

International Labour Conference, 93rd Session, 2005

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 publication of information concerning action taken in respect of international labour Conventions and Recommendations does not imply any expression of view by the International Labour Office on the legal status of the State having communicated such information (including the communication of a ratification or declaration), or on its authority over the areas or territories in respect of which such information is communicated; in certain cases this may present problems on which the ILO is not competent to express an opinion.

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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 in 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) **Reader's note** describes the Committee's mandate, functioning and the institutional context in which it operates (**Book 1A, pages 1-2**).
- (b) **Part I: General Report** describes the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards, and emphasizes important issues concerning the relationships between the international labour standards and the multilateral system (**Book 1A, pages 3-24**).
- (c) **Part II: Observations concerning particular countries** on the application of ratified Conventions presented by subject matter (see section I), and on the obligation to submit instruments to the competent authorities (see section II) (**Book 1A, pages 25-493**).
- (d) **Part III: General Survey**, in which the Committee of Experts examines the application of ILO standards, ratified or not ratified, in a particular subject area. The General Survey is published as a separate volume (Report III (Part 1B)) and this year examines the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (**Book 1B**).

Furthermore, the List of ratifications which has usually accompanied the Report of the Committee of Experts is now published as the *Information document on ratifications and standards-related activities*, which provides an overview of recent developments in international labour standards, the implementation of special procedures, technical cooperation in relation to international labour standards, and tables relating to ratifications and respect for obligations by member States (**Book 2**).

The report of the Committee of Experts is also available at:

<http://www.ilo.org/ilolex/gbe/ceacr2005.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	<i>Labour Inspection Convention, 1947 (No. 81)</i>
C085	Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)
C129	<i>Labour Inspection (Agriculture) Convention, 1969 (No. 129)</i>
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	<i>Employment Policy Convention, 1964 (No. 122)</i>
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)
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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)
C041	Night Work (Women) Convention (Revised), 1934 (No. 41)
C043	Sheet-Glass Works Convention, 1934 (No. 43)
C047	Forty-Hour Week Convention, 1935 (No. 47)
C049	Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49)
C052	Holidays with Pay Convention, 1936 (No. 52)
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)

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)
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)
C055	Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
C056	Sickness Insurance (Sea) Convention, 1936 (No. 56)
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)
C071	Seafarers' Pensions Convention, 1946 (No. 71)
C073	Medical Examination (Seafarers) Convention, 1946 (No. 73)
C074	Certification of Able Seamen Convention, 1946 (No. 74)
C091	Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)
C092	Accommodation of Crews Convention (Revised), 1949 (No. 92)
C108	Seafarers' Identity Documents Convention, 1958 (No. 108)
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)

18 Fishers⁴⁴³

C112	Minimum Age (Fishermen) Convention, 1959 (No. 112)
C113	Medical Examination (Fishermen) Convention, 1959 (No. 113)
C114	Fishermen's Articles of Agreement Convention, 1959 (No. 114)
C125	Fishermen's Competency Certificates Convention, 1966 (No. 125)
C126	Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)

19 Dockworkers

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

20 Indigenous and Tribal Peoples

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

21 Specific Categories of Workers

C110	Plantations Convention, 1958 (No. 110)
C149	Nursing Personnel Convention, 1977 (No. 149)
C172	Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
C177	Home Work Convention, 1996 (No. 177)

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C087.....	103		
C088.....	362		
Submission to the competent authorities.....	490		
Saudi Arabia			
C111.....	282		
Senegal			
C013.....	424		
C087.....	104		
C098.....	105		
C120.....	425		
Submission to the competent authorities.....	490		
Serbia and Montenegro			
C087.....	105		
C098.....	106		
C111.....	284		
General observations.....	30		
Seychelles			
C087.....	106		
Sierra Leone			
C008.....	463		
C017.....	444		
C029.....	183		
C059.....	245		
C081.....	343		
C088.....	363		
C098.....	107		
C101.....	407		
C105.....	183		
C111.....	285		
C144.....	300		
Submission to the competent authorities.....	490		
Singapore			
C029.....	183		
C098.....	107		
Slovakia			
C144.....	300		
Slovenia			
C100.....	285		
C111.....	285		
Solomon Islands			
C008.....	464		
General observations.....	30		
Submission to the competent authorities.....	490		
Somalia			
General observations.....	30		
Submission to the competent authorities.....	490		
South Africa			
C045.....	425		
C100.....	286		
Spain			
C001.....	407		
C014.....	408		
C030.....	408		
C087.....	107		
C097.....	449		
C100.....	287		
C106.....	409		
C111.....	287		
C159.....	363		
Submission to the competent authorities.....	491		
Sri Lanka			
C095.....	388		
C096.....	363		
C098.....	108		
C100.....	288		
C144.....	301		
C182.....	245		
St. Pierre and Miquelon (France)			
C022.....	456		
C053.....	456		
C063.....	326		
Sudan			
C029.....	184		
C098.....	109		
C105.....	186		
C111.....	289		
Submission to the competent authorities.....	491		
Swaziland			
C029.....	186		
C087.....	109		
C096.....	364		
C098.....	110		
Submission to the competent authorities.....	491		
Sweden			
C115.....	425		
C129.....	343		
C155.....	426		
C161.....	426		
C167.....	427		
Switzerland			
C098.....	111		
Syrian Arab Republic			
C087.....	111		
C115.....	427		
Submission to the competent authorities.....	491		
Tajikistan			
C087.....	112		
C138.....	249		
C142.....	370		
General observations.....	30		
Submission to the competent authorities.....	492		
Tanganyika (United Republic of Tanzania)			
C088.....	364		
Thailand			
C105.....	187		
Submission to the competent authorities.....	492		
The former Yugoslav Republic of Macedonia			
C087.....	113		
C098.....	113		
General observations.....	31		
Submission to the competent authorities.....	492		
Togo			
C029.....	188		
C087.....	114		
C144.....	301		
Trinidad and Tobago			
C087.....	114		
C098.....	114		
C100.....	290		
C105.....	189		
C111.....	290		

Tunisia			
C087	115	C098.....	112
C127	428	C134.....	464
Turkey		C137.....	468
C014	410	C140.....	370
C029	189	C144.....	301
C087	116	C154.....	113
C088	365	Submission to the competent authorities	492
C096	365	United States	
C098	119	C105.....	194
C105	190	C144.....	303
C111	290	C182.....	254
C115	428	Uruguay	
C118	445	C081.....	345
C119	429	C098.....	124
C122	366	C131.....	388
C142	370	C151.....	124
C144	302	Submission to the competent authorities	492
C158	372	Uzbekistan	
C182	249	Submission to the competent authorities	493
Turkmenistan		Venezuela	
General observations	31	C001.....	410
Submission to the competent authorities	492	C087.....	125
Uganda		C098.....	127
C017	445	C111.....	292
C029	192	C155.....	430
C081	343	C169.....	479
C098	121	Submission to the competent authorities	493
C105	193	Viet Nam	
C158	373	C081.....	346
C162	429	Yemen	
General observations	31	C081.....	346
Submission to the competent authorities	492	C087.....	127
Ukraine		C098.....	128
C087	122	Zambia	
C095	388	C029.....	195
C119	430	C087.....	129
C144	302	C095.....	389
United Arab Emirates		General observations.....	31
C081	344	Submission to the competent authorities	493
C182	251	Zanzibar (United Republic of Tanzania)	
United Kingdom		General observations.....	31
C087	123	Zimbabwe	
C098	123	C098.....	129
C144	302	C100.....	293
United Republic of Tanzania		C144.....	303
C087	112		

Reader's note

Overview of the ILO supervisory mechanisms

Since its creation in 1919, the International Labour Organization has had both the function of adopting and promoting international labour standards as well as supervising their application in its member States. The ILO's supervisory system has two facets. First, 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 non-ratified Conventions and Recommendations.

Secondly, a number of supervisory mechanisms exist whereby the Organization examines the implementation of Conventions upon their ratification by member States. The supervisory mechanisms are diverse and they complement each other. Under article 22 of the Constitution, member States are required to report on measures they have taken to give effect to Conventions to which they are a party.¹ Under article 35, governments report on Conventions they have declared applicable to non-metropolitan territories under their administration. In order to ensure the efficient examination of reports submitted under articles 19, 22 and 35, the International Labour Conference and the ILO's Governing Body established the Committee of Experts on the Application of Conventions and Recommendations as well as the Conference Committee on the Application of Standards.

In addition, the Constitution provides explicitly for two complaint-driven mechanisms in its articles 24 and 26. Under article 24, workers' or employers' organizations can submit a representation for the non-observance by a member State of a Convention to which it is party. Under article 26, an ILO member State, or a delegate to the International Labour Conference may lodge a complaint against another Member, or the Governing Body may launch the procedure on its own initiative. Finally, in 1951, the Committee on Freedom of Association and the Fact-finding and Consolidation Commission were created with the competence to consider complaints in the area of freedom of association even in cases where the State complained against has not ratified the relevant Conventions on freedom of association. For information on the activities of supervisory procedures other than the Committee of Experts, please see this year's *Information document on ratifications and standards-related activities*.

The Committee of Experts on the Application of Conventions and Recommendations: Its mandate and functioning

The Committee of Experts was established in 1926 and is an independent body composed of legal experts appointed by the Governing Body. In its annual report, the Committee of Experts carries out an impartial and technical examination of the application of standards. This report is then discussed in a tripartite setting during the International Labour Conference by the Conference Committee on the Application of Standards, composed of representatives of governments, employers and workers. Among its other functions, the Conference Committee selects a number of cases examined by the Committee of Experts and invites the concerned governments to respond in the Conference Committee. These two

¹ Reports are submitted every two years for so-called fundamental and priority Conventions, and every five years for others, unless the Committee requests them sooner. Since 2003, reports are submitted according to Conventions grouped by subject matter. See page v for a list of Conventions grouped by subject.

Committees complement each other and a spirit of mutual respect, cooperation and responsibility has consistently prevailed between the two.

The Committee of Experts' task consists of examining the extent to which law and practice in each State appear to be in conformity with ratified Conventions, and the extent to which States respect their standards-related obligations under the ILO Constitution. To accomplish this task, the Committee follows the principles of independence, objectivity and impartiality. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee is called upon to examine:

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

Governments are required to provide relevant legislation, statistics and documentation necessary for the full examination of their reports. In cases where reports do not provide full information and this material is not otherwise available, the Office, as requested by the Committee, writes to the governments concerned asking them to supply the necessary texts to enable the Committee to fulfil its task.

The analysis of the application of Conventions by the Committee is reflected in two kinds of comments: *observations* and *direct requests* (see also paragraphs 33-35 of the General Report). The observations contain comments on fundamental questions raised by the application of a particular Convention by a government. These observations are reproduced in the Committee's report. The direct requests usually relate to more technical questions or questions of lesser importance. They are not published in the report, but are communicated directly to the governments concerned.²

The observations of the Committee appear in Part Two (sections I and II) of this report. Following the observations on a group of Conventions, there is a list of all the direct requests relating to the group of Conventions.

