, the Committee requests the Government to provide information on the reasons for that declaration, its possible connection with the indigenous conflict and the specific rights that were suspended or limited during that period. It also requests the Government to adopt special measures as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned in accordance with Article 4 of the Convention and to provide information in this regard.*

Land and wages. It is indicated in the communication that the rights over lands, recognized in the Convention, are being violated and the cases of the following estates are mentioned: Finca Termal Xauch, Finca Sataña Saquimo and Finca Secacnab Guaquitim. It is also indicated that the traditional occupation of indigenous peoples is not recognized and that in addition, having been employed on their own lands, their wages were not paid and they were violently removed and their

ranches burned. The trade unions further claim that, in the case of the Finca Sataña Saquimo, the indigenous villagers had purchased the land and had a public instrument to prove it, but this did not prevent their removal. The communication states that the public authorities failed to intervene even though they were fully aware of the situation. The Committee recalls that in the report of the Governing Body mentioned above, it was indicated that, although the regularization of lands takes time, indigenous peoples should not be adversely affected by the duration of this process and it requested the Government to adopt transitional measures in order to protect the land rights referred to in *Article 14* of the Convention, while the regularization process is being completed. ***Consequently, the Committee requests the Government to take the necessary transitional protection measures concerning the lands referred to in Article 14 of the Convention and concerning the wages due, and to provide detailed information on this matter, including on the case relating to the lands for which the indigenous peoples state that they have a public instrument proving their rights.***

Participation and consultation. It is indicated in the communication that, despite the comments made by the Committee in 2005, 2006 and 2007 concerning the mining exploitation of the Montana Company, the Government has continued to award mining licences without consultation and, in particular, it has not compensated the indigenous people for the damages sustained nor made efforts to reduce the impact of the exploitation. According to the communication, *Article 15* of the Convention on consultation and natural resources is not applied, a land register has not been kept in order to establish when a territory is indigenous, there is no legislation on consultation with indigenous peoples, and they are discriminated against by the courts. The Committee notes that the persistence and recurrence of the matters covered by the communications indicate that in Guatemala suggest the existence of serious problems with regard to the implementation of the aforementioned Articles of the Convention, related to lands, natural resources, consultation and participation. The same matter was dealt with in document GB.299/6/1 mentioned above. The Committee is aware of the complexity of the matter but recalls that the Government must take the necessary steps towards the creation of the bodies and mechanisms provided for by the Convention, which will in turn facilitate the resolution of disputes by means of dialogue with the inclusion of indigenous peoples in plans and projects which may affect them directly. The system of consultation and participation established by the Convention with regard to natural resources is to be based on the participation of the indigenous peoples in the formulation of plans and programmes as provided for by *Article 7* of the Convention. Belated consultation after the plans of the region have already been defined without the participation of the indigenous peoples would not be effective. The Committee exhorts the Government to examine the matter of natural resources from the point of view of *Articles 2, 6, 7, 15 and 33* of the Convention. ***The Committee asks the Government to take into account, in particular, that, according to Article 7(1) of the Convention, indigenous peoples “shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly”. The Committee requests the Government to neither grant nor renew any licence for the exploration and exploitation of natural resources as referred to in Article 15 of the Convention while the participation and consultation provided for by the Convention are not being carried out, and to provide information in this regard.***

Legislation. The Committee recalls that for a number of years, the Government had indicated its willingness to adopt a law on consultation. The Committee once again encourages the Government to make progress in the formulation and adoption of a law on indigenous peoples' consultation and of appropriate regulations regarding consultations to be undertaken in the case of exploration or exploitation of natural resources (minerals, forests, water, etc.), in accordance with *Article 15* of the Convention, and participation in accordance with *Article 7* of the Convention; this would foster the development of appropriate mechanisms for consultation and participation, thereby attenuating disputes relating to natural resources and laying the foundations for promoting inclusive development. ***The Committee asks the Government to provide information on the progress made regarding the elaboration and adoption of a law on consultation.***

The Committee invites the Government to provide its comments on the communication received and to reply to the present comments and the comments made by the Committee in 2007.

[The Government is asked to reply in detail to the present comments in 2009.]

Honduras

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1995)

Article 1 of the Convention. The Committee notes that according to the Government, the Convention covers the various ethnic groups that lived in Honduras before colonization and also those known as “pueblos negros” (which include, among others, Afro-Hondurans and the Garifuna), who, though not originally from Honduras, live in much the same social, economic, ecological and geographical conditions. The 2001 census recorded 493,146 indigenous peoples and “pueblos negros”, accounting for 6.33 per cent of the population of Honduras. They currently account for an estimated 15.7 per cent according to the Strategic Plan for the Comprehensive Development of Indigenous Peoples. The Government indicates that the indigenous and “pueblos negros” of Honduras are: (1) Miskito; (2) Garifuna; (3) Pech; (4) Tolupan; (5) Lenca; (6) Tawahka; (7) Nahoa/Nahuatl; (8) Maya Chorti; and (9) English-speaking black peoples.

Articles 2 and 33. Coordinated and systematic action. Agencies. The Committee notes that the Government, through the Ministry of the Interior and Justice (SGJ) established the Indigenous Peoples Unit (UPA), which serves as an intermediary between the Government and the indigenous and “pueblos negros” of Honduras. This unit's mandate includes: mainstreaming and institutionalizing the issue of indigenous peoples covered by the Convention; participation in

the National Advisory Board; ensuring coordination of the development processes by promoting indigenous participation; contributing to the reinforcement of representative bodies, and facilitating communications between the State and the indigenous peoples. The UPA is engaged in an ongoing dialogue with the National Confederation of Indigenous Peoples of Honduras and other indigenous movements. The Committee notes that the UPA's work in mainstreaming and ensuring participation and support to reinforce the indigenous peoples' representative bodies could have a key role in the application of the Convention. The Committee notes, however, that it is not clear to what extent indigenous peoples participate in the work of the UPA. The Committee notes in this regard that in order to comply fully with the Convention, it is not sufficient to establish governmental bodies to liaise with indigenous peoples: it is necessary to ensure the participation of indigenous peoples in these bodies. ***The Committee requests the Government to provide detailed information on the manner in which indigenous peoples participate in practice in the activities of the UPA, in particular in the preparation, implementation and follow-up thereof.***

Articles 2, 7 and 33. Strategic plan. The Committee notes with interest the Strategic Plan for the Comprehensive Development of Indigenous Peoples, which, as stated in its introduction, was drawn up with the participation of the indigenous peoples. It notes that the Plan and a bill now under discussion are to be the pillars of Honduras's future policy on indigenous and "pueblos negros". The institutional framework for the Plan provides for the management and responsibility to be shared by the political and technical representatives of the peoples covered by the Convention and the institutions of the State. After describing the current institutional framework, the Plan puts forward a proposal for the future institutional framework. Priority actions is to be implemented within five years, medium-term objectives are set for implementation in ten years, and a general, long-term objective is to be implemented over 25 years. Implementation of the Plan is to begin in 2008. ***The Committee requests the Government to provide information on the implementation of the Plan and on the results achieved.***

Article 6. Legislation. The Committee notes that the Bill on the Comprehensive Development of Indigenous and Afro-Honduran Peoples includes important principles for implementing the Convention. The introductory part states that participation of the indigenous and "pueblos negros" in preparing this Bill was unprecedented in the history of Honduras and that the Bill gives effect to Convention No. 169. The Committee further notes that the Bill defines the concept of traditional authority. ***The Committee hopes that the Bill will be approved shortly and asks the Government to provide information on the progress made in this regard.***

Articles 6, 7 and 15. Consultation, participation and natural resources. The Government states that in carrying out consultations the following mechanisms are used flexibly: (1) thematic meetings with indigenous participation; (2) internal community consultation; (3) participatory evaluation meetings; (4) discussion groups on socio-environmental management; and (5) verification meetings. The Committee understands that these mechanisms are steps in the same process: proposals for action are submitted, the community analyses them, a further meeting is held to make any amendments or adjustments, and in the penultimate phase adjustments are submitted on the basis of recommendations from the communities, ways and means are discussed, agreements are reached and recorded in the form of decisions. Lastly, a verification meeting is held to carry out an audit of the previous consultation, and the written commitments arising from the strategies agreed during the consultations are set out in a comprehensible and verifiable manner. ***The Committee notes with interest this approach to consultations based on a process of dialogue and participation, and asks the Government to provide information on the consultations held on the basis of this procedure, together with copies of decisions, resolutions and any other material used in the various stages of the consultations.***

Articles 6, 13, 14 and 33. Lands and participation. The Committee notes that one of the immediate priorities of the Government is the granting of land titles, and that the Strategic Plan indicates the status of the lands of each indigenous peoples and the action to be undertaken. It also notes with interest that the Bill aims, pursuant to section 15(g), "to guarantee the participation of the indigenous and black peoples of Honduras in the delimitation and titling of their lands". ***The Committee hopes that the Government will be in a position to provide in its next report practical examples of the application of this important provision.***

The Committee welcomes the developments mentioned above as positive steps towards the establishment of mechanisms that could pave the way for the provisions of the Convention to be fully implemented. It notes in particular that a Strategic Plan and a Bill have been drafted on a participatory basis and that bodies for their implementation have been established. ***The Committee hopes that the Government will pursue efforts to strengthen these bodies and mechanisms with a view to expanding the institutional basis for participation of indigenous peoples in the development, implementation and monitoring of policies that affect them. It also hopes that the Government will be able to report on progress made in this respect.***

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

Mexico

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1990)

The Committee notes a communication from the Trade Union Delegation of Radio Education, section XI, of the National Union of Education Workers (SNTE), of 7 November 2007, and the Government's reply of 18 August 2008. The SNTE alleges that the Government of Mexico failed to comply with the recommendations in a Governing Body report

concerning a representation it made (Governing Body document GB.272/7/2, June 1998). The Committee notes that in a communication dated 26 August 2008, the Mexican Government stated that the preparation of the report was complex because various complaints had to be addressed. It indicated that consultations were under way for this purpose and requested an extension of the deadline for the report. The Committee notes that it received the full report from the Government on 25 November 2008. Due to the late arrival of the report, the Committee will not be able to examine the report fully at this session, though it will examine the information relevant to the trade union communication.

Background. The subject of the representation was a claim filed by the Union of Huichol Indigenous Communities of Jalisco, through the SNTE, for the return to the Huichol community of San Andrés de Cohamiata of 22,000 hectares adjudicated by the federal Government to agrarian communities in the 1960s. The land in question included Tierra Blanca, El Saucito, in the State of Nayarit (which includes the villages of El Arrayán, Mojarras, Corpos, Tonalisco, Saucito, Barbechito and Campatehuala) and Bancos de San Hipólito, in the State of Durango, which, according to the complainant organizations, also belonged to San Andrés de Cohamiata.

In paragraph 45 of the abovementioned report, the Governing Body: (a) urged the Government to take measures in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, in accordance with *Article 14 of the Convention*; (b) requested the Government to inform the Committee of Experts, through the reports to be submitted on this Convention under article 22 of the ILO Constitution, on: (i) the decision to be handed down by the Third Collegial Court of the Twelfth Circuit concerning the appeal for protection of constitutional rights lodged against the decision handed down by the Agrarian Tribunal in the particular case of Tierra Blanca; (ii) the measures which have been taken or which could be taken to remedy the situation of the Huicholes, who represent a minority in the area in question and have not been recognized in land censuses, which might include the adoption of special measures to safeguard the existence of these people as such and their way of life, to the extent that they wish to safeguard it; (iii) the possible adoption of appropriate measures to remedy the situation which has given rise to this representation, taking account of the possibility of assigning additional land to the Huichol people when they do not have the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers, as provided in *Article 19* of the Convention.

The Committee re-examined the matter in 2001 and 2006 after receiving a communication from the SNTE stating, *inter alia*, that the Presidential Decision granting title for the land to San Andrés de Cohamiata had recognized only a part of its land, removing from San Andrés 43 per cent of its ancestral lands; and it was precisely on these lands in which the community of Bancos lived which were given to San Lucas de Jalpa. The SNTE added that a forestry exploitation concession had been granted to San Lucas de Jalpa, which was unlawful because the land involved was currently the subject of litigation.