Role of employers' and workers' organizations

The ILO was one of the first international organizations to associate non-governmental actors in its activities as a natural consequence of its tripartite structure. The participation of employers' and workers' organizations in the supervisory mechanism is recognized in the Constitution under paragraph 2 of article 23 which provides that reports submitted by governments in accordance with articles 19 and 22 must be communicated to the representative organizations. In practice, these occupational organizations may submit comments on the contents of the reports provided on the implementation of a ratified Convention. They may for instance draw attention to a discrepancy in law or in fact that might otherwise have gone unnoticed, and thus trigger the process whereby the Committee of Experts will request further information from the government, and ultimately make an observation that may lead to a tripartite discussion at the Conference Committee on the Application of Standards. Further, workers' and employers' organizations can submit directly to the Office comments on the application of Conventions and request that these comments be forwarded to the government concerned (see also paragraphs 42-48 of the General Report).

In accordance with established practice, in March each year the Office sends to the representative organizations of employers and workers a letter outlining the various opportunities open to them of contributing to the implementation of Conventions and Recommendations, accompanied by relevant documentary material, and a list of the reports due from their respective governments and copies of the Committee's comments to which the governments are invited to reply in their reports. Moreover, it highlights the fact that numerous Conventions call for consultation with employers' and workers' organizations, or their collaboration in a variety of measures.

² Direct requests are available through the ILOLEX CD-ROM.

Part I. General Report

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by States Members of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 75th Session in Geneva from 25 November to 10 December 2004. The Committee has the honour to present its report to the Governing Body.

2. The composition of the Committee is as follows: Mr. Anwar Ahmad Rashed AL-FUZAIE (Kuwait), Ms. Janice R. BELLACE (United States), Mr. Prafullachandra Natvarlal BHAGWATI (India), Mr. Michael Halton CHEADLE (South Africa), Ms. Laura COX, QC (United Kingdom), Ms. Blanca Ruth ESPONDA ESPINOSA (Mexico), Ms. Robyn A. LAYTON, QC (Australia), Mr. Pierre LYON-CAEN (France), Mr. Sergey Petrovitch MAVRIN (Russian Federation), Mr. Cassio MESQUITA BARROS (Brazil), Ms. Angelika NUSSBERGER (Germany), Mr. Benjamin Obi NWABUEZE (Nigeria), Mr. Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain), Mr. Amadou SÔ (Senegal), Mr. Budislav VUKAS (Croatia), Mr. Yozo YOKOTA (Japan). For the full CVs of the Committee's members, please see Appendix I of the General Report.

3. The Committee attended the official ceremony, which was held on 25 November 2004, to pay tribute to the memory of Nicolas Valticos, former Assistant Director-General of the ILO and former Chief of the International Labour Standards Department. On this occasion, the Office published a collection of essays entitled *Les normes internationales du travail: un patrimoine pour l'avenir – Mélanges en l'honneur de Nicolas Valticos*, while an ILO meeting room was given his name.¹ The Committee fully associates itself with the solemn homage rendered to one of the most eloquent advocates and lifetime servants of the standards-related work of the Organization.

4. The Committee would like to express its gratitude to Mr. Edilbert Razafindralambo, whose term came to its end last year. Mr. Razafindralambo was a member of the Committee and served as its reporter for nearly 40 years, during which he was greatly appreciated for his wisdom, integrity and the rigour of his contribution. The Committee was also pleased to receive kind words of encouragement from Mr. Rafael Albuquerque who had submitted his resignation upon his election as Vice-President of the Dominican Republic before the present session. The Committee would like to express its great appreciation for the remarkable way in which he has carried out his duties, and wishes him well in his new responsibilities.

5. During this session, Mr. Bhagwati and Mr. Nwabueze notified the Committee that they would not seek to renew their mandate, and that this would be the last session in which they would participate. The Committee set aside some time to express its deep appreciation of these longstanding colleagues who had each contributed greatly to the Committee's work. On this occasion, the Director-General of the ILO, Mr. Juan Somavia, expressed his personal thanks to Mr. Bhagwati and to Mr. Nwabueze and underlined the special relevance of the Committee's work in today's changing world.

6. During this session, the Committee had the pleasure of welcoming two new members, Ms. Nussberger and Mr. Cheadle. It also welcomed the new Director of the International Labour Standards Department, Ms. Cleopatra Doumbia-Henry. It expressed its deep appreciation of the work carried out by the departing Director of the Department, Mr. Jean-Claude Javillier, and noted that two members of the secretariat, Ms. Jacqueline Ancel-Lenners, Chief of the Social Protection and Labour Conditions Branch, and Mr. Bernard Gernigon, Chief of the Freedom of Association Branch, were due to retire. The Committee wished to express its sincere gratitude for their longstanding and valuable assistance to the Committee.

¹ This publication is available online at: <http://www.ilo.org/public/french/standards/norm/download/valticos.pdf>.

7. Ms. Layton, QC, continued her mandate as Chairperson, and the Committee elected Mr. Al-Fuzaie as the Reporter.

Subcommittee on working methods

8. The Committee has in recent years undertaken a thorough examination of its working methods. In 2001, in order to guide its reflections on this matter in an efficient manner, the Committee decided to create a subcommittee. This subcommittee has as a mandate to examine not only the working methods of the Committee as strictly defined but also any related subjects, and to make appropriate recommendations to the Committee.²

9. In 2002, the Committee of Experts considered and adopted the first recommendations of its subcommittee, prepared after a wide-ranging review of the Committee's work, to which all members of the Committee had had an opportunity to contribute during the year. In 2003 the Committee agreed on changes to the presentation and structure of the contents of their published report and to some of the language used with a view to providing a more concise and accessible report, whilst preserving its integrity and value. This year the Committee has also had regard to the discussion in the Conference Committee on aspects of the presentation of the report. Changes are now in the process of being implemented.

10. This year, the subcommittee examined ways of improving the impact of the annual report and of the work of the Committee. A wide-ranging discussion took place on various measures which could assist in strengthening the supervisory work of the Committee and in highlighting cases of progress. The Committee noted that any measures would need to progress incrementally. The Committee agreed that further consideration should now be given to some of these measures by a working group of its members charged with the task of advising the Committee on practical implementation at its next session. Other measures discussed will remain on the agenda for further consideration by the subcommittee when it meets again next year, together with further improvements to the Committee's working methods to enable it effectively to manage its increasing workload.

Relations with the Conference Committee on the Application of Standards

11. 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 into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations. The Committee expressed its regret that the Chairperson of its 74th Session was unable to attend the general discussion of the Committee on the Application of Standards of the 92nd Session of the International Labour Conference (June 2004) as an observer. It noted the request by the abovementioned Committee for the Director-General to renew this invitation for the 93rd Session of the International Labour Conference (June 2005). The Committee has accepted the invitation.

12. The Chairperson of the Committee of Experts invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards of the 92nd Session of the International Labour Conference to pay a joint visit to this Committee at its present session. Both accepted this invitation and discussed with the Committee, in a special sitting, matters of mutual interest.

² This subcommittee is composed of a core group and is open to any member of the Committee wishing to participate in it.

II. *Respect for obligations*

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

A. Supply of reports

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

14. In accordance with the changes in the reporting system adopted by the Governing Body in November 2001 and March 2002,³ 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 addressed simultaneously to each country.⁴ 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 English alphabetical order, one year by member States beginning with the letters A to J, and the second year by those whose names begin with the letters K to Z, or the converse.⁵ For a list of subject matters and corresponding Conventions, please see page v.

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

- (a) a first report after ratification was due;
- (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 which were expressly requested by the Conference Committee.

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

Reports requested and received

16. A total of 2,569 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, 1,645 of these reports had been received by the Office. This figure corresponds to 64.03 per cent of the reports requested, compared with 65.87 per cent last year.

17. In addition, 331 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (article 35 of the Constitution). Of these, 225 reports, or 67.98 per cent, had been received by the end of the Committee's session, in comparison with 58.65 per cent last year.

³ Documents GB.282/LILS/5, GB.282/8/2, GB.283/LILS/6 and GB.283/10/2.

⁴ 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>.

⁵ 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>.

18. Appendix I of the 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, and by the date of the session of the International Labour Conference.

19. 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, wrote to the governments concerned asking them to supply the necessary texts to enable the Committee to fulfil its task.

Compliance with reporting obligations

20. Most of the governments from which reports were due on the application of ratified Conventions have supplied most or all the reports requested (see Appendix I). However, no reports due have been received for the past two or more years from the following 16 countries: **Afghanistan, Antigua and Barbuda, Armenia, Denmark (Greenland), Grenada, Haiti, Iraq, Kiribati, Liberia, Paraguay, Solomon Islands, Somalia, Tajikistan, United Republic of Tanzania (Zanzibar), The former Yugoslav Republic of Macedonia, Turkmenistan.** In addition, all or the majority of the reports due this year have not been received from the following 40 countries: **Azerbaijan, Barbados, Belize, Bosnia and Herzegovina, Botswana, Burundi, Cambodia, Cape Verde, Chad, Comoros, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, France (French Southern and Antarctic Territories, St. Pierre and Miquelon), Gambia, Georgia, Ghana, Guinea, Guyana, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Libyan Arab Jamahiriya, Netherlands (Aruba), Niger, Pakistan, Saint Lucia, San Marino, Sao Tome and Principe, Serbia and Montenegro, Seychelles, Sweden, United Republic of Tanzania (Tanganyika), Trinidad and Tobago, United Kingdom (British Virgin Islands, Isle of Man, Montserrat, St. Helena), Yemen, Zambia.**

21. The Committee urges the governments of these countries to make every effort to supply the reports requested on ratified Conventions. 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, and it recalls that in cases of this kind, assistance from the Office, in particular through the specialists on international labour standards in the regional or subregional offices, can help the government to overcome its difficulties.

Late reports

22. The Committee is still concerned about the number of reports being received after the prescribed time period, especially given the large number of reports received this year. 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 fixing this date, particularly to the time required to translate the reports, where necessary, to conduct research into legislation and other necessary documents, and to examine reports and legislation.

23. The supervisory procedure can function correctly 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.

24. The Committee observes that the great majority of reports are received between the time limit fixed and the date on which the Committee meets: by 1 September 2004, the proportion of reports received was only 25.65 per cent. This percentage is only slightly higher than for its previous session (24.23 per cent) and the Committee is still concerned over this fact, since it notes that it is often first reports and those relating to Conventions on which the Committee has made comments that are received the latest. In these circumstances, the Committee has been bound in recent years to postpone to its following session the examination of an increasing number of reports, since they could not be examined with the necessary care owing to lack of time. It has thus had to examine a number of reports at its present session which had previously been deferred.

25. The Committee wishes to draw attention to the importance of the governments transmitting reports within the prescribed time limits. The majority of reports received from governments continued this time to arrive in the last three months before the Committee's meeting or even during it. This obviously places a great strain on the supervisory process and effectively makes it impossible for some cases to be dealt with adequately or at all. These problems will continue to increase with the success of the ratification campaign on fundamental Conventions and an increase in the number of ratifications of other Conventions.

26. Furthermore, the Committee notes that a number of countries sent some or all of the reports due by 1 September 2003 on ratified Conventions during the period between the end of the Committee's December 2003 session, and the beginning of the June 2004 session of the International Labour Conference, or even during the Conference.⁶ The Committee emphasizes that this practice disturbs the regular operation of the supervisory system and makes it more burdensome. It wishes to provide the following list of those countries which followed this practice in 2003-04, as

⁶ 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. 24, 92nd Session, ILC, 2004). 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>.

requested by the Conference Committee on the Application of Standards: **Algeria** (Conventions Nos. 96, 122); **Angola** (Conventions Nos. 69, 106); **Barbados** (Conventions Nos. 98, 101, 111, 144); **Botswana** (Conventions Nos. 14, 87, 98, 144); **Cambodia** (Conventions Nos. 105, 111, 150); **Cameroon** (Conventions Nos. 14, 87, 89, 98, 100, 106, 111, 132, 138); **Central African Republic** (Conventions Nos. 14, 62, 98, 101, 119); **Congo** (Conventions Nos. 13, 14, 26, 29, 81, 87, 89, 95, 98, 100, 105, 111, 119, 138, 144, 149, 152); **Cyprus** (Conventions Nos. 111, 142, 171, 182); **Democratic Republic of the Congo** (Conventions Nos. 87, 105, 111, 135, 138, 144, 182); **Denmark** (Conventions Nos. 119, 120, 129, 139, 149); **Denmark: Faeroe Islands** (Conventions Nos. 5, 6, 7, 8, 9, 12, 14, 16, 19, 53, 98, 105); **Equatorial Guinea** (Conventions Nos. 1, 14, 30, 87, 98, 138); **Fiji** (Conventions Nos. 29, 98); **France** (Conventions Nos. 82, 142); **France: French Guiana** (Conventions Nos. 58, 69, 74, 112, 113, 125), **French Polynesia** (Convention No. 149), **French Southern and Antarctic Territories** (Conventions Nos. 58, 69, 74, 87, 98, 111), **Guadeloupe** (Conventions Nos. 58, 69, 74, 112, 113, 125), **Martinique** (Conventions Nos. 58, 69, 74, 112, 113, 125), **New Caledonia** (Conventions Nos. 29, 52, 82, 87, 89, 95, 98, 100, 101, 111, 120, 127, 129, 131, 141, 142, 144, 149), **Réunion** (Conventions Nos. 58, 69, 74, 112, 113, 125), **St. Pierre and Miquelon** (Conventions Nos. 58, 69, 125); **Ghana** (Conventions Nos. 30, 87, 89, 100, 111); **Guinea** (Conventions Nos. 14, 62, 113, 117, 139, 142); **Iceland** (Convention No. 111); **Israel** (Conventions Nos. 87, 98); **Kazakhstan** (Conventions Nos. 29, 100, 105, 138); **Madagascar** (Conventions Nos. 81, 97, 117, 129); **Mongolia** (Conventions Nos. 98, 100, 103, 123); **Netherlands: Netherlands Antilles** (Conventions Nos. 14, 29, 101, 106, 172); **Niger** (Conventions Nos. 6, 13, 14, 102, 135, 142); **Papua New Guinea** (Conventions Nos. 103, 105, 111, 138, 158, 182); **Peru** (Conventions Nos. 29, 81, 105); **Saint Kitts and Nevis** (Conventions Nos. 29, 105); **San Marino** (Conventions Nos. 29, 105, 138, 142, 182); **Serbia and Montenegro** (Conventions Nos. 12, 14, 19, 29, 32, 81, 89, 90, 97, 106, 121, 129, 132, 138, 140, 142, 143, 158); **Sierra Leone** (Conventions Nos. 8, 16, 17, 19, 22, 26, 29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144); **Slovakia** (Conventions Nos. 13, 29, 102, 105, 115, 120, 139, 173); **Slovenia** (Conventions Nos. 138, 140, 142, 173, 175, 182); **United Republic of Tanzania** (Conventions Nos. 19, 135, 144); **Thailand** (Convention No. 182); **Trinidad and Tobago** (Conventions Nos. 29, 105); **Uganda** (Conventions Nos. 29, 81, 98, 105, 122, 144, 154, 158, 162); **United Arab Emirates** (Convention No. 105); **United Kingdom: Anguilla** (Conventions Nos. 14, 29, 58, 82, 101, 105, 140), **Bermuda** (Conventions Nos. 29, 82, 105), **Falkland Islands (Malvinas)** (Conventions Nos. 14, 29, 82, 105).

Supply of first reports

27. A total of 138 of the 235 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 167 out of the 297 first reports 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 from the following 23 States: since 1992 – **Liberia** (Convention No. 133); since 1995 – **Armenia** (Convention No. 111), **Kyrgyzstan** (Convention No. 133); since 1996 – **Armenia** (Conventions Nos. 100, 122, 135, 151); since 1998 – **Armenia** (Convention No. 174), **Equatorial Guinea** (Conventions Nos. 68, 92); since 1999 – **Turkmenistan** (Conventions Nos. 29, 87, 98, 100, 105, 111); since 2001 – **Armenia** (Convention No. 176), **Kyrgyzstan** (Convention No. 105), **Tajikistan** (Convention No. 105); since 2002 – **Azerbaijan** (Conventions Nos. 81, 129), **Bosnia and Herzegovina** (Convention No. 105), **Chad** (Conventions Nos. 132, 182), **Gambia** (Conventions Nos. 29, 105, 138), **Kyrgyzstan** (Convention No. 81), **Saint Kitts and Nevis** (Conventions Nos. 87, 98, 100), **Saint Lucia** (Conventions Nos. 154, 158, 182); and since 2003 – **Bahamas** (Convention No. 147), **Bosnia and Herzegovina** (Convention No. 182), **Dominica** (Convention No. 182), **Equatorial Guinea** (Convention No. 182), **Gambia** (Convention No. 182), **Iraq** (Conventions Nos. 172, 182), **Kiribati** (Conventions Nos. 29, 105), **Lesotho** (Conventions Nos. 105, 150), **Madagascar** (Convention No. 182), **Pakistan** (Conventions Nos. 100, 182), **Paraguay** (Convention No. 182), **Serbia and Montenegro** (Conventions Nos. 24, 25, 27, 102, 113, 114, 156), **Uganda** (Convention No. 182), **Zambia** (Convention No. 182).

28. First reports have particular importance since it is the basis on which the Committee makes its initial assessment of the observance of ratified Conventions. The Committee therefore requests the governments concerned to make a special effort to supply these reports. This is even more important in view of the Governing Body's decision at its 282nd Session to remove the automatic obligation to submit a second detailed report two years after the first report.

Replies to the comments of the supervisory bodies

29. Governments are requested to reply in their reports to the observations and direct requests made by the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the International Labour Office wrote to all the governments who failed to provide such replies, requesting them to supply the necessary information. Of the 37 governments to which such letters were sent, only six have provided the information requested.

30. The Committee notes that there are still many cases of failure to reply to its comments, either:

- (a) out 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.

31. In all there were 444 cases of no response (concerning 49 countries).⁷ There were 325 such cases (concerning 37 countries) last year. It is bound to repeat the observations or direct requests already made on the Conventions in question.

32. 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, and the Committee of Experts cannot overemphasize the importance of ensuring the dispatch of the reports and replies to its comments.

B. Examination of reports

33. In examining the reports received on ratified Conventions and Conventions declared applicable to non-metropolitan territories, in accordance with its practice the Committee assigned, to each of its members, the initial responsibility for a group of Conventions. 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 all their colleagues for their examination. These conclusions are then presented to the Committee in plenary sitting by their respective authors for discussion and approval. Decisions on comments are adopted by consensus.

Observations and direct requests

34. In many cases, the Committee has found that no comment is called for regarding the way 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 report, but are communicated directly to the governments concerned.⁸

35. 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 met 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.⁹ Under the present reporting cycle,¹⁰ which applies to most Conventions, such early reports have been requested

⁷ **Afghanistan** (Conventions Nos. 13, 41, 95, 105, 111, 139); **Antigua and Barbuda** (Conventions Nos. 14, 17, 29, 81, 87, 101, 111, 138); **Azerbaijan** (Conventions Nos. 16, 23, 29, 69, 73, 87, 108, 119, 120, 122, 126, 135, 138, 142, 147, 151, 154, 160); **Barbados** (Conventions Nos. 63, 81, 105, 108, 118, 147); **Belize** (Conventions Nos. 29, 81, 105, 135, 150, 151, 154); **Bosnia and Herzegovina** (Conventions Nos. 81, 87, 111); **Botswana** (Conventions Nos. 29, 105, 138, 151, 173); **Burundi** (Conventions Nos. 29, 81, 89, 94, 98, 100, 101, 111, 135); **Cambodia** (Conventions Nos. 4, 13, 87, 98, 122, 138); **Cape Verde** (Conventions Nos. 19, 29, 81, 118); **Central African Republic** (Conventions Nos. 41, 62, 81, 87, 95, 98, 105, 117, 119, 138, 182); **Chad** (Conventions Nos. 26, 29, 41, 81, 87, 105, 151); **Comoros** (Conventions Nos. 52, 81); **Côte d'Ivoire** (Conventions Nos. 81, 129); **Cyprus** (Conventions Nos. 29, 105, 150, 151, 160); **Democratic Republic of the Congo** (Conventions Nos. 81, 87, 98, 100, 102, 150); **Denmark** (Conventions Nos. 29, 52, 53, 81, 122, 138, 144, 160, 169); **Denmark: Greenland** (Conventions Nos. 14, 106, 122); **Djibouti** (Conventions Nos. 22, 23, 29, 53, 55, 56, 63, 69, 71, 73, 81, 91, 105, 106, 108, 125); **Dominica** (Conventions Nos. 8, 16, 29, 81, 100, 105, 111, 138); **France: French Southern and Antarctic Territories** (Conventions Nos. 8, 53, 108, 147), Guadeloupe (Conventions Nos. 53, 129, 145), Martinique (Conventions Nos. 22, 53, 145), Réunion (Conventions Nos. 22, 53, 145), St. Pierre and Miquelon (Conventions Nos. 16, 22, 53, 145); **Georgia** (Conventions Nos. 29, 87, 98, 100, 105, 117, 122, 138, 142); **Ghana** (Conventions Nos. 22, 29, 74, 81, 103, 105, 117); **Grenada** (Conventions Nos. 81, 87, 100, 105, 144); **Guinea** (Conventions Nos. 3, 10, 16, 26, 33, 81, 87, 111, 118, 120, 121, 140, 144, 150, 152, 159); **Guyana** (Conventions Nos. 81, 129, 138, 150, 166); **Haiti** (Conventions Nos. 14, 24, 25, 29, 77, 78, 81, 87, 98, 100, 106); **Iraq** (Conventions Nos. 8, 22, 23, 108, 147, 150); **Kazakhstan** (Conventions Nos. 87, 98, 122, 135, 148); **Kyrgyzstan** (Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 95, 98, 100, 122, 124, 148, 149, 159, 160); **Lesotho** (Conventions Nos. 87, 98, 100, 111, 144); **Liberia** (Conventions Nos. 22, 29, 53, 55, 58, 87, 92, 98, 105, 111, 112, 113, 114, 133, 147); **Libyan Arab Jamahiriya** (Conventions Nos. 52, 87, 100, 121, 128, 130, 131); **Mozambique** (Conventions Nos. 88, 98, 111, 122); **Netherlands: Aruba** (Conventions Nos. 87, 88, 122, 135, 144), Netherlands Antilles (Conventions Nos. 87, 122); **Niger** (Conventions Nos. 87, 98, 100, 148); **Pakistan** (Conventions Nos. 18, 81, 87, 96, 98, 100, 105, 107, 111, 144); **Paraguay** (Conventions Nos. 1, 29, 30, 52, 79, 81, 87, 89, 90, 98, 100, 111, 115, 117, 119, 120, 122, 159, 169); **Saint Lucia** (Conventions Nos. 87, 100, 111); **Sao Tome and Principe** (Conventions Nos. 87, 88, 98, 111, 144, 159); **Serbia and Montenegro** (Conventions Nos. 29, 98, 100, 102, 121, 122, 129, 135, 138); **Seychelles** (Conventions Nos. 87, 98, 100, 111, 151); **Solomon Islands** (Conventions Nos. 8, 14, 16, 26, 29, 81, 95); **Sweden** (Conventions Nos. 120, 128, 139, 155, 159, 161, 162, 167, 170); **Tajikistan** (Conventions Nos. 14, 29, 47, 52, 77, 78, 87, 95, 98, 100, 103, 115, 122, 124, 126, 138, 142, 159, 160); **The former Yugoslav Republic of Macedonia** (Conventions Nos. 87, 98); **Trinidad and Tobago** (Conventions Nos. 87, 98, 100, 111, 144, 159); **United Kingdom: Isle of Man** (Conventions Nos. 98, 122), Montserrat (Conventions Nos. 26, 29, 95); **Yemen** (Conventions Nos. 98, 100, 111, 122, 132, 135, 138, 144, 159); **Zambia** (Conventions Nos. 87, 98, 111, 122, 136, 144, 148, 149, 159, 173).