Communication from the SNTE of 2007 and the Government's reply. The SNTE states that despite the nine years that have lapsed since recommendations were made concerning the representation in question, the Government has still not taken the necessary measures to deal with the situations that gave rise to the representation. The agrarian situation of the community of Bancos had become worse, and there was a real danger that the "legal dispossession" of its land would become definite. It also pointed out that the Agrarian Tribunals had handed down a ruling along the lines of the Presidential Resolution of 1981, contested by the Huichol community. Under this Decision, the title of the lands of the Bancos community had been conceded to the agrarian community of San Lucas de Jalpa. The SNTE states that on 10 August 2007, the community had filed a claim for constitutional rights (*amparo*) against the decision of the Higher Agrarian Tribunal, which in this matter would be the final judicial procedure available. The SNTE also indicates that the indigenous community of Bancos proposed to the Government, among other things, that the Secretariat for the Agrarian Reform should critically review the legality and correctness of the acts resulting in the illegitimate granting of titles on the lands of the Bancos community of San Lucas since the Secretariat had at its disposal technical information collected by the Secretariat itself which proved the ancestral possession of the Bancos community. The SNTE states that this could contribute to the solution of the dispute without affecting the separation of powers.

The SNTE states that, for the time being, the agrarian legislation does not provide for adequate procedures referred to under *Article 14(3)* of the Convention to recognize land traditionally occupied by indigenous peoples, and that for the judges, only the official documents are valid. They basically uphold the decisions confirming the validity of the titles given to San Lucas de Jalpa, to the detriment of the Huichol community, on the basis that the titles of 1981 and 1985 were legal. It was precisely these titles that the indigenous community protested against, because they failed to recognize their traditional occupation of the land. According to the trade union, the traditional occupation should already have been recognized in accordance with *Article 11* of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which specifies that "the right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised". It points out that the Higher Agrarian Court considered that Convention No. 169 had not entered into force when the Presidential Decision was issued on 28 July 1981 and the negative decision of the agrarian advisory body was passed down on 20 June 1985.

The SNTE adds that, although there was considerable evidence that the Huicholes had lived on the lands from time immemorial – as shown by the existence of titles granted by the Spanish Crown, as well as historical and anthropological studies – this was not enough because there were no procedures in national law to establish a link between the facts as presented and international standards. The Committee notes that, in its reply, the Government states that it is vital to find a

solution to the ancestral disputes over rural land in order to maintain peace and social stability; and it is also of extreme importance to give effect to the decisions of the Judiciary and Agrarian Tribunals. It stresses that the community in question is a small community. It points out that on 30 April 2008, the Secretary of Agrarian Reform and the Governor of the state of Durango signed an agreement to settle the agrarian problem in this State (the dispute is between San Lucas de Jalpa and Bancos de Calitique o Cohamiata), and further added that injecting financial resources to reach a settlement was a priority. The Government is envisaging negotiations once all the legal means have been exhausted. It adds that, on 7 May 2008, a framework agreement was signed with the National Commission for the Development of Indigenous People (CDI), and that one of the objectives of this agreement is to preserve the land of indigenous peoples and communities.

Concerning the forestry areas granted under concession by the Secretary of the Environment and Natural Resources (SEMARNAT) to San Lucas de Jalpa, claimed by the indigenous peoples of Bancos as belonging to them (upon which the Committee made comments in 2005), the Government has undertaken to deal with this matter and cancel the forestry exploitation concession of San Lucas de Jalpa, even though the land involved was currently the subject of litigation.

The Committee notes with concern that the situation which gave rise to the representation remains unchanged. It notes, however, that the Government has expressed its determination to try to negotiate once the legal avenues have been exhausted. It also notes the Government's intention to look into and even cancel the concession of the forestry land, which the Huicholes claim they have traditionally occupied. The Committee observes that the main issue at stake in this case is the way in which national law and the Convention regulate land rights. This is a matter of vital importance because indigenous peoples do not usually hold titles established in accordance with civil law, whereas under Conventions Nos 107 and 169, "traditional occupation" is, in itself, a source of law. Furthermore, the Committee recalls that, in another document (GB.276/16/3, paragraph 36), on a representation, the Governing Body considers that "the Convention does currently apply with respect to the consequences of the decisions taken prior to its entry into force". Although the Government states that the procedures of the Agrarian Tribunals make it possible to give effect to *Article 14*, the trade union points out that these procedures failed to take account of the elements proving traditional occupation, because they gave precedence to the titles granted to San Lucas de Jalpa over the concept of traditional occupation.

Under *Article 14* of the Convention, traditional occupation of land creates rights which the State is obliged to recognize. According to *paragraph 1* of this Article, "the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized". Under *paragraph 2* of this Article, "Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession". Finally, *paragraph 3* of the same Article states, "adequate procedures shall be established within the national legal system to resolve land claims by the people concerned". *Article 14(3)* refers to the rights laid down in *paragraphs 1 and 2* of the same Article, and consequently the Committee infers that, in order to be adequate, procedures must enable indigenous peoples to settle their land disputes by proving that they have been traditionally occupying the land. If the indigenous peoples were unable to assert traditional occupation as rights of ownership and possession, *Article 14* of the Convention would become a dead letter. The Committee is aware that it is difficult to capture this principle in the legislation, as well as to establish adequate procedures, but stresses that the recognition of rights and possession over land which people have traditionally occupied, by means of adequate procedures, is the cornerstone of the land rights system established under the Convention. The concept of traditional occupation may be reflected in various ways in national legislation, but it must be applied. ***For these reasons, the Committee requests the Government to do its utmost to guarantee the application of Article 14 in dealing with this case, including by means of negotiation and to provide information in this regard. The Committee also requests the Government to provide information on how it considers the proposal put forward by the indigenous community of Bancos regarding the possibility that the Government revises its acts granting land titles to the community of San Lucas, with a view to redressing the situation under examination. Similarly, it requests the Government to provide detailed information on the way in which this Article, and especially the concept of traditional occupation as being a source of rights of ownership and possession, is reflected in national law, and to indicate whether adequate procedures, as envisaged under Article 14(3) of the Convention, exist. Furthermore, given that there is a difference of opinion as to whether existing procedures are in conformity with Article 14 of the Convention and the length of these proceedings, the Committee suggests that the Government engages in consultations with the indigenous peoples on changes that might bring these procedures more in line with the Convention. The Committee asks the Government to provide information on the measures taken in this regard. Finally, the Committee requests the Government to provide information on the implementation of the recommendations contained in paragraph 45(a) and (b)(i), (ii) and (iii) of the abovementioned representation, specifying those matters that have been settled and others that are still pending.***

In the light of the information submitted by the Government on 25 November 2008, the Committee requests the Government to provide any additional information it may consider relevant for its examination at its next session in 2009.

[The Government is requested to reply in detail to the present comments in 2009].

Norway

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1990)

The Committee notes the observations dated 28 August 2008 from the Norwegian Sami Parliament which, according to the wishes expressed by the Government upon ratification, plays a direct role in the dialogue associated with supervision of the application of the Convention. However, the Committee notes that the Government's report has not been received. *It hopes that the Government will make every effort to take the necessary action to submit its report in the near future, including replies to the Committee's previous observation and any comments it may wish to make in reply to the observations made by the Sami Parliament.*

Pakistan

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1960)

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

1. Recalling the comments received from the All Pakistan Federation of Trade Unions concerning the application of the Convention in 2003, the Committee notes another communication from the same organization dated 26 April 2005. In the recent communication it is stated that tribal peoples in Pakistan suffered great economic and social hardship and deprivation and that there was a need for the Government to bring national law and practice into conformity with the Convention, including through effective economic and social measures to develop tribal areas and to provide for basic needs of education, water, health and employment opportunities. The Committee notes the Government's report which contains some information in reply to the matters raised by the All Pakistan Federation of Trade Unions, as well as partial replies to the matters previously raised by the Committee. The Committee further notes the communication dated 23 January 2006 from the Employers' Federation of Pakistan, which was forwarded by the Government, outlining the contributions made by the employers to the development of the tribal areas.

2. The Committee recalls that under *Article 2 of the Convention*, the Government has the primary responsibility for developing coordinated and systematic action for the protection of the populations concerned, including action to promote the social, economic and cultural development of these populations and to raise their standard of living. In this regard, the Committee notes from the Government's report that the Annual Development Programme 2003–04 for the Federally Administrated Tribal Areas (FATA) was allocated PKR3.26 billion to implement schemes in the areas of education and training, including skills development for women, health, communication, agriculture and rural development. The Committee also notes that Pakistan's 2003 Poverty Reduction Strategy Paper indicates that the Government has initiated a major development effort in the FATA "to reach inaccessible areas and expose them to the mainstream economic benefits" (paragraph 5.193). The Committee notes that among the objectives of this effort are the improvement of the living conditions of the rural poor, to boost agricultural production, and to improve the status of women through training and support for income-generating activities. *The Committee requests the Government to provide in its next report information on the implementation of these development programmes in the FATA, including statistical data or other indicators on the basis of which the Committee can appreciate the progress made in raising the standard of living of tribal people in the different agencies, in accordance with the Convention. Recalling its previous comments, the Committee reiterates its request to the Government to provide information on the development activities in the Provincially Administered Tribal Areas, particularly those being implemented in Baluchistan.*

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

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

Panama

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1971)

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

1. The Committee notes the full information provided by the Government in its report, received in October 2003, and the numerous annexes attached. It also notes the detailed report prepared by the Indigenous Assemblies and Organizations of Panama on the situation of indigenous peoples, and the various annexes attached, which were forwarded to the Government on 27 May 2003 for its comments.

2. The Committee notes the information provided by the Government on the continuation of the legislative activity to provide legal guarantees for the rights of indigenous communities. In particular, the Committee notes with interest the establishment of the National Traditional Indigenous Medicine Commission and the Technical Secretariat for Traditional Medicine of Indigenous Peoples by Executive Decree No. 117 of 9 May 2003, the text of which was attached to the Government's report and which recognizes the importance of the knowledge and therapeutic and healing practices of these peoples. *The Committee trusts that the Government will provide information in its next report on the activities of these institutions both to promote the preventive methods, healing practices and traditional medicine of indigenous peoples and to improve the coverage of primary health care in rural and remote areas.*

3. In its previous request, the Committee reminded the Government of the importance of adopting education plans incorporating the values and needs of indigenous populations. The Committee notes with interest the adoption of Act No. 5 of 15 January 2002 declaring 12 October to be the National Day of Reflection on the Situation of Indigenous Peoples and instructing

educational institutions, both official and private, to carry out cultural activities on that day designed to study and appreciate the cultures of indigenous peoples, recognizing their contribution to the nation. This Act also provides that the Ministry of Education shall take measures to ensure that by January 2003 school texts incorporate changes recognizing the contribution made by the culture of indigenous peoples. ***The Committee would be grateful if the Government would keep it informed in its next report on the implementation of this Act.***

4. The Committee notes the indication in the communication of the Indigenous Assemblies and Organizations of Panama concerning the urgent need to establish dialogue between indigenous peoples and the three state bodies to discuss the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). On this subject, the Committee noted with interest in its previous comment that the Permanent Commission on Indigenous Affairs of the Legislative Assembly considered it appropriate to ratify the Convention. The Committee notes the Government's indication that it has not taken a definitive decision on this matter due to the complexity of the matters covered by the Convention and the effects of its application. The Committee wishes to point out once again to the Government that it can seek the Office's assistance if it considers it necessary. ***The Committee hopes that the Government will once again provide information in its next report on any developments in relation to this matter.***

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

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

Paraguay

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1993)

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

1. The Committee notes the information contained in the Government's report, received in March 2006, the information provided by the Government to the Conference Committee on the Application of Standards in June 2006 and the ensuing debate, as a result of which the Committee on the Application of Standards urged the Government to adopt measures to enable it to send on a regular basis the information requested by the Committee of Experts. It emphasized the importance of providing information on the practical application of the Convention, in particular regarding the various aspects relating to the recruitment and conditions of employment of indigenous persons. It recalled the Government's obligation to consult and ensure the participation of indigenous peoples with respect to measures that might affect them and it suggested that the Government should consider requesting further ILO technical assistance regarding the application of the Convention. The Committee notes that although all the information requested on the application of the Convention in practice has not been provided, the Government has made an effort to gather information in its report and to submit additional information during the Conference Committee on the Application of Standards. ***The Committee hopes that the Government will make efforts to provide its report on the application of the Convention within the established time limits and that, in particular, it will provide information on the application in practice of certain provisions indicated in the following paragraphs and the direct request. The Committee invites the Government to request the Office's technical assistance with a view to examining possible solutions to the problems of application indicated in the Committee's comments.***