⁸ ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev.2/1998, para. 54(k). These comments appear in the CD-ROM version of the ILOLEX database.

⁹ Convention No. 13: **Senegal**; Convention No. 16: **Saint Vincent and the Grenadines**; Convention No. 17: **Myanmar**; Convention No. 18: **Sao Tome and Principe**; Convention No. 22: **New Zealand**; Convention No. 24: **Peru**; Convention No. 25: **Peru**; Convention No. 26: **Guinea, Myanmar**; Convention No. 27: **Angola**; Convention No. 29: **Denmark, Dominican Republic, Guyana**; Convention No. 30: **Panama**; Convention No. 32: **Algeria**; Convention No. 55: **Peru**; Convention No. 56: **Peru**; Convention No. 62: **Algeria**; Convention No. 71: **Peru**; Convention No. 77: **Ecuador, Nicaragua**; Convention No. 78: **Cameroon, Ecuador**; Convention No. 87: **Myanmar, Venezuela**; Convention No. 88: **Nigeria, United Republic of Tanzania – Tanganyika, Turkey**; Convention No. 89: **India**; Convention No. 94: **Central African Republic, Ghana**; Convention No. 95: **Congo, Costa Rica, Libyan Arab Jamahiriya, Poland, Zambia**; Convention No. 96: **Swaziland, Turkey**; Convention No. 97: **Spain**; Convention No. 101: **Netherlands**; Convention No. 102: **Libyan Arab Jamahiriya, Peru**; Convention No. 106: **Colombia**; Convention No. 107: **India, Pakistan**; Convention No. 115: **Turkey**; Convention No. 118: **Libyan Arab Jamahiriya**; Convention No. 120: **Senegal**; Convention No. 121: **Chile, Libyan Arab Jamahiriya**; Convention No. 122: **Kyrgyzstan**; Convention No. 127: **Tunisia**; Convention No. 128:

after an interval of either one or two years, according to circumstances. In some instances, the Committee has also requested the government to supply full particulars to the Conference at its next session in June 2005.¹¹ In addition, in certain cases the Committee has requested governments to furnish detailed reports when simplified reports would otherwise be due.

36. The observations of the Committee 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 Annex VII.

Practical application

37. The Committee also notes with interest the judicial and administrative decisions on questions of principle relating to the application of ratified Conventions to which certain countries have referred in their reports. It noted that 49 reports contain information of this kind and thereby shed additional light on the problems raised in these cases by the practical application of the Conventions in question.

Cases of progress

38. In accordance with its usual practice, the Committee has drawn up a list of the cases in which it has been able to **express its satisfaction** at the adoption of necessary changes in a country's law or practice following comments by the Committee on the degree of conformity between national law or practice and the provisions of a ratified Convention. Details concerning the cases in question are to be found in Part II of this report and cover 53 instances in which measures of this kind have been taken in 35 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.
Argentina	81, 98
Austria	81
Benin	81, 150
Botswana	87, 98
Brazil	81
Bulgaria	81
China – Hong Kong Special Administrative Region	160
Comoros	1
Democratic Republic of the Congo	29
France	81, 138
France – French Polynesia	63, 129
Gabon	81
Greece	111, 150
Guatemala	98, 129
Latvia	81
Lithuania	154
Luxembourg	87
Madagascar	81

Libyan Arab Jamahiriya, Netherlands; Convention No. 130: **Libyan Arab Jamahiriya**; Convention No. 131: **Uruguay**; Convention No. 137: **United Republic of Tanzania**; Convention No. 140: **Guinea**; Convention No. 142: **Ecuador**; Convention No. 144: **Guinea, Pakistan, Slovakia**; Convention No. 155: **Netherlands**; Convention No. 158: **Gabon**; Convention No. 159: **Kyrgyzstan**; Convention No. 162: **Uganda**; Convention No. 169: **Argentina, Bolivia, Fiji, Paraguay, Venezuela**; Convention No. 174: **Netherlands**. Requests for advanced reports are also contained in a number of direct requests.

¹⁰ After the first report, subsequent reports are requested every two years for the priority Conventions and every five years for other Conventions (doc. GB.258/6/19).

¹¹ Convention No. 29: **Sudan**; Convention No. 77: **Ecuador**; Convention No. 78: **Ecuador**.

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.
Malawi	81
Malta	100
Mauritania	87, 98
Morocco	135
Netherlands	98
New Zealand	29, 160
Nicaragua	87
Peru	87, 88, 98, 151
Portugal	87
Romania	87
Singapore	98
Slovenia	100
Sudan	98
United Republic of Tanzania	87, 98
Turkey	87, 98, 118, 158
United Kingdom	98
United Kingdom – Gibraltar	29
Viet Nam	81
Zimbabwe	100

39. Thus, the total number of cases in which the Committee has been led to **express its satisfaction** with the progress achieved following its comments has risen to 2,429 since the Committee began listing them in its reports in 1964.

40. In addition, there have been 267 cases in which the Committee has been able to **note with interest** various measures that have been taken following its comments with a view to ensuring a fuller application of ratified Conventions. Details concerning the cases in question are to be found in Part II of this report and in the requests addressed directly to governments concerned and cover 267 instances in which measures of this kind have been taken concerning 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.
Algeria	150
Angola	81, 138, 182
Argentina	182
Australia	81, 98
Austria	138, 182
Azerbaijan	148
Bahamas	100, 138
Bangladesh	81, 182
Barbados	138
Belarus	111

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.
Belgium	138, 149
Belize	97, 138
Benin	81, 138, 150, 182
Bolivia	81, 129, 138
Botswana	87
Brazil	29, 81, 138, 142, 182
Bulgaria	81, 100, 111, 182
Burkina Faso	138, 182
Burundi	105, 138
Canada	160, 162
Chile	29, 63, 98, 138, 182
China – Hong Kong Special Administrative Region	81, 97, 138, 160
China – Macau Special Administrative Region	81, 138
Colombia	81, 129, 138, 160
Costa Rica	81, 160, 182
Croatia	81, 138
Cuba	150
Cyprus	95, 111, 171, 172
Czech Republic	87, 100
Dominican Republic	29, 81, 138, 182
Ecuador	138
Egypt	63, 100, 138
El Salvador	81, 138, 160, 182
Equatorial Guinea	87, 103
Fiji	8, 85, 87, 98
Finland	81, 111, 129, 149, 150, 182
France	42, 63, 81, 111, 182
France – French Guiana	81
France – French Polynesia	81, 129
France – New Caledonia	81, 129
France – St. Pierre and Miquelon	81
Gabon	81
Germany	81, 129
Ghana	182
Greece	81, 150
Guatemala	81, 129, 138, 144, 160, 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.
Honduras	81, 138, 182
Hungary	111, 138, 142
Iceland	111
India	29, 89, 160
Indonesia	98, 138, 182
Ireland	81, 139, 160
Italy	81, 182
Japan	100, 138
Jordan	81, 138
Kazakhstan	81, 138
Kenya	98, 100, 182
Republic of Korea	138, 182
Kuwait	87
Latvia	81, 111, 120, 158
Lebanon	1, 17, 98, 182
Lesotho	98, 138, 182
Libyan Arab Jamahiriya	130
Lithuania	111, 159
Luxembourg	100, 111, 150, 182
Madagascar	81, 129
Malawi	81, 129, 182
Mali	81, 87
Malta	100, 111
Mauritania	14, 29, 111, 182
Mauritius	98
Mexico	161, 167, 182
Mongolia	123
Morocco	30, 100, 111, 182
Namibia	111
Netherlands	177
Netherlands – Aruba	101
Nicaragua	13, 87
Nigeria	87
Norway	13, 87, 98, 100, 111
Panama	88
Papua New Guinea	100, 138

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.
Peru	71, 81, 87, 102
Philippines	182
Poland	45, 62, 87, 115, 119, 127
Portugal	45, 148, 149, 159, 182
Romania	81, 87, 98, 129
Russian Federation	87
Rwanda	135
Sao Tome and Principe	18
Serbia and Montenegro	87
Slovakia	45
Slovenia	136, 138, 139, 162
South Africa	45, 100, 111
Spain	45, 100, 111, 159
Sri Lanka	87, 182
Swaziland	98
Sweden	115
Syrian Arab Republic	138
United Republic of Tanzania	63, 87, 148, 182
Turkey	87, 127, 182
Ukraine	87
United Kingdom	68, 87, 135, 138, 182
United Kingdom – Guernsey	98
United States	182
Uruguay	148, 182
Venezuela	87, 98, 111
Viet Nam	100, 182
Yemen	81
Zimbabwe	45, 100

41. All these cases provide an indication of the efforts made by governments to ensure that their national law and practice are in conformity with the provisions of the ILO Conventions they have ratified.

Role of employers' and workers' organizations

42. 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. Almost all governments have indicated the organizations to which they have communicated copies of the information supplied to the Office on the submission to the competent authorities of the instruments adopted by the Conference.

Observations made by employers' and workers' organizations

43. Since its last session, the Committee has received 533 observations (compared to 297 last year), 70 of which were communicated by employers' organizations and 463 by workers' organizations. The Committee welcomes this increase, and recalls the importance it attaches to this contribution by employers' and workers' organizations to the tasks of the supervisory bodies, which is essential for the Committee's evaluation of the application of ratified Conventions in law and in practice.

44. The majority of observations received (501) relate to the application of ratified Conventions (see Appendix III).¹² Thirty-two observations relate to the reports provided by governments under article 19 of the Constitution of the ILO on the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).¹³

45. The Committee notes that, of the observations received this year, 335 were transmitted directly to the Office, which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. In 198 cases, the governments transmitted the observations with their reports, sometimes adding their own comments.

46. The Committee also examined a number of other observations by employers' and workers' organizations, consideration of which had been postponed from the last session because the observations of the organizations or the replies of the governments had arrived just before or just after the session. It has again had to postpone the examination of a number of observations to its next session, 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.

47. The Committee notes that in most cases the employers' and workers' organizations endeavoured to gather and present precise elements of law and fact on the application in practice of ratified Conventions. The Committee recalls that for the purpose of its examination it is important for organizations to give adequate details.

48. The Committee notes that the matters dealt with in these observations have touched on a very wide range of Conventions. The second part of this report contains most of the comments 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.

Submission of Conventions and Recommendations to the competent authorities (article 19, paragraphs 5, 6 and 7, of the Constitution)

49. 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 90th Session (2002) (Protocol of 2002, Recommendations Nos. 193 and 194);
- (b) information on the steps taken to submit to the competent authorities the Seafarers' Identity Documents (Revised) Convention, 2003 (No. 185), adopted by the Conference at its 91st Session (2001);
- (c) additional information on the steps taken to submit to the competent authorities the instruments adopted by the Conference from its 31st Session (1948) to its 90th Session (2002) (Conventions Nos. 87 to 184, Recommendations Nos. 83 to 194 and the Protocols);
- (d) replies to the observations and direct requests made by the Committee at its previous session (November-December 2003).

50. The table in Appendix IV of Part Two of this report shows the position of each member State on the basis of the information supplied by governments regarding the obligation to submit the instruments adopted by the Conference to the competent authorities. Appendix V shows the overall situation with regard to the instruments adopted since the 51st Session (June 1967) of the Conference. Appendix VI contains a summary indicating, where the information has been provided, the name of the competent authority to which the instruments adopted by the Conference at its 90th and 91st Sessions (June 2002 and 2003) were submitted and the date of submission.

90th Session

51. The instruments adopted at the 90th Session (June 2002) of the Conference were to be submitted to the competent authorities within one year or, under exceptional circumstances, within 18 months of the closure of the session, that is before 20 June 2003 and 20 December 2003, respectively. The Committee notes with interest the information on submission of these instruments to the competent authorities provided by the following 29 States, in addition to those

¹² Information on 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>.

¹³ See the report in Part III(1B) regarding the General Survey.

mentioned in the last report: **Albania, Australia, Austria, Barbados, Belgium, Cyprus, Czech Republic, El Salvador, Eritrea, France, Greece, Guatemala, Hungary, India, Indonesia, Israel, Jordan, Mauritania, Republic of Moldova, Morocco, Niger, Nigeria, Norway, Panama, Qatar, San Marino, South Africa, Switzerland and United States.** The Protocol of 2002 has received three ratifications.

91st Session

52. The Seafarers' Identity Documents (Revised) Convention, 2003 (No. 185), adopted at the 91st Session (2003) of the Conference was to be submitted to the competent authorities within one year or, under exceptional circumstances, within 18 months of the closure of the session of the Conference, that is before 19 June 2004 and 19 December 2004, respectively. The following 59 governments have provided information on the steps taken with a view to the submission of Convention No. 185 to the authorities which they consider competent: **Barbados, Belarus, Benin, Bulgaria, China, Costa Rica, Czech Republic, Denmark, Dominican Republic, Egypt, Eritrea, Finland, France, Germany, Greece, Guatemala, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Kenya, Kuwait, Lebanon, Lithuania, Luxembourg, Malaysia, Mauritania, Mauritius, Republic of Moldova, Morocco, Myanmar, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Philippines, Poland, Qatar, Romania, Saint Kitts and Nevis, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Suriname, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom and Zimbabwe.** Convention No. 185, which has received three ratifications, will enter into force on 9 February 2005.

Noted improvements

53. The Committee welcomes the special efforts made by the following governments: **Guatemala, Morocco, Nigeria and South Africa.**

General aspects

54. The Committee has noted the discussions under way in the Governing Body to consider revision of the 1980 Memorandum in order to assist governments and the social partners to discharge the obligations set forth in article 19 of the Constitution and to facilitate the transmission by governments of the information requested along uniform lines.

55. Since it was last revised by the Governing Body in 1980, the *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities* has allowed the Committee to examine the information it needs in order to assess the efforts that governments have made to fulfil this essential constitutional obligation. The Committee has accordingly underlined the importance of transmitting information to parliamentary bodies, the most widely used procedure for deciding on the ratification of Conventions and Protocols or the implementation of Recommendations at national level.

56. The Committee has always stressed, as has the Conference Committee, that in order to promote the Organization's objectives it is important to ensure that national parliaments are regularly and thoroughly informed of the instruments adopted by the Conference.

57. The Committee notes with satisfaction that, for the 112 States that have already ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), effective consultations should be held at national level on the proposals put to parliaments at the time of submission of the instruments adopted by the Conference. The effectiveness of consultations presupposes that the representatives of employers and of workers have at their disposal, sufficiently in advance, all the elements they need to reach their opinions before the government comes to its final decision.

58. The Committee hopes that the revision of the Memorandum will enable the obligation of submission to be better understood and help to remedy the serious cases of delay in submission mentioned in paragraphs 14 and 15.

Comments of the Committee and replies from governments

59. 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. In addition, requests for additional information on other points have been addressed directly to a number of countries (see the list at the end of section III).

60. The Committee hopes that the comments it is addressing this year to 132 governments will enable them better to discharge the constitutional obligation of submission and thus to contribute to the promotion of the standards adopted by the Conference and the ratification of recent Conventions. As the Committee has noted before, it is important that governments should send the information and documents requested by the questionnaire at the end of the Memorandum. The Committee must receive, for examination, a summary or a copy of the documents by which the instruments have been submitted to the parliamentary bodies, together with the proposals 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 Parliament and the relevant information has been supplied to the ILO.

Special problems

61. The Committee regrets that the governments of the following 14 countries have supplied no information showing that the instruments adopted by the Conference at the last seven or more sessions (from the 84th to the 90th) have

indeed been submitted to the competent authorities: **Afghanistan, Armenia, Cambodia, Djibouti, Guinea, Haiti, Lao People's Democratic Republic, Latvia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan.**

62. In response to the call made by the Director-General for the highest priority to be given to the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), some governments were particularly prompt in sending information on the steps taken with a view to the submission of this instrument, adopted by the Conference on 17 June 1999 at its 87th Session. Fifteen States have not yet submitted the instruments of 1999 to the competent authorities (Convention No. 182 has received 150 ratifications). The Committee remains concerned about some States which, although they have ratified Convention No. 182, have built up a very significant backlog in the submission to the competent authorities of the instruments adopted by the Conference. These countries (**Belize, Bolivia, Bosnia and Herzegovina, Cameroon, Central African Republic, Comoros, Congo, Dominica, Grenada, Guinea-Bissau, Kazakhstan, Kyrgyzstan, Madagascar, Mali, Saint Lucia, Senegal**) were mentioned in previous reports.

63. The Committee considers this situation to be a matter of extreme concern. Indeed, there is a danger that some of these countries may find it very difficult, or even impossible, to bring themselves up to date. Furthermore, neither the legislative authorities nor public opinion in these countries are regularly informed of the existence of new instruments as they are adopted by the Conference, which defeats the real purpose of the obligation of submission, as explained in the preceding paragraphs.

64. The Committee reminds governments that they may seek technical assistance from the ILO, particularly through the standards specialists in the field and the relevant branches of the Office. It particularly urges those governments with long-standing non-compliance to utilize this facility to assist them in discharging their obligations under article 19 of the Constitution.

Instruments chosen for reports under article 19 of the Constitution

65. In accordance with the decisions taken by the Governing Body, governments were requested to supply reports under article 19 of the ILO Constitution on the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).

66. A total of 272 reports were requested and 143 received.¹⁴ This represents 52.57 per cent of the reports requested.

67. 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 ILO Constitution has been received from the following 25 countries: **Afghanistan, Bosnia and Herzegovina, Cameroon, Congo, Democratic Republic of the Congo, Dominican Republic, Guinea, Guyana, Kazakhstan, Kyrgyzstan, Liberia, Mali, Mongolia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda, Uzbekistan, and Zambia.**

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

69. Part Three of this report (issued separately as Report III (Part 1B)) contains the General Survey on hours of work. 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 persons appointed by the Committee from among its members.

¹⁴ ILO: Report III (Part 1B), ILC, 93rd Session, 2005.

III. 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

70. 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, in a new procedure inaugurated this year, the United Nations, certain specialized agencies and other intergovernmental organizations with which the ILO has entered into special arrangements for this purpose, are being asked whether they have information on how Conventions are being applied. The list of the Conventions concerned and the international organizations that were consulted is as follows:

- the Indigenous and Tribal Populations Convention, 1957 (No. 107), to the United Nations Food and Agriculture Organization (FAO), the Inter-American Indian Institute of the Organization of American States, the United Nations, the United Nations Office of the High Commissioner for Human Rights, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO);
- the Radiation Protection Convention, 1960 (No. 115), to the International Atomic Energy Agency;
- the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), to FAO, the United Nations, the United Nations Office of the High Commissioner for Human Rights and UNESCO;
- > the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), to the International Maritime Organization (IMO);
- > the Rural Workers' Organisations Convention, 1975 (No. 141), to FAO, the United Nations and the United Nations Office of the High Commissioner for Human Rights;
- > the Human Resources Development Convention, 1975 (No. 142), to UNESCO;
- > the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), to the United Nations, United Nations Office of the High Commissioner for Human Rights, UNESCO and WHO;
- > the Nursing Personnel Convention, 1977 (No. 149), to WHO;
- > the Indigenous and Tribal Peoples Convention, 1989 (No. 169), to FAO, the Inter-American Indian Institute of the Organization of American States, the United Nations, the United Nations Office of the High Commissioner for Human Rights, UNESCO and WHO.