Recruitment and conditions of employment

2. *Article 20 of the Convention.* With regard to discrimination in relation to wages and treatment based on the indigenous origin of workers, particularly those working on ranches within the country and for Mennonite communities (which in certain cases constitute situations of forced labour), the Committee notes the Government's indication that with the cooperation of the ILO, a field study was undertaken, which is summarized in the document entitled "Debt Bondage and Marginalization in the Paraguayan Chaco". The study shows that the labour situation of indigenous communities in the Paraguayan Chaco is often a result of cultural issues. The Government adds that the document was subjected to tripartite analysis in seminars in which the participants included representatives of indigenous communities and that the Ministry of Justice and Labour dispatched labour inspectors to ascertain the situations described. The Committee notes with interest the Inter-Institutional Cooperation Agreement between the Ministry of Justice and Labour and the municipal authorities of Mariscal José Félix Estigarribia (the centre of the Paraguayan Chaco). Pursuant to the Agreement, a regional office of the General Directorate of Labour will be established to cover cases in the western region of the country, and the officials in that office will participate in radio programmes broadcast widely in the Chaco region to disseminate information regarding the labour rights of workers and employers inter alia. ***The Committee hopes that the Government will provide all the necessary means to the abovementioned office so that it is able to take effective action against discrimination and forced labour, and to ensure decent work for indigenous peoples. The Committee, in particular, asks the Government to keep it informed of the activities undertaken by the regional office to eliminate forced labour and discrimination and to give effect to Article 20 of the Convention and on the results and impact achieved in practice, particularly with regard to the situation on ranches and in Mennonite communities. Please also provide information on the number and outcome of inspections undertaken and the measures adopted as a result.***

Consultation and participation – coordinated and systematic action

3. *Article 6. Consultation.* The Committee notes that according to the report, Act No. 2822, "the Statutes of Indigenous Peoples and Communities", approved by the National Congress on 3 November 2005, which repealed Act No. 904/81, "Statute of Indigenous Communities", was partially vetoed by the executive authority upon the proposal of the Paraguayan Indigenous Institute (INDI) and representative indigenous organizations on the ground that it contained unconstitutional provisions and violated the rights of indigenous communities recognized in the Constitution. It also notes the Government's indication that Bill No. 2822 was the culmination of a process initiated in March 2004 in the context of the programme for the institutional strengthening of the INDI, during which consultations were held with indigenous peoples through workshops, personal interviews with indigenous leaders, working meetings and visits to communities. The process concluded with an Indigenous Congress held in March 2005, which issued guidance for more effective application and compliance with constitutional rights, including the amendment of Act No. 904/81, which gave rise to the submission of the above Bill to the National Congress without a final review by the representative indigenous organizations. In its previous comments, the Committee noted the communication of the National Union of Workers (CNT) received on 10 August 2001, according to which the Bill referred to above governs the

operation of the institutions responsible for the national indigenous policy, and observed that the obligation of consultation had not been given effect. *As the Government plans to adopt legislation governing the rights of indigenous peoples at the national level, the Committee hopes that the Government, in the process of the adoption of the legislation on indigenous rights, will comply with the requirement of prior consultation in accordance with Article 6 of the Convention. The Committee considers that the consultation and participation machinery envisaged in the Convention contributes to the progressive implementation of the Convention on indigenous peoples. It further considers that by engaging in genuine dialogue with these peoples on issues which affect them, progress will be made in the development of inclusive instruments which will contribute to reducing tension and increasing social cohesion. The Committee hopes that the Government will keep it informed regarding the measures adopted or envisaged to ensure consultation within the meaning of the Convention on the relevant legislative and administrative measures, and particularly with regard to the Bill vetoed by the executive authority.*

4. *Articles 2 and 33. Coordinated and systematic action with the participation of indigenous peoples.* The Committee also wishes to draw the Government's attention to the fact that *Articles 2 and 33* of the Convention provide for coordinated and systematic action, with the participation of indigenous peoples, from the planning to the evaluation of the measures envisaged in the Convention. *The Committee urges the Government to make every effort, in cooperation with the peoples concerned, to achieve progress in the implementation of these Articles.* Indeed, the consultation envisaged by the Convention goes beyond consultation on specific cases and requires the whole system for the application of the provisions of the Convention to be implemented in a systematic and coordinated manner in cooperation with indigenous peoples. This presupposes a gradual process of the establishment of appropriate bodies and machinery for this purpose. *The Committee requests the Government to provide information on the measures adopted in this respect.*

5. *Part VIII of the report form.* The Committee, considering that the Convention is fundamentally an instrument promoting dialogue and participation, wishes to remind the Government that this point of the report form, approved by the Governing Body, indicates that "although such action is not required, the Government may find it helpful to consult organizations of indigenous or tribal peoples in the country, through their traditional institutions where they exist, on the measures taken to give effect to the present Convention, and in preparing reports on its application". *The Committee asks the Government to indicate whether it is planning to hold such consultations.*

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

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

Peru

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1994)

The Committee notes a communication from the General Confederation of Workers of Peru (CGTP) concerning Peru's compliance with the Convention, enclosing the Alternative Report of 2008 on the application of the Convention in Peru received on 5 August 2008 and sent to the Government on 1 September 2008. This report was drawn up with the participation of the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDSESP), the Peasant Farmers' Confederation of Peru (CCP), the National Agrarian Confederation (CNA), the National Coordinating Committee for Communities affected by Mining (CONACAMI), the Regional Association of the Indigenous Peoples of the Central Rainforest (ARPI), the Ucayali AIDSESP Regional Organization (ORAU) and non-governmental organizations belonging to the Indigenous Peoples Working Group of the National Coordinating Committee on Human Rights. The Committee also notes two communications from the General Union of Grau Tacna Commercial Centre Wholesalers and Retailers (SIGECOMGT), one dated 17 September 2007 and sent to the Government on 27 September 2007, the other dated 28 March 2008 and sent to the Government on 2 May 2008. In addition, in its observation of 2007, the Committee noted another communication from the CGTP and a communication from SIGECOMGT which were sent to the Government, but which the Committee did not examine because of the Government's indication that, owing to the severe earthquake which occurred in Peru on 15 August 2007, it had not been in a position to supply information, and for that reason the Committee will examine both of these communications on this occasion. The Committee also notes the indication in the Government's report, received on 17 October 2008, that it had received the alternative report from the CGTP on 5 August. However, the Government has not yet provided comments on the communications. Because of the late arrival of the Government's report, the Committee will consider some items in the report relating to the communications and will examine it in detail in 2009, together with the reply to the present comments.

Article 1 of the Convention. Peoples covered by the Convention. The communications indicate that various categories are referred to in Peru to designate and recognize indigenous peoples. Consequently, it is unclear to whom the Convention applies. They explain that the legal term "indigenous peoples" is not found in the Constitution, and that the legal term established by the colonial authorities, and recognized by the Constitution and most of the legislation is the word "community". There are both rural and native communities in the country, with 6,000 communities registered at present. The terms "native communities", "rural communities" and "indigenous peoples" are used inconsistently sometimes to mean similar or different things, depending on the laws in question. The communications indicate that the extent to which the Convention is applied varies. For example, in the case of "native communities", positive measures have been adopted to enhance the right to consultation. However, there has been little progress in the application of the Convention to rural communities of the coastal and highland regions.

The Committee notes the Government's statement that section 2 of the regulations relating to Act No. 28945 concerning the National Institute of Andean Peoples establishes the definitions applying to the Andean, Amazonian and Afro-Peruvian peoples. The Committee notes the Government's indication that peasant farmers' communities and native

communities are placed on a similar footing to indigenous peoples with regard to the recognition of their ethnic and cultural rights, with emphasis on the social, political and cultural aspects. This appears to be a positive statement as it confirms indications from previous reports from the Government and comments from the Committee to the effect that indigenous communities are covered by the Convention irrespective of what they are called. However, there appear to be inconsistencies in the application of the Convention as regards its coverage. The Committee considers that, where rural communities meet the requirements of *Article 1(1)* of the Convention, they must enjoy the full protection of the Convention regardless of differences from or similarities to other communities and irrespective of what they are called.

The Committee has been referring to this matter for a number of years and in its direct request of 1998 the Committee suggested “that the Government might develop harmonized criteria for the populations which may be covered by the Convention, since the various definitions and terms used may give rise to confusion between rural, indigenous and native populations and those living in the highlands, the forest and cleared land”. The Committee notes from the communications received that there seem to be different degrees of application of the Convention, according to the name given to the community. It also observes that the inconsistent terminology used in different laws creates confusion and that the different names or characteristics of the peoples concerned are irrelevant if they come within the scope of *Article 1(1)*, of the Convention. The Committee reiterates that the concept of “indigenous peoples” is broader than that of the communities to which such peoples belong and that, whatever such communities are called, it is irrelevant for the purposes of the application of the Convention, as long as “native”, “rural” or other communities are covered by *Article 1(1)(a) or (b)*, of the Convention. Therefore the provisions of the Convention should be applied to all of them equally. This does not imply that specific action targeted at specific needs of certain groups cannot be taken. This is the case, for example of communities with which no contact has been established or those living in voluntary isolation. The Committee again draws the Government’s attention to the fact that the various terms used and the difference in legislative treatment cause confusion and make it difficult to apply the Convention. ***The Committee therefore requests the Government once again, in consultation with the representative institutions of the indigenous peoples, to establish harmonized criteria to define the coverage of the Convention so as to avoid the confusion resulting from the various definitions and names given to them, and to provide information in this respect. The Committee also urges the Government to take the necessary measures to guarantee that all the peoples referred to in Article 1 of the Convention are covered by all of the Convention’s provisions and enjoy the rights set out therein on an equal footing, and to provide information in this respect.***

Articles 2 and 33. Coordinated and systematic action. The CGTP alleges blatant and systematic lack of compliance with *Article 33* of the Convention with regard to the State’s obligation to ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned and that they have the means necessary for the proper fulfilment of the functions assigned to them. It states that the National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) was established in 2005, by means of Act No. 28,495, as a participatory body with administrative and budgetary autonomy, whose principal mandate is to design national policies for the promotion and protection of indigenous and Afro-Peruvian peoples, and supervise and coordinate their implementation. The CGTP states that although there are indigenous representatives on the Executive Board of the INDEPA, the disparity in representation is clear, meaning that decisions tend to be imposed by the State. Furthermore, most decisions are taken in any case without the participation of the Board. The trade union refers to the lack of real power of INDEPA within the Ministry for Women’s Affairs and Social Development, undermining its functionality and undermining the effective participation of the indigenous representatives in the decision-making process. The CGTP asserts that INDEPA must be strengthened. The Committee reiterates its previous statements that *Articles 2 and 33* are complementary, and that to ensure the correct application of *Article 2*, which states that “governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples”, it is essential that the agencies or other appropriate mechanisms provided for in *Article 33* are established. The Convention also provides that measures aimed at applying its provisions shall be formulated in a systematic and coordinated manner, in cooperation with the indigenous peoples. This presupposes the establishment of the appropriate bodies and mechanisms. ***The Committee requests the Government to establish, with the participation of the indigenous peoples and in consultation with them, the agencies and mechanisms provided for by Article 33 of the Convention, to ensure that such agencies or mechanisms have the means necessary for the proper fulfilment of the functions assigned to them, and to supply information on the measures taken in this regard.***