B. United Nations treaties concerning human rights

71. The Office regularly sends written reports and submits oral information, in accordance with existing arrangements with each one of them, to the various bodies responsible for the application of United Nations Conventions that are relevant to the ILO's mandate. These bodies constitute the supervisory machinery established by the United

Nations to examine the reports that governments are required to submit at regular intervals on each of the United Nations instruments that they have ratified. Since the Committee's last meeting, activities have been undertaken in relation to the bodies responsible for supervising the application of the following instruments:

- › the International Covenant on Economic, Social and Cultural Rights (three sessions);
- › the International Covenant on Civil and Political Rights (two sessions);
- › the International Convention on the Elimination of All Forms of Discrimination against Women (three sessions);
- › the International Convention on the Elimination of All Forms of Racial Discrimination (two sessions);
- › the Convention on the Rights of the Child (three sessions).

72. The Office has established a good working relationship with all these committees, and each of them regularly refers to information provided by the ILO and recommends the ratification of appropriate ILO Conventions or measures to apply them more fully. The Committee of Experts met the United Nations Committee on Economic, Social and Cultural Rights before its 2003 session, and a similar meeting took place on 25 November 2004.

73. The Office has had a series of meetings with the newly established United Nations treaty body created to monitor the implementation of the International Convention on the Protection of the Rights of all Migrants Workers and Members of their Families, which recently received the ratifications necessary to enter into force. This United Nations Convention assigns a prominent role to the ILO in examining government reports, which are due to begin arriving in 2005.

74. The Office was also represented at the 16th Meeting (June 2004) of Chairpersons of the United Nations treaty bodies to discuss closer cooperation between these bodies and the ILO and, in particular, how the treaty bodies could make better use of the detailed information provided in the ILO reports.

C. European treaties

European Code of Social Security and its Protocol

75. In accordance with the supervisory procedure established under article 74(4) of the Code, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 19 reports on the application of the European Code of Social Security and, as appropriate, its Protocol. It noted that the State parties to the Code and the Protocol continue in large measure to apply them. At the sitting in which the Committee examined the reports on the European Code of Social Security and its Protocol, the Council of Europe was represented by Ms. Michelle Akip. The conclusions of the Committee regarding these reports will be sent to the Council of Europe. Estonia and Slovenia ratified the Code in February and May 2004, respectively.

76. In addition, representatives of the ILO took part as technical advisers in the meeting of the Committee of Experts on Standard-setting Instruments in the field of social security held in Limassol (Cyprus) in May 2004, to examine the application of these instruments on the basis of the conclusions of the Committee of Experts. The Committee of Experts on Standard-setting Instruments endorsed the conclusions of the Committee of Experts. Joint missions with the Council of Europe were also carried out in the following countries: Hungary (May 2004), Lithuania (April 2004), Republic of Moldova (November 2004), Netherlands (May 2004) and Spain (March 2004).

European Social Charter

77. In accordance with article 26 of the European Social Charter, the ILO participates in an advisory capacity in the sessions of the Committee of Independent Experts responsible for supervising the application of the Charter. Since the last session of the Committee, Andorra, Armenia, Azerbaijan and Belgium have ratified the European Social Charter (Revised) and Hungary has ratified the Protocol amending the Social Charter.

D. Matters relating to human rights

78. Interest in international labour standards continues to increase outside the ILO and there is a growing conviction in other international organizations that sustainable economic development cannot take place without careful attention to the situation of workers, particularly in an economy undergoing the effects of globalization.

79. The Committee recalls that the Governing Body decided, at its March-April 1995 session, to collect information on the ratification situation of the ILO Conventions dealing with fundamental human rights (Conventions Nos. 29 and 105, 87 and 98, 100 and 111, and 138 and 182, the last having been added after its adoption in 1999) and, at its subsequent sessions, examined reports collating the replies of member States to the Director-General's letter calling for their universal ratification. The Governing Body has also examined reports of the Office's assistance to the member States for the ratification and application of these instruments. The campaign has been a great success, with more than 440 new ratifications or confirmations of ratifications previously applicable, undertaken by 158 countries. To date, of the Organization's 177 member States, 104 countries (five more than a year ago) have ratified the eight fundamental Conventions, 29 have ratified seven, and increasing numbers of States continue to deposit ratifications of these instruments. Among the eight fundamental Conventions, the Worst Forms of Child Labour Convention, 1999 (No. 182), has now acquired 150 ratifications, attaining the fastest ratification pace of any ILO Convention in its history, while the

Minimum Age Convention, 1973 (No. 138), also continues to be ratified at a rapid pace and approaches the levels of ratification of the other fundamental Conventions. The campaign continues, and detailed periodic reports are submitted to the Governing Body each year.

80. The Committee also notes that the ILO has participated in the sessions of the United Nations Permanent Forum on Indigenous Issues (third session in May 2004) and in a UNESCO World Forum on Human Rights (2004), in addition to its regular attendance at meetings of the UN Commission on Human Rights and its subsidiary bodies.

* * *

81. 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, 10 December 2004.

(Signed) Robyn Layton, QC,
Chairperson.

A. Al-Fuzaie,
Reporter.

Appendix to the General Report

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

Mr. Anwar Ahmad Rashed AL-FUZAIE (Kuwait),

Professor of Private Law of the University of Kuwait; attorney; 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; former Director of Legal Affairs of the Municipality of Kuwait; former Adviser to the Embassy of Kuwait (Paris).

Ms. Janice R. BELLACE (United States),

Associate Provost, University of Pennsylvania and Samuel Blank Professor and Professor of Legal Studies and Management of the Wharton School, University of Pennsylvania; Vice-Chairman and Founding President, Singapore Management University; Senior Editor, Comparative Labor Law and Policy Journal; member of the Executive Board 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. Prafullachandra Natvarlal BHAGWATI (India),

Former Chief Justice of India; former Chief Justice of the High Court of Gujarat; former Chairman, Legal Aid Committee and Judicial Reforms Committee, Government of Gujarat; former Chairman, Committee on Juridicare, Government of India; former Chairman of the Committee appointed by the Government of India for implementing legal aid schemes in the country; member of the International Committee on Human Rights of the International Law Association; member of the Editorial Committee of Reports of the Commonwealth; Chairman of the Advisory Board of the Centre for Independence of Judges and Lawyers of the International Commission of Jurists, Geneva; Vice-President of "El Taller"; former Chairman of the Standing Independent Group for scrutinizing and monitoring mega-power projects in India; Chairman of the United Nations Human Rights Committee; former member of the International Panel of Eminent Persons for investigating causes of genocide in Rwanda by the OAU; Regional Adviser to the High Commissioner for Human Rights for the Asia-Pacific Region; member of the International Advisory Council of the World Bank for Legal and Judicial Reform; Fellow of the American Academy of Arts and Sciences; honorary member of the Bar of the City of New York.

Mr. Michael Halton CHEADLE (South Africa),

Professor of Labour Law at the University of Cape Town; former Chief 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; 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); Benchler 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; currently Chairperson of the Board of INTERIGHTS, the International Centre for the Legal Protection of Human Rights and Chairperson of the Equal Treatment Advisory Committee of the Judicial Studies Board.

Ms. Blanca Ruth ESPONDA ESPINOSA (Mexico),

Doctor of Law; Professor of International Public Law at the Law Faculty of the National Autonomous University of Mexico; Vice-President of the Regional Council of IPPF/WHR; former President of the Senate of the Republic (1989) and of the Foreign Relations Committee; former President of the Population and Development Committee of the Chamber of Deputies and member of the Labour and Social Security Committee; former President of the Inter-American Parliamentary Group on Population and Development and former Vice-President of the Global Forum of Spiritual and Parliamentary Leaders; 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)"; former Director-General of the National Institute for Labour Studies; former Commissioner of the National Migration Institute and former editor of the Mexican Labour Review.

Ms. Robyn A. LAYTON, QC (Australia),

LL B., LL M., Barrister-at-Law; former Judge and Deputy President of the South Australian Industrial Court and Commission; former Deputy President of the Federal Administrative Appeals Tribunal; Chairperson of the Human Rights Committee of the Law Society of South Australia; former Director, National Rail Corporation; former Commissioner on the Health Insurance Commission; former Chairperson of the Australian Health Ethics Committee of the National Health and Medical Research Council; former Honorary Solicitor for the South Australian Council for Civil Liberties; former Solicitor for the Central Aboriginal Land Council; former Chairman of the South Australian Sex Discrimination Board.

Mr. Pierre LYON-CAEN (France),

Honorary Advocate-General, Court of Cassation (Social Division); President, Journalists Arbitration Commissions; Former Deputy Director, Office of the Minister of Justice; Graduate of the Ecole Nationale de la Magistrature.

Mr. Sergey Petrovitch MAVRIN (Russian Federation),

Professor of Labour Law (Law Faculty of the St. Petersburg State University); Doctor of Law; Chief of the Labour Law Department; former Director of the Interregional Association of Law Schools; Expert of the Labour Committee of the State Duma and Regional Legislative Assembly of St. Petersburg.

Mr. Cassio MESQUITA BARROS (Brazil),

Barrister-at-Law specializing in labour relations (São Paulo); Titular Professor of Labour Law at the Law School of the public University of São Paulo and the Law School of the private Pontifical Catholic University of São Paulo; President of the Arcadas Support Foundation for the Faculty of Law of the University of São Paulo; Founder and President of the Centre for the Study of International Labour Standards of the University of São Paulo; Professor honoris causa of the ICA University of Peru and the University Constantin Brancusi (Romania); Academic Adviser, San Martín de Porres University (Lima); honorary member of the Association of Labour Lawyers (São Paulo); Honorary President of the "Asociación Iberoamericana de Derecho del Trabajo y Seguridad Social" (Buenos Aires, Argentina); Honorary President of the "Academia Nacional do Direito do Trabalho" (Rio de Janeiro); member of the International Academy of Law and Economy (São Paulo); titular member of the "Academia Iberoamericana de Derecho del Trabajo y de la Seguridad Social" (based in Madrid); member of the National Commission on Labour Law and Labour Relations for Labour Reform.

Ms. Angelika NUSSBERGER (Germany),

Doctor of Law; Ordinary Professor of Law at the University of Cologne; Legal Adviser in the Directorate General of Social Cohesion (DG III) of the Council of Europe (2001-02).

Mr. Benjamin Obi NWABUEZE (Nigeria),

LL D (London); Hon. LL D (University of Nigeria); Senior Advocate of Nigeria; Laureate of the Nigerian National Order of Merit; former Professor of Law at the University of Nigeria; former Professor and Dean of the Faculty of Law at the University of Zambia; former member of the Governing Council, Nigerian Institute of International Affairs; Fellow of the Nigerian Institute of Advanced Legal Studies; former member, Council of Legal Education;

former Minister of Education for Nigeria; former Constitutional Adviser to the Government of Kenya (1992), Ethiopia (1992) and Zambia (1993); Honourable Fellow of four higher educational institutions in Nigeria; International Intellectual of the Year for the year 2001.