Articles 6 and 17. Consultation and legislation. The Committee notes the adoption on 19 May 2008 of Legislative Decree No. 1015, amending the number of voters required for disposing of communal land. The CGTP states that, in the face of widespread criticism, this Decree was amended on 28 June 2008 by Legislative Decree No. 1073, which also eases conditions for disposing of communal land, but there was no consultation on the adoption of such legislation. The Committee draws the Government’s attention to the fact that, according to *Article 6(1)(a)* of the Convention, governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly, and, according to *Article 17(2)*, the peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community. The Committee recalls that the Governing Body referred to a similar question in 1998 in relation to Act No. 26845 (GB.273/14/4) and stated that “under *Article 17(2)* of the Convention, the peoples concerned shall be consulted whenever consideration is

being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community. In this case, in particular, the Committee notes that there is no indication that consultations have been held on the implications of these measures to establish title with the people concerned as provided by the Convention". The same report also reminded the Government of its obligation to hold consultations under the terms of *Article 17(2)*, including on the scope and implications of the proposed measures. The Committee expresses its concern at the fact that, ten years after the publication of the aforementioned Governing Body report, communications are still being received alleging a lack of prior consultation with respect to the adoption of the measures provided for in *Articles 6 and 17(2)* of the Convention. ***The Committee urges the Government to take steps, without further delay, with the participation of the indigenous peoples, to establish appropriate consultation and participation mechanisms and to consult the indigenous peoples before the adoption of the measures referred to in Articles 6 and 17(2) of the Convention, and to provide information in this respect.***

The Committee notes the statement by SIGECOMGT that draft Acts Nos 690 and 840 are being examined by Congress, relating to the promotion of private investment in the lands of Amazonian indigenous peoples, without their consultation. ***The Committee requests the Government to ensure that consultations are held with regard to these projects and to supply information on the consultations held.***

Articles 2, 6, 7, 15 and 33. Participation, consultation and natural resources. The communications refer in detail to numerous serious situations of conflict connected with a dramatic increase in the exploitation of natural resources, without participation or consultation, on lands traditionally occupied by indigenous peoples. Mining accounted for less than 3 million hectares in 1992 but increased to 22 million hectares in 2000, and 3,326 out of 5,818 communities recognized in Peru were affected. The "emblematic cases" referred to include the Río Blanco mining project. The CGTP indicates that the underlying discussion in Río Blanco relates to the kind of development desired by the population, which drew up a sustainable alternative proposal for the region entitled "Vision for a shared and sustainable future" which did not include mining but the Government ignored this initiative. With regard to the 75 million hectares of oil and gas deposits in Peruvian Amazonia, more than 75 per cent are covered by oil and gas sites imposed on indigenous lands. The communications refer in detail to numerous cases of exploitation of natural resources without participation or consultation, and attach a December 2006 report from the Office of the People's Ombudsperson entitled "Socio-environmental disputes as a result of mining and allied activities in Peru", which raises the alarm with regard to the gravity of the situation, indicating that the indigenous and peasant peoples are those most affected in those cases. It also mentions that those peoples are not always opposed to exploration or exploitation but merely wish to have a share in the benefits of such activities.

The communication sent by the CGTP refers to the recent Decree No. 012-2008-EM issuing regulations on people's participation in oil and gas sector activities. It claims that this Decree gives legal backing to the monitoring activities promoted by the companies but that the same backing does not exist for community monitoring, thereby creating conditions for manipulation and co-option. With respect to forestry exploitation, it states that although Act No. 27308 formally protects the rights of indigenous peoples, the latter have received no technical or economic support in practice, effective policies and controls are lacking, and forestry concessions have been superimposed on communal lands, with 18 cases in Ucayali. The communication from SIGECOMGT refers to various cases of presumed violations of the Convention in relation to the extraction of natural resources, consultations and land rights, with serious consequences due to pollution of the environment, particularly water, as a result of mining activities. Particular reference is made to the activities of the Barrick Misquichilca company in Huaraz de Ancash province and the activities of the Newmont mining company in Tacna. With regard to forest resources, 53,000 hectares of the virgin Loreto forest have reportedly been assigned to a concession for reforestation without consultation of the indigenous communities or their participation.

The Government has not sent any reply to these comments but states that, in May 2008, by means of Supreme Decree No. 020-2008-EM of the Directorate-General of Social Management at the Ministry of Energy and Mining, it issued the regulations concerning citizens' participation in oil and gas sector activities which, according to the report, gives effect to *Articles 2, 7, 13, 15 and 33* of the Convention. It states that the adoption of the regulations involved substantial participation of the citizens. It also states that the following legislation has been adopted to this end: Supreme Decree No. 012-2008-EM issuing regulations on the people's participation in oil and gas sector activities; Supreme Decree No. 015-2006-EM issuing regulations on protection of the environment in relation to the development of activities in the oil and gas sector; and Supreme Decree No. 020-2008-EM issuing environmental regulations in relation to mining activities. Since January 2008, the Ministry of Energy and Mining has been promoting tripartite dialogue meetings with the participation of the Government, the private sector and indigenous leaders in the regions of Madre de Dios, Loreto and Ucayali, and coordinating committees have been established in the last two of these regions. Furthermore, the "National programme for hydrographic basins and land conservation (PRONAMACHS)" of the Ministry of Agriculture makes participation the key element in its strategy.

The Committee notes from the Government's report that the Government has made some effort with regard to consultation and participation; however, it is concerned that from the communications, drawn up with full participation of the indigenous peoples, and the report from the Office of the People's Ombudsperson that these efforts appear to be isolated and sporadic and at times not in line with the Convention (for example, information meetings being held rather than consultations). There is a lack of participation and consultation for tackling the numerous disputes connected with the

exploitation of resources in lands traditionally occupied by indigenous peoples. The Committee expresses its concern regarding the communications received and the lack of comments on them from the Government. *The Committee urges the Government to adopt the necessary measures, with the participation and consultation of the indigenous peoples, to ensure (1) the participation and consultation of the indigenous peoples in a coordinated and systematic manner in the light of Articles 2, 6, 7, 15 and 33 of the Convention; (2) the identification of urgent situations connected with the exploitation of natural resources which endanger the persons, institutions, property, work, culture and environment of the peoples concerned and the prompt application of special measures necessary to safeguard them. The Committee requests the Government to supply information in this respect, together with its comments on the communications received.*

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

[The Government is asked to reply in detail to the present comments in 2009.]

Tunisia

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1962)

The Committee notes the Government's brief report which indicates that issues related to indigenous and tribal populations do not arise in Tunisia. In addition, the Government indicates that under article 6 of the Constitution all Tunisians have equal rights and duties and are equal before the law.

While noting these indications, the Committee also notes that the 2003 Report of the Working Group of Experts on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights has addressed the situation of the Berbers (Amazigh) of North Africa which identify themselves as indigenous peoples. The Working Group refers to estimates according to which 5 per cent of the population of Tunisia are believed to be Amazigh.

The Committee recalls that the Convention has been revised by the Indigenous and Tribal Peoples Convention, 1989 (No. 169) which is oriented towards respect for and protection of indigenous and tribal peoples' cultures, ways of life and traditional institutions. *As indicated in its 1992 general observation, the Committee therefore encourages the Government to consider ratifying Convention No. 169.*

The Committee notes that pending such consideration, the Government remains under the obligation to give effect to the provisions of Convention No. 107 which remain relevant, including *Articles 5, 7 and 11*, or any other provisions which may be applied while respecting generally accepted human rights principles pertaining to indigenous and tribal peoples. *The Committee requests the Government to provide information on the application of the relevant provisions of the Convention, including information on the measures taken to seek the collaboration of representatives of any populations which fall under the scope of the Convention as envisaged in Article 5(a).*

[The Government is asked to reply in detail to the present comments in 2010.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 107** (Angola, Belgium, Egypt, El Salvador, Haiti, Malawi, Pakistan, Panama, Portugal, Syrian Arab Republic); **Convention No. 169** (Colombia, Denmark, Fiji, Honduras, Paraguay, Peru).

Specific categories of workers

France

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1984)

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

The Committee has been commenting for the last ten years on the method for appointing members of the nursing care committees and has been requesting information on the participation of representative organizations in these consultative bodies. The Government in successive reports has not supplied any explanations on this point, nor has it informed of any follow-up discussions concerning the modification of the method of appointing members of the nursing care committees which were to be held with trade union organizations under the terms of the protocol agreement signed in March 2000 by the Government and representative organizations of nursing personnel.

The Committee recalls once again that *Article 5, paragraph 1, of the Convention* does not specify the role to be played by the representatives of nursing personnel in promoting participative and consultative practices within health care establishments, nor does it indicate any particular method of appointing representatives of the personnel. However, reference may be made to Paragraphs 19(2) and 20 of the Nursing Personnel Recommendation, 1977 (No. 157), according to which the representatives of nursing personnel should be understood within the meaning of Article 3 of the Workers' Representatives Convention, 1971 (No. 135), which sets out specific procedures for the appointment of representatives.

The Committee requests the Government once again to indicate whether the possible modification of the method of appointing members of nursing care committees by drawing lots is still under consideration and to report on any further developments in this regard.

The Committee is also addressing a direct request to the Government concerning certain other points.

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

Guinea

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1982)

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

The Committee notes with regret that the information provided by the Government in its last report remains fragmentary, and estimates that, in the interest of maintaining a meaningful dialogue on the application of the Convention in law and practice, the Government should make a genuine effort to collect and transmit all relevant information, including legislative texts or other official documents, dealing with health care policy and nursing services. For instance, despite repeated requests in the last ten years, the Committee has still not received a copy of Decree No. 93/043/PRG/SGG of 26 March 1993, establishing general regimes for hospitals; nor has it received copies of the statutory texts and collective agreements applicable to nursing staff, particularly as regards remuneration and hours of work. Moreover, the Government has been referring since 1992 to ongoing negotiations on two sets of general regulations, one for medical and paramedical staff and another for nurses, without any indication as to the time frame for the possible conclusion of those negotiations. In addition, the Committee notes with concern the Government's last statement to the effect that there is no specific policy concerning nursing services and that accordingly there are no particular texts or provisions addressing the special nature of nursing work.

Under the circumstances, the Committee asks the Government to prepare a detailed and fully documented report on the effect given to the main requirements of the Convention, particularly as regards: (i) the formulation of a national policy on nursing services designed to improve the quality standards of public health care but also to create a stimulating environment for the exercise of the nursing profession (Article 2(1)); (ii) measures relating to nursing education and training as may be taken in consultation with the National Nurses Association (ANIGUI) (Article 2(2)(a) and Article 3); (iii) the institutional framework and practical modalities of the process of consultation with employers' and workers' organizations in matters of nursing policy (Article 2(3) and Article 5(1)); (iv) sufficient protection for nursing personnel, in light of the constraints and hazards inherent in the profession, especially in terms of hours of work and rest periods, paid absence and social security benefits (Article 6); and (v) measures to improve the occupational safety and health conditions of health workers, including any specific initiative aimed at protecting nursing personnel from HIV infection (Article 7).

Finally, recalling that some statistical data on the evolution of the nursing workforce were transmitted for the last time in 1992, the Committee requests the Government to provide, in accordance with Part V of the report form, up to date information on the practical application of the Convention, including for instance statistics on the nurse-to-population ratio, the number of students attending nursing schools and the number of nurses leaving or joining the profession, as well as any difficulties encountered in the application of the Convention (e.g. migration of qualified nurses, impact of the privatization of health care institutions on the employment conditions of nurses, etc.).

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 110** (Côte d'Ivoire, Nicaragua, Panama); **Convention No. 149** (Congo, Denmark, France, France: French Guiana, France: Guadeloupe, France: Martinique, France: Réunion, France: St Pierre and Miquelon, Guyana, Kenya, Kyrgyzstan, Malawi, Malta, Norway, Russian Federation, Sweden, United Republic of Tanzania); **Convention No. 172** (Barbados, Guyana, Ireland, Spain); **Convention No. 177** (Ireland).

II. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)

Angola

The Committee notes with regret that the Government has not replied to its previous observations. *It asks the Government to provide information with regard to the submission to the National Assembly of the instruments adopted by the conference at its 91st, 92nd, 94th, 95th and 96th Sessions (2003–07).*

In addition, the Committee requests the Government to provide information on the submission to the National Assembly of the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180) (79th Session, 1992), the 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

The Committee notes with regret that the Government has not replied to its previous observations. *It asks the Government to supply the relevant information concerning the submission to the Parliament of Antigua and Barbuda of the instruments adopted by the Conference during 12 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).*

Azerbaijan

The Committee notes the communication received in October 2008 reporting on the measures taken to examine the instruments adopted at the 95th Session. It recalls the information provided by the Government in September 2007 indicating that the Maritime Labour Convention, 2006, was submitted to the State Maritime Administration for its examination. *It requests the Government to provide information with regard to the submission to the Mili Mejlis (National Assembly) of Recommendation No. 180 (79th Session), and the instruments adopted at the 83rd, 84th, 88th, 89th, 90th, 94th, 95th and 96th Sessions of the Conference.* Please also indicate the date of submission of Recommendation No. 195 to the National Assembly.

Bahamas

The Committee notes with interest that the ratification of the Maritime Labour Convention, 2006, was registered on 11 February 2008. *The Committee hopes that the Government will also supply information on the submission to Parliament of the remaining 16 instruments adopted by the Conference between 1997 and 2007 (at the 85th, 86th, 88th, 89th, 90th, 92nd, 95th and 96th Sessions).*

Bahrain

The Committee notes the information provided by the Government in November 2008 indicating that the Work in Fishing Convention, 2007 (No.188), and the Work in Fishing Recommendation, 2008 (No. 199), were submitted to the Cabinet, which is, according to the Government, the competent authority in the Kingdom of Bahrain. The Committee notes that the 2002 Constitution of the Kingdom of Bahrain provides for a Legislative Authority, constituted by the National Assembly, which is composed of two Chambers, the Consultative Council and the Chamber of Deputies (article 51 of the Constitution of the Kingdom of Bahrain). Under article 19 of the ILO Constitution, the competent national authority should normally be the legislature. The Committee notes that, even in cases where, under the terms of the Constitution of the Member, legislative powers are held by the executive, it is in conformity with the spirit of the provisions of article 19 of the Constitution of the ILO and practice to arrange for the examination of the instruments adopted by the Conference by a deliberative body, where one exists. In this regard, the Committee notes that discussion in a deliberative assembly, or at least information of the assembly, can constitute an important factor in the complete examination of a question and in a possible improvement of the measures taken at the domestic level to give effect to the instruments adopted by the Conference (see paragraphs (b) and (c) in Part II. *Nature of the competent authority of the 2005 Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities of 2005*). ***The Committee therefore hopes that the Government will be in a position to indicate that Convention No. 188 and Recommendation No. 199, as well as all the instruments adopted by the Conference at the seven sessions held between 2000 and 2006, were also submitted to the Legislative Authority.*** The Committee invites the Government to consider the possibility of requesting the assistance of the Office to better comply with this constitutional obligation.

Bangladesh

The Committee notes with regret that the Government has not replied to its previous comments. ***It asks again the Government to provide information on the submission to Parliament of the remaining instruments adopted at the 77th Session (Convention No. 170 and Recommendation No. 177), the 79th Session (Convention No. 173 and Recommendation No. 180), the 84th Session (Convention No. 179 and Recommendations Nos 185, 186 and 187), and the 85th Session (Recommendation No. 188), as well as all the instruments adopted at the 81st, 82nd, 83rd, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions.***

Belize

The Committee asks the Government to take measures in order to fulfil its constitutional obligation to submit the instruments adopted by the Conference to the National Assembly. ***It refers to its 2008 observation on the application of Convention No. 144, and hopes that the Government will supply information on the submission to the National Assembly of the pending instruments adopted by the Conference at its 84th (Maritime) Session (October 1996), and the other 17 sessions held between 1990 and 2007 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).***

Bolivia

In its 2005 observation the Committee noted that the international labour Conventions adopted by the Conference from 1990 to 2003 were submitted to the National Congress on 26 April 2005. The Committee asks the Government to also report on the decision taken by the National Congress with regard to the Conventions submitted. It also requests the Government to indicate the representative organizations of employers and workers to which the information forwarded to the Director-General concerning the submission of the abovementioned Conventions was communicated.

The Committee asks the Government to provide all the information requested on the submission to the National Congress of all the remaining Conventions, Recommendations and Protocols adopted by the Conference between 1990 and 2007. The information is required by the questionnaire at the end of the *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, revised by the Governing Body in March 2005.

Bosnia and Herzegovina

In its 2007 observation, the Committee noted that the instruments pending submission have been forwarded to the relevant authorities in Bosnia and Herzegovina for their consideration and possible ratification. With the assistance of the Office, 32 instruments adopted by the Conference since 1993 were translated and sent to the entities. The entities – the Federation of Bosnia and Herzegovina and the Republika Srpska – were encouraged to involve the social partners at the entity level in the consultation process. In November 2007, the Government confirmed that the instruments adopted by the Conference between its 80th and 95th Sessions were sent to the authorities concerned and to the social partners of the entities and of the Brijčko District for their examination with a view to an eventual ratification. ***The Committee hopes that it will soon be possible to examine all the required information concerning the submission to the Parliamentary Assembly of the instruments adopted by the Conference between 1993 and 2007.***

Brazil

The Committee notes with interest that the ratification of Convention No. 178 was registered on 21 December 2007. It further notes that a tripartite committee was established in May 2008 to examine the instruments adopted by the Conference at its 96th Session. The Committee recalls that Conventions Nos 128 to 130, 149 to 151, 156 and 157 and the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd (1995 Protocol), 83rd, 84th (Conventions Nos 179 and 180; 1996 Protocol, Recommendations Nos 186 and 187), 85th, 86th, 88th, 90th, 92nd, 94th and 95th Sessions of the Conference are still waiting to be submitted to the National Congress. ***The Committee hopes that the Government will soon report on other measures that have been taken to submit all the pending instruments to the National Congress.*** In this regard, the Committee recalls that the Tripartite Committee on International Relations (CTRI) requested the Ministry of External Relations in March 2006 to take the necessary steps to submit to the National Congress the Tenants and Sharecroppers Recommendation, 1968 (No. 132), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), the Promotion of Cooperatives Recommendation, 2002 (No. 193), the List of Occupational Diseases Recommendation, 2002 (No. 194), and the Human Resources Development Recommendation, 2004 (No. 195).

Burkina Faso

The Committee recalls the information supplied in August 2007 on the consultations held in order to submit the Maritime Labour Convention, 2006. It asks the Government to provide the relevant information concerning the submission to the National Assembly of the instruments adopted at the eight sessions of the Conference held between 2000 and 2007.

Cambodia

The Committee notes the assistance provided by the ILO in 2008 to translate into Khmer the instruments still pending submission. It refers to its previous observations and hopes that the Government will soon indicate that the instruments have been submitted to the National Assembly.

Cameroon

The Committee notes with interest the information provided by the Government in its reports concerning submission prepared during the meeting of an inter-ministerial commission entrusted with the evaluation and follow-up of the application of ILO Conventions, held in Mbalmayo in April 2008. The proposal was made to the National Assembly to authorize the President of the Republic to ratify Conventions Nos 183 and 187. The reports were transmitted to the representative organizations of employers and workers. ***The Committee hopes that the Government will soon be in a position to announce that the reports have in fact been submitted to the National Assembly and that it will accept the opinions set out therein.*** It once again invites the Government to provide all relevant information on the submission to the National Assembly of the instruments adopted by the Conference at the 25 sessions held between 1983 and 2007, that is at its 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions.

Cape Verde

The Committee notes with regret that the Government has provided no information on the submission to the competent authorities of the instruments adopted by the Conference during 13 sessions held between 1995 and 2007 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Central African Republic

The Committee refers to its previous observations and hopes that the Government will soon be in a position to announce the submission to the National Assembly of the instruments adopted by the Conference at 20 sessions held between 1988 and 2007 (75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Chad

The Committee notes with regret that the Government has not provided the information requested for many years. It once again asks the Government to provide the information requested in the questionnaire at the end of the Memorandum on the submission to the National Assembly of the instruments adopted at 12 sessions of the Conference held between 1993 and 2007 (80th, 81st, 82nd, 83rd, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Chile

The Committee refers to its previous observations and requests the Government to provide all the information required on the submission to the National Congress of the instruments adopted at 12 sessions of the Conference held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Colombia

The Committee refers to its 2008 observation on the application of Convention No. 144 and asks the Government to provide all relevant information on the submission to the Congress of the Republic of the 31 instruments adopted at the 75th (Convention No. 168), 79th (Convention No. 173), 81st (Recommendation No. 182), 82nd, 83rd, 84th, 85th, 86th, 88th (Recommendation No. 191), 89th (Recommendation No. 192), 90th, 91st, 92nd, 94th, 95th and 96th Sessions of the Conference.

Comoros

The Committee notes the Government's communication, received in September 2008, indicating that it is facing a problem with the reproduction of the instruments adopted by the Conference for submission to the Assembly of the Union of Comoros. It notes that the Government has received in October 2008 copies of the documents requested. *The Committee hopes that the Government will be soon in a position to announce that the instruments adopted at 16 sessions held between 1992 and 2007 were submitted to the Assembly of the Union of Comoros.*

Congo

The Committee notes a communication sent in December 2007 according to which the Ministry of Labour, on 27 April 2006, requested the General Secretary of the Government to submit 34 international labour Conventions and 43 Recommendations which had not yet been submitted to the National Assembly. The Committee notes that other information has not yet been received on the steps taken for the transmission in practice to the National Assembly of the instruments adopted at the 54th (Recommendations Nos 135 and 136), 55th (Recommendations Nos 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137 and Recommendation No. 145), 60th (Conventions Nos 141 and 143, Recommendations Nos 149 and 151), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos 163, 164 and 165), 68th (Convention No. 157 and Recommendations Nos 167 and 168), 69th, 70th, 71st (Recommendations Nos 170 and 171), 72nd, 74th and 75th (Recommendations Nos 175 and 176) Sessions of the Conference, and the instruments adopted between 1990 and 2007 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). *The Committee urges the Government to spare no effort to comply with the obligation of submission and recalls that the Office is available to the parties concerned to overcome this important backlog.*

Côte d'Ivoire

The Committee refers to its previous observations and asks the Government to provide all relevant information on the submission to the National Assembly of the instruments adopted at 12 sessions of the Conference held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Croatia

In its previous comments, the Committee noted that the instruments adopted at the 86th, 88th, 89th, 90th, 91st and 92nd Sessions of the Conference had not been submitted to the Croatian Parliament because the translation had not yet been finished. *It asks the Government to take appropriate measures in order to ensure that all the remaining instruments adopted by the Conference between 1998 and 2007 are submitted to the Croatian Parliament.*

Democratic Republic of the Congo

Referring to its previous observations, the Committee requests the Government to provide all relevant information concerning the submission to Parliament of the instruments adopted at 12 sessions of the Conference held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Djibouti

The Committee asks the Government to provide the required information on the submission to the National Assembly of the instruments adopted at 26 sessions of the Conference held between 1980 and 2007 (66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions of the Conference).

Dominica

The Committee regrets that the Government has not replied to its previous observations. It reiterates its hope that the Government will soon announce that the instruments adopted by the Conference during 15 sessions held between 1993 and 2007 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) have been submitted to the House of Assembly.

El Salvador

In its previous comments, the Committee observed the failure to submit to the Congress of the Republic the instruments adopted at the 62nd, 65th, 66th, 68th, 70th, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference, as well as the remaining instruments from the 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163) and 69th (Recommendation No. 167) Sessions. *The Committee requests the Government to provide information on the submission to the Congress of the Republic of all the remaining instruments, including Recommendations Nos 193 and 194 (90th Session, 2002) and the instruments adopted at the 91st, 92nd, 94th, 95th and 96th Sessions (2003–07).*

Equatorial Guinea

The Committee notes the communication dated 9 May 2008 in which the Ministry of Labour and Social Security requests the Head of Government to proceed with the submission to the House of People's Representatives of the instruments adopted by the Conference at 13 sessions held between 1993 and 2006. *The Committee hopes to receive in the near future the other relevant information on compliance with the obligation of submission, and particularly the date on which the above instruments were in fact submitted to the House of People's Representatives.*

Ethiopia

The Committee asks the Government to provide all the relevant information on the submission to the House of People's Representatives of the instruments adopted by the Conference at its 88th (Recommendation No. 191), 90th, 91st, 92nd, 94th, 95th and 96th Sessions.