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; 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; former President of the Spanish Association of Labour Law and Social Security.

Mr. Amadou SÔ (Senegal),

Honorary President of the Council of State; former member of the Constitutional Council; former President of the Social and Administrative Section of the Supreme Court; former Secretary-General of the Supreme Court; former Councillor of the Supreme Court; former President of the Social Chamber of the Court of Appeal; former Director of Judicial Services; former Councillor of the Court of Appeal; former President of the Dakar Labour Court; former Auditor of the Supreme Court; former Inspector of Railways.

Mr. Budislav VUKAS (Croatia),

Professor of Public International Law at the University of Zagreb, Faculty of Law; Vice-President of the International Tribunal for the Law of the Sea; member of the Institute of International Law; member of the Permanent Court of Arbitration; member of the OSCE Court of Conciliation and Arbitration; member of the International Council of Environmental Law; member of the Commission on Environmental Law of the International Union for Conservation of Nature and Natural Resources.

Mr. Yozo YOKOTA (Japan),

Professor, Chuo Law School; Special Adviser to the Rector, United Nations University; Member of the UN Sub-Commission 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

Afghanistan

The Committee notes with regret that, for the eighth year in succession, the reports due have not been received. While taking note of the ongoing transitional process of reconstruction of the country and rebuilding of national institutions, it hopes that appropriate measures will be taken to ensure application of the ratified Conventions as soon as the circumstances so permit.

Antigua and Barbuda

The Committee notes that, for the second year in succession, the reports due have not been received. It trusts that the Government will in future discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Armenia

The Committee notes with regret that, for the tenth year in succession, the reports due have not been received. It also notes with regret that the first report due since 1995 on Convention No. 111 has not been received; nor have the first reports due since 1996 on Conventions Nos. 100, 122, 135 and 151; nor the first report due since 1998 on Convention No. 174; nor has the first report due since 2001 on Convention No. 176. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Azerbaijan

The Committee notes that the first reports due since 2002 on Conventions Nos. 81 and 129 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Bahamas

The Committee notes that the first report due since 2003 on Convention No. 147 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Bosnia and Herzegovina

The Committee notes that the first report due since 2002 on Convention No. 105 has not been received; nor has the first report due since 2003 on Convention No. 182. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of this Convention, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Chad

The Committee notes that the first reports due since 2002 on Conventions Nos. 132 and 182 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Denmark

Greenland

The Committee notes that, for the second year in succession, the reports due have not been received. It trusts that the Government will in future discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Dominica

The Committee notes that the first report due since 2003 on Convention No. 182 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report on the application of this Convention, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Equatorial Guinea

The Committee notes that the first reports due since 1998 on Conventions Nos. 68 and 92 have not been received; nor has the first report due since 2003 on Convention No. 182. The Committee trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

France

French Southern and Antarctic Territories

The Committee reverts to the content of its previous comments on the enforcement of maritime labour Conventions for vessels registered in these Territories. This includes a general observation requesting the Government to forward a copy of the report to which it referred concerning the conditions of employment for foreign seafarers on vessels registered in the French Southern and Antarctic Territories (TAAF). The Committee renews its request for the Government to forward the report(s) and any subsequent documents relating thereto.

It recalls that the enabling texts concerning the system of maritime labour inspection (Law 96-151 of 26.2.96 and Decree 99-489 of 7.6.99) were promulgated pursuant to the Labour Code and only apply to vessels on the first register. In considering the extraterritorial status of the Kerguelen Register with regard to the European Union, the Committee likewise recalls that the national legislation applicable to vessels registered in the TAAF – where a majority of the seafarers are non-EU citizens – is the Overseas Labour Code (CTOM), and not the Labour Code (applicable in France and other overseas territories) which contains special provisions concerning seafarers and a chapter on the special régime of the Merchant Marine.

While the Government has evoked the possibility that maritime labour inspection pursuant to the aforementioned texts could be extended to the TAAF following the recent ratification of the Labour Inspection (Seafarers) Convention, 1996 (No. 178), the Committee requests the Government to clarify how, when and by whom international maritime labour standards for vessels registered in the TAAF are monitored, and to provide reports of inspections, as previously requested by this Committee, but which have never been provided for the TAAF.

In addition, the Committee recalls that the maritime labour inspection service referred to above has been in the creation phase for over three years (since September 2001) and requests clarification as to when it is to become operational and to what extent, if any, its territorial jurisdiction will extend to the TAAF.

[The Government is asked to supply detailed reports in 2006 on the following Conventions: Nos. 9, 16, 22, 23, 58, 68, 73, 74, 108, 133.]

Gambia

The Committee notes that the first reports due since 2002 on Conventions Nos. 29, 105 and 138 have not been received; nor has the first report due since 2003 on Convention No. 182. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Grenada

The Committee notes that, for the second year in succession, the reports due have not been received. It trusts that the Government will in future discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Haiti

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will in future discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Iraq

The Committee notes that, for the second year in succession, the reports due have not been received. It also notes that the first reports due since 2003 on Conventions Nos. 172 and 182 have not been received. While taking note of the process of reconstruction of the country and rebuilding of national institutions, as well as the underlying climate of violence, the Committee hopes that appropriate measures will be taken by the Government to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Kiribati

The Committee notes that, for the second year in succession, the reports due have not been received. It also notes that the first reports due since 2003 on Conventions Nos. 29 and 105 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Kyrgyzstan

The Committee notes that the first report due since 1995 on Convention No. 133 has not been received; nor the first report due since 2001 on Convention No. 105; nor has the first report due since 2002 on Convention No. 81. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Lesotho

The Committee notes that the first reports due since 2003 on Conventions Nos. 105 and 150 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Liberia

The Committee notes with regret that, for the fifth year in succession, the reports due have not been received. The Committee, once again noting the evolution of the national situation, nevertheless notes with regret that the first report due since 1992 on Convention No. 133 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Madagascar

The Committee notes that the first report due since 2003 on Convention No. 182 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of ratified

Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Pakistan

The Committee notes that the first reports due since 2003 on Conventions Nos. 100 and 182 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Paraguay

The Committee notes that, for the second year in succession, the reports due have not been received. It also notes that the first report due since 2003 on Convention No. 182 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Saint Kitts and Nevis

The Committee notes with regret that the first reports due since 2002 on Conventions Nos. 87, 98 and 100 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Saint Lucia

The Committee notes with regret that the first reports due since 2002 on Conventions Nos. 154, 158 and 182 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Serbia and Montenegro

The Committee notes that the first reports due since 2003 on Conventions Nos. 24, 25, 27, 102, 113, 114 and 156 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Solomon Islands

The Committee notes with regret that, for the seventh year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Somalia

The Committee notes with regret that the reports due have not been received. While taking note of the national situation, it hopes that appropriate measures will be taken to ensure application of ratified Conventions as soon as circumstances so permit.

Tajikistan

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It also notes with regret that the first report due since 2001 on Convention No. 105 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

United Republic of Tanzania

Zanzibar

The Committee notes that, for the second year in succession, the reports due have not been received. It trusts that the Government will in future discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

The former Yugoslav Republic of Macedonia

The Committee notes with regret that, for the seventh year in succession, the reports due have not been received. It however notes that, at the Government's request, technical assistance was provided in 2004 with the aim of addressing the various issues related to Conventions which it has ratified. The Committee trusts therefore that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations.

Turkmenistan

The Committee notes with regret that, for the sixth year in succession, the reports due have not been received. It also notes with regret that the first reports due since 1999 on Conventions Nos. 29, 87, 98, 100, 105 and 111 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Uganda

The Committee notes that the first report due since 2003 on Convention No. 182 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Zambia

The Committee notes that the first report due since 2003 on Convention No. 182 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Azerbaijan, Barbados, Belize, Bosnia and Herzegovina, Botswana, Burundi, Cambodia, Cape Verde, Chad, Comoros, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, France: French Southern and Antarctic Territories, France: St. Pierre and Miquelon, Gambia, Georgia, Ghana, Guinea, Guyana, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Libyan Arab Jamahiriya, Netherlands: Aruba, Niger, Pakistan, Saint Lucia, San Marino, Sao Tome and Principe, Serbia and Montenegro, Seychelles, Sweden, United Republic of Tanzania: Tanganyika, Trinidad and Tobago, United Kingdom: British Virgin Islands, United Kingdom: Isle of Man, United Kingdom: Montserrat, United Kingdom: St. Helena, Yemen, Zambia.*

Freedom of Association, Collective Bargaining, and Industrial Relations

Albania

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1999)

The Committee takes note of the report of the Government on the application of the Convention and the comments of the Confederation of the Trade Unions of Albania (CTUA/KSSH).

Articles 1 and 2 of the Convention. The Committee notes that Law No. 8549, dated 11 November 1999, on the Status of the Civil Servant guarantees to civil servants as defined in article 2(1) of the Act, the right to form and join labour unions and professional organizations and the right to take part, through labour unions or representatives, in decision-making processes relating to working conditions. The Committee notes however that, according to the CTUA/KSSH, the aforesaid Law is not applicable to all categories of employees in the public sector and employees in the customs, taxation and local governance offices (prefectures), etc. The Committee therefore requests the Government to indicate whether all categories of employees in the public sector and all civil servants are guaranteed the rights provided under the Convention.

Article 4. The Committee notes that by virtue of article 4 of Law No. 7961, dated 7 December 1995, the Code of Labour of the Republic of Albania, protection against anti-union discrimination granted by articles 10 and 146(1)(e) of the Code is applicable to civil servants covered by Law No. 8549. The Committee requests the Government to indicate in its report whether all categories of employees in the public sector and all civil servants enjoy such protection from anti-union discrimination.

Article 5. The Committee notes that articles 184-186 of the Labour Code prohibit any acts of interference by state bodies and employers in the establishment, functioning or administration of employees' organizations and article 202 sanctions violations of these provisions. The Committee notes however that the rules on labour union activities of civil servants have not been formulated yet as required under article 20(d) of Law No. 8549, dated 11 November 1999, on the Status of the Civil Servant. The Committee therefore requests the Government to indicate the measures taken or envisaged to formulate the said rules, and to transmit a copy of the rules, when adopted.

Article 6. The Committee notes that article 181(7) of the Labour Code requires employers to create all the necessary conditions and facilities for the elected representatives of the organizations of employees to normally exercise their functions, which are defined in the collective contract. The Committee therefore requests the Government to indicate in its next report whether the civil servants covered by the Law on the Status of the Civil Servant have entered into collective contracts defining the necessary conditions and facilities to be extended to the elected representatives of their organizations. The Committee also requests the Government to indicate whether, in practice, representatives of recognized organizations of civil servants and public employees are afforded the facilities necessary to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.