Fiji

The Committee notes with interest that the ratification of Conventions Nos 81, 149, 155, 172, 178 and 184 was registered on 28 May 2008. It further notes that by Cabinet Decisions of May 2007, it was decided to defer the ratification of Conventions Nos 177, 179, 180, 181, 183 and 185. The Committee recalls that even when a decision to defer the ratification of Conventions is adopted, Governments still have the obligation to submit to parliament all Conventions, Recommendations and Protocols adopted by the Conference. It further notes that, since December 2006, Fiji has been run by an interim Government appointed by the army and that before the restoration of democracy it will not be possible to submit the instruments adopted by the Conference to the Parliament of Fiji. *The Committee hopes that the Government will be in a position to announce soon that the remaining instruments adopted by the Conference at its 84th Session (Maritime, October 1996) and all the instruments adopted at the 83rd, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions have been submitted to the Parliament of Fiji.*

Gabon

1. The Committee recalls its previous comments and invites the Government to report on Parliament's decision regarding Conventions Nos 122, 138, 142, 151, 155, 176, 177, 179, 181, 184 and 185.

2. The Committee further notes with interest the information received in February 2008 indicating that the Government intends to submit to Parliament the Maritime Labour Convention, 2006, for its ratification. *It hopes that the Government will soon provide the relevant information concerning the submission to Parliament of the Conventions, Recommendations and Protocols not yet submitted to Parliament that were adopted at the 74th, 82nd, 83rd, 84th, 86th 88th, 89th, 90th, 92nd, 94th, 95th and 96th Sessions of the Conference.*

Gambia

The Committee notes with serious concern that the Government has not communicated information on the submission to the National Assembly of the instruments adopted by the Conference at 13 sessions held between 1995 and 2007.

The Committee notes that Gambia has been a Member of the Organization since 29 May 1995. It also recalls that, under article 19 of the Constitution of the Organization, each Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies "for the

enactment of legislation or other action". The Governing Body of the International Labour Office has adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars on this subject. ***The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the date on which the instruments were submitted to the National Assembly and any proposals made by the Government on the measures to be taken with regard to the instruments that have been submitted.***

Georgia

The Committee refers to its previous observations and asks the Government to report on the submission to Parliament of the instruments adopted by the Conference at 13 sessions held between 1993 and 2007 (80th, 81st, 82nd, 83rd, 84th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Ghana

The Committee recalls the information provided by the Government in July 2006 indicating that the instruments adopted by the Conference at its 88th, 89th, 90th, 91st and 92nd Sessions were sent by the Labour Department to the Sector Ministry for their submission to the Parliament of the Republic of Ghana. ***It asks the Government to indicate if all the instruments adopted by the Conference at the eight sessions held between 2000 and 2007 have been submitted to Parliament.*** In addition, the Committee recalls its previous comments and once again asks the Government to supply the indications required with regard to the submission to Parliament of the instruments adopted by the Conference at its 80th Session (Convention No. 174 and Recommendation No. 181), 81st Session (Convention No. 175 and Recommendation No. 182), 82nd Session (Convention No. 176 and Recommendation No. 183, and the Protocol of 1995) and 84th Session (Recommendations Nos 185 and 186).

Grenada

The Committee notes the information provided by the Government in September 2008 in which it recalls that, following the Cabinet Conclusion No. 486 dated 12 March 2007, the Cabinet endorsed a list of Conventions and Recommendations. The Office of the Houses of Parliament has communicated to the Department of Labour an apparent delay in the process of the information submitted by Cabinet. ***The Committee hopes that the Government will be soon in a position to provide 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 asks the Government to provide information on the submission to the Parliament of Grenada of the instruments adopted at the 96th Session of the Conference.

Guinea

The Committee refers to its previous comments and asks the Government to provide the information requested regarding the submission to the National Assembly of the instruments adopted at 11 sessions held by the Conference between October 1996 and June 2007 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Guinea-Bissau

The Committee refers to its 2006 observation and recalls that the Government reported on the submission to the President of the Council of Ministers for its consideration and approval for ratification of Conventions Nos 87, 122, 135, 144, 150, 151, 154, 175, 177, 181 and 183. ***The Committee hopes that the Government will provide updated information on the decision taken with regard to the abovementioned Conventions, as well as with the submission to the National People's Assembly of the instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th and 96th Sessions.***

Haiti

The Committee notes the detailed information sent by the Ministry of Social Affairs and Labour in October 2008 indicating that, owing to the ongoing government crisis, the files prepared with a view to submission to Parliament have been unable to go through the usual channels. The Committee also takes account of the firm undertaking given by the Ministry of Social Affairs and Labour to expedite the files for submission once the Prime Minister is installed in office. It notes the assistance given by the ILO and trusts that the Government will be in a position in the very near future to send information indicating that the submission to Parliament has indeed taken place. It recalls that delays in submission relate to 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 the 19 sessions of the Conference held between 1989 and 2007.

Ireland

The Committee hopes that the Government will be able to announce soon that the instruments adopted by the Conference at eight sessions held between 2000 and 2007 (88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) were submitted to the *Oireachtas* (Parliament).

Kazakhstan

The Committee notes the information provided by the Government in November 2007 indicating that, in conformity with article 49 of the Constitution of the Republic of Kazakhstan, Parliament is the highest legislative body. The Government also indicated that the instruments adopted by the Conference at its 95th Session have not been submitted to Parliament, as it needs time to first apply the 2007 Labour Code in practice and to study its impact. The Committee recalls that the aim of submission to parliaments is to encourage a rapid and responsible decision by each member State on instruments adopted by the Conference (see Part I(b), *Aims and objectives of submission* of the 2005 Memorandum). The Committee further notes that instruments adopted by the Conference at 15 sessions, held between 1993 and 2007, have yet to be submitted to Parliament. ***It hopes that the Government and the social partners will take appropriate measures to consult effectively on the proposals to be made to Parliament on the pending instruments and it will be possible in the very near future to submit the 32 instruments adopted by the Conference still pending submission to Parliament.***

Kenya

The Committee notes the information provided by the Government in August 2008 indicating that, once constituted the National Labour Board, all the pending instruments adopted by the Conference will be placed on its agenda before submission to the competent authorities. ***The Committee refers to its previous observations and asks the Government to provide the required information on the submission to the National Assembly of the Protocols of 1995 and 1996 (adopted at the 82nd and 84th Sessions), and of all the instruments adopted by the Conference at its eight sessions held between 2000 and 2007 (88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).***

Kiribati

The Committee refers to its previous comments and recalls that the Government indicated that, after an ILO mission in October 2005, a memorandum for submission to Cabinet and to the *Maneaba ni Maungatabu* (House of Assembly) of the instruments adopted at the 88th, 89th, 90th and 91st Sessions of the Conference had been prepared. ***It hopes that the Government will soon be in a position to announce the submission to the House of Assembly of the instruments adopted by the Conference at the eight sessions held between 2000 and 2007 (88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).***

Kyrgyzstan

The Committee notes with serious concern that the Government has not communicated information on the submission to the competent authorities of instruments adopted by the Conference at 16 sessions held between 1992 and 2007.

The Committee notes that Kyrgyzstan has been a Member of the Organization since 31 March 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars on this subject. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on measures to be taken with regard to the instruments that have been submitted.

The Committee, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Lao People's Democratic Republic

The Committee notes the assistance provided by the ILO in 2008 to translate the instruments still pending submission into Lao. It hopes that the Government will soon indicate that the instruments adopted by the Conference during 13 sessions held between 1995 and 2007 have been submitted to the National Assembly.

Liberia

The Committee notes with interest the information provided by the Government in May 2008 indicating that fundamental Conventions Nos 138 and 100, as well as the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), were submitted to the National Legislature for ratification. These Conventions had passed the House of Representatives and were awaiting concurrence by the Senate. *The Committee hopes that the Government will continue to make progress with regard to its constitutional obligation to submit the instruments adopted by the Conference to the National Legislature and will soon announce that the instruments adopted by the Conference at its 88th, 89th, 90th, 92nd, 95th and 96th Sessions have been submitted to the National Legislature.*

The Committee recalls that the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, and the Protocol of 1995 to the Labour Inspection Convention, 1947, were not mentioned by the Government in its previous communications. *It asks the Government to provide the relevant information regarding the submission of the 1990 and 1995 Protocols to the National Legislature.*

Libyan Arab Jamahiriya

The Committee refers to its previous observations and reiterates its hope that the Government will soon be in a position to provide the other information requested concerning the submission to the competent authorities, within the meaning of article 19, paragraphs 5 and 6, of the ILO Constitution, of all Conventions, Recommendations and Protocols adopted at 12 sessions of the Conference held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Mongolia

The Committee asks the Government to indicate if the instruments adopted by the Conference at 11 sessions held between 1995 and 2007 (82nd, 83rd, 84th, 85th, 86th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) were submitted to the State Great Khural.

Mozambique

The Committee notes the statement communicated by the Government in its report on the application of Convention No. 144, received in October 2008, expressing its commitment to redouble its efforts to submit in the near future to the Assembly of the Republic the instruments adopted by the Conference. *The Committee once again hopes that the Government will soon announce that the instruments adopted at 12 sessions of the Conference held between 1996 and 2007 have been submitted to the Assembly of the Republic.*

Namibia

The Committee **notes with interest** that the instruments adopted by the Conference at the sessions held between 2000 and 2007 were submitted to Parliament for its information on 2 October 2007. *It welcomes the progress achieved in this respect and hopes that the Government will continue to provide regularly the information required on the constitutional obligation to submit the instrument adopted by the Conference to Parliament.*

Nepal

The Committee **notes with interest** the volume forwarded to the Office in August 2008, containing the instruments adopted by the Conference between June 1995 to June 2006, that has been prepared and is due to be submitted to Parliament for its consideration. It refers to its 2008 observations on the application of Convention No. 144, and hopes that the Government will soon be in a position to announce that the abovementioned instruments have been submitted to Parliament.

Niger

The Committee refers to its previous observations and requests the Government to supply the required information on the submission to the National Assembly of the instruments adopted by the Conference at 11 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Nigeria

The Committee refers to its 2006 observation on the application of Convention No. 144 and notes again that the instruments adopted by the Conference at its 95th Session were submitted to the National Assembly on 21 August 2006. *It requests the Government to provide the relevant information on the submission to the National Assembly of the instruments adopted by the Conference at its 94th and 96th Sessions.* It further recalls that, under Convention No. 144, effective prior consultations have to be held on the proposals made to the National Assembly when submitting the instruments adopted by the Conference.

Pakistan

The Committee refers to its previous observations and asks the Government to report on the measures taken to submit to Parliament (*Majlis-e-Shoora*) the instruments adopted by the Conference at 14 sessions held between 1994 and 2007 at its 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions.

Panama

The Committee notes that on 16 September 2008 the draft law approving the Maritime Labour Convention, 2006 (MLC), was presented by the Government to the Assembly of Deputies. It notes with interest that the Assembly of Deputies approved the ratification of the MLC on 30 October 2008. *The Committee would be grateful if the Government would keep it informed of any decision taken by the Assembly with regard to Conventions Nos 183, 184 and 185, that were mentioned by the Government in previous communications. It also invites the Government to supply information on the submission to the Assembly of the instruments adopted at the 95th and 96th Sessions of the Conference.*

Papua New Guinea

The Committee hopes that the Government will soon announce that the instruments adopted by the Conference at eight sessions between 2000 and 2007 (88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) have been submitted to the National Parliament.

Paraguay

The Committee notes with regret that the Government has not provided information on the submission to the National Congress of the instruments adopted at ten sessions held between 1997 and 2007 (85th, 86th, 88th, 89th, 90th, 91st, 92nd, 92nd, 94th, 95th and 96th Sessions).

The Committee recalls its previous comments and asks the Government to provide information on the content of the document or documents whereby the instruments adopted at the 82nd, 83rd and 84th Sessions of the Conference were submitted to the National Congress, together with the texts of any proposals that may have been made. It also asks whether the National Congress has reached a decision on the abovementioned instruments and to indicate the representative employers' and workers' organizations to which the information sent to the Director-General has been forwarded.

Peru

The Committee notes the detailed information provided by the Government in January and May 2008. The Committee **notes with interest** that consultations are held with the National Labour and Employment Promotion Council before the submission to the Congress of the Republic of the instruments adopted by the Conference. Convention No. 183 and Recommendation No. 193 have been forwarded to the Congress of the Republic. The National Labour and Employment Promotion Council is due to issue a position on 17 instruments before their submission to the Congress of the Republic. *The Committee welcomes this progress and hopes that the Government and the social partners will continue taking the necessary measures so that it can be announced in the near future that the remaining instruments adopted at the 84th, 88th and 90th Sessions of the Conference, and at other sessions of the Conference held between 2001 and 2007 (89th, 91st, 92nd, 94th, 95th and 96th Sessions) have been submitted to the Congress of the Republic.*

Russian Federation

The Committee recalls the resolution adopted by the State Duma on 29 June 2007 requesting the Government of the Russian Federation to take additional measures to ensure unconditional observance of article 19 of the ILO Constitution in regard to mandatory and timely submission to the state Duma of the Conventions and Recommendations adopted by the Conference. *The Committee again asks the Government to provide all the required information regarding the submission to the State Duma of the instruments adopted by the Conference at the seven sessions held between 2001 and 2007 (89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).*

Rwanda

The Committee asks the Government to report on the submission to the National Assembly of the Conventions, Recommendations and Protocols adopted by the Conference at 14 sessions held between 1993 and 2007 at the 80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions.

Saint Kitts and Nevis

The Committee notes with regret that the Government has not replied to its previous comments. It asks the Government to provide the required information about the date on which the instruments were submitted to the National Assembly and the proposals made by the Government on the measures which might be taken with regard to the instruments adopted by the Conference at 11 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). ***The Committee again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.***

Saint Lucia

The Committee notes with regret that the Government has not replied to its previous comments. It recalls that, in accordance with article 19, paragraphs 5 and 6, of the Constitution of the Organization, Saint Lucia, as a Member of the Organization, has the obligation to submit to Parliament all the remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2007 (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 and 96th Sessions). ***The Committee again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.***

Saint Vincent and the Grenadines

In its previous observations, the Committee noted the information provided by the Government indicating that it had fulfilled its obligation to submit to the competent authorities all of the instruments adopted by the Conference. Through the Minister of Labour, the Department of Labour submitted to the Cabinet a list of all the Conventions and Recommendations adopted by the Conference from October 1996 to June 2004, along with its recommendations for ratification. The submission to the Cabinet was made on 11 September 2006 and the representative organizations of employers and workers were duly notified. The Committee once again notes that, under the 1979 Constitution of Saint Vincent and the Grenadines, the Cabinet is the executive authority which has the responsibility for making final decisions on ratification and for determining any matter that is brought before the House of Assembly for legislative action. ***The Committee asks the Government to fulfil its remaining obligations under article 19, paragraphs 5 and 6, of the ILO Constitution by also submitting to the House of Assembly the instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 12 sessions held from October 1996 to June 2007.***

Sao Tome and Principe

The Committee recalls that the Government has not provided the required information on the submission to the competent authorities of 41 instruments adopted by the Conference between 1990 and 2007 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). ***The Committee asks the Government to make every effort to fulfil the constitutional obligation of submission and recalls that the International Labour Office is available to provide the necessary technical assistance to give effect to this essential obligation.***

Senegal

The Committee recalls the information provided by the Government in May 2007 indicating that a file containing detailed analyses of the instruments adopted by the Conference at its 79th, 81st, 82nd, 83rd, 85th and 86th Sessions had been forwarded to the President of the Republic in order to fulfil the obligation of submission. ***The Committee asks the Government to indicate if all the instruments (Conventions, Recommendations, Protocols) adopted by the Conference at the 16 sessions held between 1992 and 2007 have in fact been submitted to the National Assembly.***

Seychelles

The Committee asks the Government to indicate whether the instruments adopted by the Conference at the seven sessions held between 2001 and 2007 (89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) have been submitted to the National Assembly.

Sierra Leone

The Committee notes with regret that the Government has not replied to its previous comments. It hopes that the Government will soon be in a position to report on the submission to Parliament of the instruments adopted by the Conference since October 1976 (Convention No. 146 and Recommendation No. 154, adopted at the 62nd Session) and the instruments adopted between 1977 and 2007.

Solomon Islands

The Committee recalls that information provided by the Government representative to the Conference Committee in June 2007 indicated that Cabinet approved, on 17 May 2007, the submission documents prepared by the ILO in 2005. *It hopes that the Government will make every effort to comply with the constitutional obligation to submit to the National Legislature the instruments adopted by the Conference between 1984 and 2007.*

Somalia

The Committee trusts that, when the national circumstances permit, the Government will provide information on the submission to the competent authorities with regard to the instruments adopted by the Conference between October 1976 and June 2007.

Spain

Submission to the Cortes Generales. The Committee notes the communication sent by the Government in September 2008 indicating that the competent departments and executive bodies of the Ministry of Labour and Immigration, after consultation of the most representative employers' and workers' organizations, sent the file for the submission of Convention No. 188 and Recommendation No. 199 on work in fishing (96th Session, June 2007) to the Ministry of External Affairs and Cooperation, on 29 May 2008, to complete the necessary formalities. *The Committee refers to its previous comments and requests the Government to indicate the manner in which it has fulfilled the obligation of submission to the Cortes Generales in relation to the instruments adopted by the Conference at its 63rd (Convention No. 149 and Recommendation No. 157), and 84th (Conventions Nos 178 and 179, Recommendations Nos 185 and 186, Protocol of 1996) Sessions, and the other instruments adopted at its 80th, 81st, 83rd, 86th, 88th, 89th, 90th, 91st, 92nd, 94th and 95th Sessions.*

Sudan

The Committee reiterates its hope that the Government will announce soon that the instruments adopted by the Conference between 1994 and 2007 were submitted to the National Assembly.

Suriname

The Committee hopes that the Government will provide information on whether the instruments adopted at the 90th, 91st, 92nd, 94th, 95th and 96th Sessions of the Conference have been submitted to the National Assembly.

Syrian Arab Republic

The Committee recalls the information supplied by the Government in August 2007, indicating that the National Committee for Consultation and Social Dialogue periodically conducts a legal review of the Conventions which have not yet been submitted to the competent authorities for ratification. It noted previously that the Conventions thus examined with a view to their ratification include Conventions Nos 97, 150, 173 and 181, and that, moreover, the tripartite committee had endorsed the proposal to ratify Convention No. 187. The Committee recalls that 40 of the instruments adopted by the Conference are still waiting to be submitted to the People's Council. *It hopes that the Government will shortly be in a position to announce that the instruments adopted by the Conference at its 66th and 69th Sessions (Recommendation Nos 167 and 168) and at its 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions have been submitted to the People's Council.*

Tajikistan

The Committee notes with regret that the information on submission to Parliament required by article 19 of the ILO Constitution for the instruments adopted by the Conference at ten sessions of the Conference held between October 1996 and June 2007 (84th, 85th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) has not been received.

The former Yugoslav Republic of Macedonia

The Committee notes with regret that the Government has not sent the information concerning the submission to the competent authorities of instruments adopted by the Conference at 12 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Togo

The Committee refers to its previous comments and asks the Government to also indicate the date on which the instruments on maternity protection (88th Session, 2000) were submitted to the National Assembly and the representative employers' and workers' organizations to which the information supplied to the Office was communicated. *The Committee asks the Government to indicate whether the instruments adopted by the Conference at the six sessions held between 2002 and 2007 at the 90th, 91st, 92nd, 94th, 95th and 96th Sessions of the Conference have been submitted to the National Assembly.*

Turkmenistan

The Committee notes with serious concern that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference at 15 sessions held by the Conference between 1994 and 2007.

The Committee notes that Turkmenistan has been a Member of the Organization since 24 September 1993. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies "for the enactment of legislation or other action". The Governing Body of the International Labour Office adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars on this subject. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on the measures to be taken with regard to the instruments that have been submitted.

The Committee, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Uganda

The Committee asks the Government to provide the required information on the submission to Parliament of the instruments adopted by the Conference at 14 sessions held between 1994 and 2007 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Uzbekistan

The Committee notes that the ratification of Convention No. 182 was registered on 24 June 2008. It recalls that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference during 14 sessions held between 1993 and 2007.

The Committee notes that Uzbekistan has been a Member of the Organization since 31 July 1992. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies "for the enactment of legislation or other action". The Governing Body of the International Labour Office has adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars about this subject. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Bolivarian Republic of Venezuela

The Committee recalls that 41 instruments await submission to the National Assembly adopted at the 79th and 81st Sessions (1992 and 1994) and between 1996 and 2007, as well as certain instruments adopted earlier (74th Session, 1987: Conventions Nos 163, 164, 165 and 166, and Recommendation No. 174; 75th Session, 1988: Convention No. 168

and Recommendation No. 176; 77th Session, 1990: Convention No. 171 and Recommendation No. 178, the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948; 78th Session, 1991: Convention No. 172; 82nd Session, 1995: Protocol of 1995 to the Labour Inspection Convention, 1947). The Committee notes the communication received in August 2008 which reiterates previous information and states that in due course the Government will report on the procedure for approval by the National Assembly and ratification by the President of the Republic. *The Committee refers to the observations which it has made for many years and invites the Government to proceed with the tripartite consultations to be held under Convention No. 144 and the submission to the National Assembly of the 41 instruments pending.*

Zambia

The Committee notes the detailed review made by the Government of Convention No. 188 and Recommendation No. 199 concerning work in the fishing sector, received in the Office in October 2008. *It requests the Government to provide the relevant information on the submission to the National Assembly of the instruments adopted by the Conference at 12 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).*

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Albania, Argentina, Armenia, Austria, Barbados, Belgium, Botswana, Burundi, Canada, Cuba, Cyprus, Ecuador, Eritrea, Honduras, Islamic Republic of Iran, Iraq, Jamaica, Jordan, Kuwait, Madagascar, Malaysia, Mali, Malta, Mauritania, Mexico, Republic of Moldova, Netherlands, Oman, Qatar, Samoa, Serbia, Slovenia, Sri Lanka, Swaziland, Timor-Leste, Trinidad and Tobago, Ukraine, Uruguay, Vanuatu, Yemen.*



Appendices

Appendix I. Table of reports received on ratified Conventions as of 12 December 2008 (articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that “each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request”. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th Session (November 1977), the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

- (a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;
- (b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

**Appendix II. Statistical table of reports received on ratified Conventions
as of 12 December 2008
(article 22 of the Constitution)**

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	–		406	90.8%	423	94.6%
1933	522	–		435	83.3%	453	86.7%
1934	601	–		508	84.5%	544	90.5%
1935	630	–		584	92.7%	620	98.4%
1936	662	–		577	87.2%	604	91.2%
1937	702	–		580	82.6%	634	90.3%
1938	748	–		616	82.4%	635	84.9%
1939	766	–		588	76.8%	–	
1944	583	–		251	43.1%	314	53.9%
1945	725	–		351	48.4%	523	72.2%
1946	731	–		370	50.6%	578	79.1%
1947	763	–		581	76.1%	666	87.3%
1948	799	–		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1 026	212	20.6%	840	75.7%	917	89.3%
1954	1 175	268	22.8%	1 077	91.7%	1 119	95.2%
1955	1 234	283	22.9%	1 063	86.1%	1 170	94.8%
1956	1 333	332	24.9%	1 234	92.5%	1 283	96.2%
1957	1 418	210	14.7%	1 295	91.3%	1 349	95.1%
1958	1 558	340	21.8%	1 484	95.2%	1 509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1 100	256	23.2%	838	76.1%	963	87.4%
1961	1 362	243	18.1%	1 090	80.0%	1 142	83.8%
1962	1 309	200	15.5%	1 059	80.9%	1 121	85.6%
1963	1 624	280	17.2%	1 314	80.9%	1 430	88.0%
1964	1 495	213	14.2%	1 268	84.8%	1 356	90.7%
1965	1 700	282	16.6%	1 444	84.9%	1 527	89.8%
1966	1 562	245	16.3%	1 330	85.1%	1 395	89.3%
1967	1 883	323	17.4%	1 551	84.5%	1 643	89.6%
1968	1 647	281	17.1%	1 409	85.5%	1 470	89.1%
1969	1 821	249	13.4%	1 501	82.4%	1 601	87.9%
1970	1 894	360	18.9%	1 463	77.0%	1 549	81.6%
1971	1 992	237	11.8%	1 504	75.5%	1 707	85.6%
1972	2 025	297	14.6%	1 572	77.6%	1 753	86.5%
1973	2 048	300	14.6%	1 521	74.3%	1 691	82.5%
1974	2 189	370	16.5%	1 854	84.6%	1 958	89.4%
1975	2 034	301	14.8%	1 663	81.7%	1 764	86.7%
1976	2 200	292	13.2%	1 831	83.0%	1 914	87.0%
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.							
1977	1 529	215	14.0%	1 120	73.2%	1 328	87.0%
1978	1 701	251	14.7%	1 289	75.7%	1 391	81.7%
1979	1 593	234	14.7%	1 270	79.8%	1 376	86.4%
1980	1 581	168	10.6%	1 302	82.2%	1 437	90.8%
1981	1 543	127	8.1%	1 210	78.4%	1 340	86.7%
1982	1 695	332	19.4%	1 382	81.4%	1 493	88.0%
1983	1 737	236	13.5%	1 388	79.9%	1 558	89.6%
1984	1 669	189	11.3%	1 286	77.0%	1 412	84.6%

Conference year	Reports requested	Reports received at the date requested	Reports received in time for the session of the Committee of Experts	Reports received in time for the session of the Conference
1985	1 666	189 11.3%	1 312 78.7%	1 471 88.2%
1986	1 752	207 11.8%	1 388 79.2%	1 529 87.3%
1987	1 793	171 9.5%	1 408 78.4%	1 542 86.0%
1988	1 636	149 9.0%	1 230 75.9%	1 384 84.4%
1989	1 719	196 11.4%	1 256 73.0%	1 409 81.9%
1990	1 958	192 9.8%	1 409 71.9%	1 639 83.7%
1991	2 010	271 13.4%	1 411 69.9%	1 544 76.8%
1992	1 824	313 17.1%	1 194 65.4%	1 384 75.8%
1993	1 906	471 24.7%	1 233 64.6%	1 473 77.2%
1994	2 290	370 16.1%	1 573 68.7%	1 879 82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.				
1995	1 252	479 38.2%	824 65.8%	988 78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.				
1996	1 806	362 20.5%	1 145 63.3%	1 413 78.2%
1997	1 927	553 28.7%	1 211 62.8%	1 438 74.6%
1998	2 036	463 22.7%	1 264 62.1%	1 455 71.4%
1999	2 288	520 22.7%	1 406 61.4%	1 641 71.7%
2000	2 550	740 29.0%	1 798 70.5%	1 952 76.6%
2001	2 313	598 25.9%	1 513 65.4%	1 672 72.2%
2002	2 368	600 25.3%	1 529 64.5%	1 852 72.1%
2003	2 344	568 24.2%	1 544 65.9%	1 701 72.6%
2004	2 569	659 25.6%	1 645 64.0%	1 852 72.1%
2005	2 638	696 26.4%	1 820 69.0%	2 065 78.3%
2006	2 586	745 28.8%	1 719 66.5%	1 949 75.4%
2007	2 478	845 34.1%	1 611 65.0%	1 812 73.2%
2008	2 517	811 32.2%	1 768 70.2%	

Appendix III. List of observations made by employers' and workers' organizations

Appendix IV. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions, the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution, a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th Session (November 1996), the Governing Body approved new measures of rationalization and simplification. In this connection, the summarized information appears in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains information relating to the submission to the competent authorities of the instruments adopted by the Conference at its 95th Session (May–June 2006): the Promotional Framework for Occupational Safety and Health Convention and Recommendation, 2006, and the Employment Relationship Recommendation, 2006. The period of 12 months provided for the submission to the competent authorities of Convention No. 187 and Recommendations Nos 197 and 198 expired on 16 June 2007, and the period of 18 months on 16 December 2007.

At its 96th Session (May–June 2007), the Conference adopted the Work in Fishing Convention and Recommendation, 2007. The period of 12 months provided for the submission to the competent authorities of Convention No. 188 and Recommendation No. 198 will expire on 15 June 2008, and the period of 18 months on 15 December 2008.

This summarized information also consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 97th Session of the Conference (Geneva, May–June 2008) and which could not therefore be laid before the Conference at that session.

Algeria. The instruments adopted at the 95th Session of the Conference were submitted to the People's National Assembly and the Council of the Nation on 22 March 2007.

Armenia. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly on 25 May 2007 and 22 October 2008, respectively.

Australia. The instruments adopted at the 95th Session of the Conference were submitted to the House of Representatives and the Senate on 5 and 17 June 2008.

Barbados. The instruments adopted at the 95th Session of the Conference were submitted to Parliament on 31 July 2007.

Belarus. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly on 24 July 2007 and 10 November 2008, respectively.

Benin. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly on 17 August 2007 and 8 February 2008, respectively.

Botswana. The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 23 August 2007.

Bulgaria. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly on 29 March 2007 and 18 April 2008, respectively.

Burundi. The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 28 May 2007.

China. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the State Council and the Standing Committee of the National People's Congress in May 2007 and June 2008, respectively.

Costa Rica. The Maritime Labour Convention, 2006, was submitted to the Legislative Assembly on 5 November 2007 and the instruments adopted at the 95th Session of the Conference were submitted on 13 November 2006.

Cuba. The ratification of Convention No. 187 was registered on 5 August 2008.

Czech Republic. The instruments adopted at the 95th Session of the Conference were submitted to Parliament on 18 July 2007. The instruments adopted at the 95th Session of the Conference were submitted to the Chamber of Deputies on 24 July and to the Senate on 28 July 2008. The ratification of Convention No. 187 was registered on 13 October 2008.

Denmark. Recommendation No. 198 was submitted to Parliament (*Folketinget*) in February 2007. The instruments adopted at the 96th Session of the Conference were submitted to Parliament on 1 April 2008.

Dominican Republic. The instruments adopted at the 95th Session of the Conference were submitted to the National Congress on 2 and 24 January 2008.

Egypt. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the People's Assembly on 29 October 2006 and 26 October 2007, respectively.

Eritrea. The instruments adopted at the 92nd, 94th and 95th Sessions of the Conference were submitted to the National Assembly on 10 April 2008.

Estonia. The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to Parliament on 25 June 2008.

Finland. The ratification of Convention No. 187 was registered on 26 June 2008. The instruments adopted at the 96th Session were submitted to Parliament on 31 October 2008.

France. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly and the Senate on 18 July 2007 and 23 July 2008, respectively.

Germany. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the *Bundestag* and the *Bundesrat* on 27 July 2007 and 14 August 2008, respectively.

Greece. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to Parliament in October 2007 and August 2008, respectively.

Guatemala. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Congress of the Republic on 6 October 2006 and 28 August 2007, respectively.

Guyana. The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 29 November 2007.

Hungary. The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 16 April 2007. The instruments adopted at the 94th and 96th Sessions of the Conference were submitted to the National Assembly on 9 May 2008.

Iceland. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to Parliament on 14 March 2007 and 22 May 2008, respectively.

India. Convention No. 187 and Recommendation No. 197 were submitted to the House of the People and the Council of States on 28 November and 3 December 2007. Recommendation No. 198 was submitted to Parliament on 21 and 23 April 2008.

Indonesia. The instruments adopted at the 95th Session of the Conference were submitted to the House of Representatives on 14 November 2007.

Islamic Republic of Iran. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Islamic Consultative Assembly.

Israel. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Knesset on 2 July 2007 and 7 January 2008, respectively.

Italy. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Presidents of the House of Representatives and the Senate.

Japan. The ratification of Convention No. 187 was registered on 24 July 2007. Recommendation No. 198 and the instruments adopted at the 96th Session were submitted to the Diet on 12 June 2007 and 10 June 2008, respectively.

Republic of Korea. The ratification of Convention No. 187 was registered on 20 February 2008. The instruments adopted at the 96th Session were submitted to the National Assembly on 29 August 2008.

Latvia. The instruments adopted at the 95th Session of the Conference were submitted to Parliament on 19 June 2007.

Lebanon. The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 17 March and 10 April 2007. The instruments adopted at the 96th Session were submitted to the National Assembly on 4 November 2008.

Lesotho. The instruments adopted at the 95th Session of the Conference were submitted to Parliament (the Assembly and the Senate) in May 2007.

Lithuania. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the *Seimas* on 7 September 2007 and 10 December 2008, respectively.

Luxembourg. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Chamber of Deputies in May and August 2007, respectively.

Malawi. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly on 14 September 2007.

Mauritius. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly on 8 May 2007 and 27 June 2008, respectively.

Morocco. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to Parliament on 26 February 2007 and 8 February 2008, respectively.

Myanmar. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to a competent authority on 3 January 2007 and 28 May 2008, respectively.

Namibia. The instruments adopted by the Conference at the sessions held between 2000 and 2006 were submitted to Parliament on 2 October 2007.

Netherlands. Recommendation No. 198 was submitted to Parliament on 24 April 2008. The instruments adopted at the 96th Session of the Conference were submitted to Parliament on 1 July 2008.

New Zealand. The instruments adopted at the 95th Session of the Conference were submitted to the House of Representatives on 12 June 2007.

Nicaragua. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly on 23 May 2007 and 4 January 2008, respectively.

Nigeria. The instruments adopted at the 95th Session of the Conference were submitted to the National Assembly on 21 August 2006.

Norway. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to Parliament (*Storting*) on 5 October 2007 and 13 June 2008, respectively.

Philippines. The instruments adopted at the 95th Session of the Conference were submitted to the House of Representatives and the Senate on 27 October 2006. The instruments adopted at the 96th Session were submitted to the House of Representatives and the Senate on 21 April 2008.

Poland. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Sejm on 27 May 2007 and 15 May 2008, respectively.

Portugal. The instruments adopted at the 95th Session of the Conference were submitted to the Assembly of the Republic on 10 May 2007.

Romania. The instruments adopted at the 95th Session of the Conference were submitted to the Senate on 23 October 2007.

San Marino. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Great and General Council on 17 September 2007.

Saudi Arabia. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Council of Ministers and the Consultative Council on 4 July 2007 and 19 August 2008, respectively.

Serbia. Convention No. 187 has been submitted to the National Assembly.

Singapore. The instruments adopted at the 92nd, 94th, 95th and 96th Sessions of the Conference were submitted to Parliament on 11 February 2008.

Slovakia. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Council on 19 December 2006 and 21 December 2007, respectively.

Slovenia. The instruments adopted at the 96th Session of the Conference were submitted to the National Assembly on 6 May 2008.

South Africa. The instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to Parliament on 29 February 2008.

Sweden. The ratification of Convention No. 187 was registered on 10 July 2008.

Switzerland. The instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to Parliament on 30 May 2008.

United Republic of Tanzania. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Assembly on 30 July and 19 October 2007, respectively.

Thailand. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the National Legislative Assembly on 6 December 2006 and 25 November 2007, respectively.

Trinidad and Tobago. The instruments adopted at the 95th Session of the Conference were submitted to the House of Representatives and the Senate in January 2008.

Tunisia. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Chamber of Deputies on 18 December 2006 and 4 September 2007, respectively.

Turkey. The instruments adopted at the 95th and 96th Sessions of the Conference were submitted to the Grand National Assembly on 19 December 2006 and 8 December 2007, respectively.

United Arab Emirates. The instruments adopted at the 95th and 96th Sessions of the Conference have been submitted to the competent authorities.

United Kingdom. The ratification of Convention No. 187 was registered on 29 May 2008. The instruments adopted at the 96th Session of the Conference were submitted to Parliament in May 2008.

United States. The instruments adopted at the 94th, 95th and 96th Sessions of the Conference were submitted to the House of Representatives and the Senate on 27 June 2008.

Uruguay. Recommendations Nos 187 and 198 were submitted to the General Assembly on 10 October 2007.

Viet Nam. The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to the National Assembly on 27 August 2007 and 9 October 2006, respectively.

Zimbabwe. The instruments adopted at the 94th and 95th Sessions of the Conference were submitted to Parliament on 24 September 2008.

The Committee has deemed it necessary in certain cases to request additional information on the nature of the competent authorities to which the instruments adopted by the Conference have been submitted, as well as other indications required by the questionnaire at the end of the Memorandum of 1980, as revised in March 2005.

**Appendix V. Information supplied by governments with regard to the obligation to submit
Conventions and Recommendations to the competent authorities
(31st to 96th Sessions of the International Labour Conference, 1948–2007)**

**Appendix VI. Overall position of member States with regard to the submission to the competent authorities of the instruments adopted by the Conference
(as of 12 December 2008)**

Appendix VII. Comments made by the Committee, by country