Article 7. The Committee notes that article 20(dh) of the Law on the Status of the Civil Servant guarantees to civil servants the right to take part through labour unions or representatives, in decision-making processes relating to working conditions. Article 4(3) of the Law on the Status of the Civil Servant provides that the Council of Ministers shall issue instructions on the negotiation of working conditions with labour unions or representatives in the institutions of the central administration subordinated to it. The Government has not indicated whether these instructions have been issued. The Committee therefore requests the Government to indicate in its next report the measures taken or envisaged to issue the requisite instructions under article 4(3) of the Law on the Status of the Civil Servant and to transmit a copy of the instructions, when issued.

The Committee notes that Chapter XV of the Labour Code contains provisions relating to the negotiation of collective contracts. The Committee requests the Government to include, in its next report, information on and available statistics of the number of collective contracts of employment entered into by organizations of civil servants and the number of employees covered.

Article 8. The Committee notes that articles 188-196 of the Labour Code provide for the resolution of employment-related collective disputes through mediation, conciliation and arbitration. The Committee notes, however, that it has been indicated by the CTUA/KSSH that the machinery contemplated under articles 188-196 of the Code has never functioned normally and the boards of conciliation are not always put in motion in order to settle labour disputes. The Committee therefore requests the Government to indicate in its next report whether the machinery contemplated under the aforesaid provisions functions normally and regularly.

Angola

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

The Committee notes with regret that the Government's report does not contain replies to the questions raised in its previous comments.

1. *Article 4 of the Convention.* The Committee noted previously that sections 20 and 28 of Act No. 20-A/92 provide that collective labour disputes in public utility enterprises may be settled by the Ministry of Labour, Public Administration and Social Security after the parties have been heard. The Committee noted that the list of public utility activities (section 1.3) is broader than the concept of essential services in the strict sense of the term (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee recalls that arbitration imposed at the initiative of the authorities is admissible only in essential services or for the purpose of concluding a first collective agreement when the trade union so requests. The Committee therefore requests the Government to take the necessary measures to amend the legislation so as to bring it into conformity with the Convention and hopes that the National Tripartite Commission for the ILO will address this matter in the near future. The Committee requests the Government to keep it informed on this subject.

2. *Article 6.* The Committee noted previously that, under the terms of section 2 of Act No. 20-A/92, employees in the central and local government and public services not organized in the form of an enterprise are not covered by the Act. The Committee once again requests the Government to indicate whether the legislation guarantees the right to collective bargaining of public employees who are not engaged in the administration of the State and, if so, to indicate the relevant provisions. It also requests the Government to specify which public services are not organized in the form of an enterprise.

Antigua and Barbuda

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

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

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. The Committee had noted the Government's indication in its latest report that the interruption of all these services on the list of essential services in the Labour Code would endanger the life, personal safety or health of the whole or part of the population. The Government further stated that the Minister is obliged to refer disputes to binding arbitration in cases of acute national crisis.

On the matter of essential services, the Committee notes the inclusion of the government printing office and the port authority in the list and considers that such services cannot be considered to be essential in the strict sense of the term. In this respect, the Committee would draw the Government's attention to paragraph 160 of its 1994 General Survey 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 other services which are of public utility rather than impose an outright ban on strikes, which would 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 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. It further requests the Government to indicate the measures taken or envisaged to ensure that 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).

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

Argentina

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

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) and the Central of Argentine Workers (CTA) on the application of the Convention.

The Committee notes that the ICFTU and CTA comments refer to matters raised by the Committee in the observations that it has been making to the Government for many years concerning certain provisions of Act No. 23551 respecting trade union associations (for example, relating to the requirements to be able to contest the trade union status of an association and the conditions for the granting of trade union status to trade unions at the level of the trade, occupation or category). The ICFTU further refers to acts of anti-union repression against the leaders and members of the Central Union of Professionals of Telecommunications Enterprises (CEPETEL) and the Buenos Aires Graphical Federation.

The Committee regrets that the Government has not provided its observations in respect of these comments. The Committee notes that the legislative matters raised by the ICFTU and the CTA were examined the previous year in the context of the regular reporting cycle. Under these conditions, the Committee requests the Government to provide its comments on these matters, particularly on the allegations concerning acts of anti-union repression, as well as on the other outstanding issues raised by the Committee (see 2003 observation, 74th Session) for examination during the regular reporting cycle in 2005.

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

The Committee notes the Government's report.

1. *Article 4 of the Convention.* The Committee recalls that for several years it has been commenting on certain provisions which restrict free collective bargaining by requiring the approval of the Ministry of Labour for the registration of collective agreements which are broader in coverage than enterprise agreements (in according approval, the Minister takes into account criteria of productivity, investment, the introduction of technology and vocational training systems). In this respect, the Committee notes with satisfaction that the Labour Regulation Act No. 25877, of 18 March 2004, has removed these criteria. The Committee also notes that, under the above Act, collective agreements covering an enterprise or group of enterprises may be registered on the motion of one of the parties (section 11 of the Act).

2. The Committee also recalls that it referred previously to the need to ensure the right to collective bargaining of public officials in the Province of Buenos Aires, since the Convention allows only public officials engaged in the administration of the State to be excluded from this right. The Committee notes the Government's indication that the legislation vetoed by the executive authorities of the Province of Buenos Aires on the grounds that it afforded the right of collective bargaining to public servants in the province referred specifically to public officials engaged in the administration of the State, and that the Convention allows the exclusion of such public officials from collective bargaining.

3. Finally, the Committee regrets that the Government has not provided its observations on the comments made by the Confederation of Argentine Workers (CTA) on 19 November 2003 and repeated in its communication of 19 November 2004. The Committee notes the view expressed by the CTA that, in order to comply with *Article 1* of the Convention, the Government should extend the protection enjoyed by the representatives of organizations with trade union status (sections 48 and 52 of Act No. 23551) to the representatives of trade union organizations which are merely registered and to the founding members of the provisional committees of new trade union organizations. The Committee refers in this respect to its comments on the application of Convention No. 87 by Argentina. The Committee also notes that the CTA considers to be in violation of *Article 2* of the Convention the provisions of section 3 of Decree No. 1040/01, which allows employers to set in motion the procedure of establishing the frame within which a trade union operates through the competent authority so that the latter can determine the trade union that is representative in disputes relating to representation by several organizations in cases where disputes could have an impact within the enterprise to wage or benefit systems, or when through this process asymmetric coverage by collective agreements could be corrected. In this regard, the Committee requests the Government to provide information on the interpretation of this provision, in particular regarding acts of anti-union interference, including information on possible means of judicial recourse.

Australia

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

The Committee takes note of the Government's reports as well as the comments of the Australian Council of Trade Unions (ACTU) and the Australian Chamber of Commerce and Industry (ACCI) as well as the Government's observations thereon.

Federal jurisdiction

The Committee recalls that its previous comments concerned the conformity of several provisions of the Workplace Relations Act, 1996 (WR Act) with the Articles of the Convention. Noting that the WR Act applies also to the State of Victoria, the Northern Territory and the Australian Capital Territory the Committee's comments on the WR Act, as set out below, are also relevant with respect to these jurisdictions.

Articles 1 and 4 of the Convention. Protection against anti-union discrimination in the framework of collective bargaining. 1. *Protection against anti-union discrimination in case of refusal to negotiate an Australian Workplace*

Agreement (AWA). As to the particular notion of “Australian Workplace Agreement” (AWA), the Committee refers to the clarifications provided in its 1997 observation on the application of the Convention by Australia. The Committee notes that its previous comments concerned the issue of protection against anti-union discrimination under the WR Act. The Committee takes note of the Government’s statement that full protection against all acts of anti-union discrimination and for all categories of workers is provided under the combined provisions of: (1) section 170CK of the WR Act, which applies in case of anti-union dismissals; (2) Part XA of the WR Act, in particular sections 298K and 298L which provide protection to all workers and in relation to a broader range of conduct, including not only conduct resulting in the termination of employment, but also threatened conduct; and (3) section 170WG(1) of the WR Act which prohibits the application of duress against an employee in connection with an AWA. The Committee takes note in this respect of several court rulings communicated by the Government. The Committee also notes, however, that the abovementioned sections do not seem to provide adequate protection against anti-union discrimination (at the time of recruitment, during employment or, for certain wide categories of workers, at the time of dismissal) to workers who refuse to negotiate an AWA and insist on having their terms and conditions of employment governed by collective agreements, contrary to *Articles 1 and 4* of the Convention.

Firstly, with regard to discrimination at the time of recruitment, the Committee notes that section 298L of the WR Act does not include a refusal to negotiate an AWA among the prohibited grounds of anti-union discrimination at the time of hiring. According to both the ACTU and the Government, the courts found that an employer offering new employees a job conditional on signing an AWA did not apply duress, as, in that case, there was no pre-existing relationship between the parties (*Maritime Union of Australia v. Burnie Port Corporation Pty. Ltd.* (2000) 101 IR 435), while the Employment Advocate has repeatedly held that where an employee is offered a position with a new employer conditional upon entering into an AWA this will not, without more, amount to duress under section 170WG(1) of the WR Act. The Committee recalls that the protection provided for in the Convention covers both the time of recruitment and the period of employment, including the time of work termination (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 210). The Committee considers that sections 170WG(1) and 298L of the WR Act and the relevant national practice do not appear to afford adequate guarantees against anti-union discrimination at the time of recruitment and cannot be considered as measures to promote collective bargaining.

Secondly, the Committee notes with regard to discrimination during employment, that according to both the ACTU and the Government, the courts found no anti-union discrimination in a case in which employees had been required to sign AWAs in order to receive a wage increase, thereby giving up their right to collective bargaining; as a result, those who chose to remain on the collective agreement received inferior conditions (*Australian Workers’ Union v. BHP Iron-Ore Pty. Ltd.* (2001) FCA 3). The Committee notes that according to the Government, the Court found that in this case, there was no evidence of pressure by the employer, who had made offers of individual agreements to all employees, as it was clear that the existing collective instruments would continue to operate for those employees who did not accept the offer of individual agreements. The Committee understands from the above that the finding that there was no discrimination, was based on the fact that there would be no dismissals; however, the issue of anti-union discrimination in the course of employment was not addressed. The Committee recalls that *Article 1(2)(b)* of the Convention covers, in addition to dismissal, acts which “otherwise” prejudice a worker by reason of union membership or because of participation in union activities (see General Survey, *op. cit.*, paragraph 212). It considers that situations in which workers who refuse to give up the right to collective bargaining are denied a wage rise amount to anti-union discrimination contrary to *Article 1* and constitute an obstacle to collective bargaining contrary to *Article 4* of the Convention.

Furthermore, the Committee notes with concern from the Government’s report that in another case the Australian Industrial Relations Commission (AIRC) held that an employer would not be in breach of either section 170CK or section 298K by relying on an undertaking given by an employee to “not involve himself in union activities forever” and that such an undertaking could be enforced by the employer (*Container Terminals Australia Limited v. Toby*, 24 July 2000). The Committee considers that enforcing an undertaking not to be involved in union activities forever amounts to a clear act of anti-union discrimination, contrary to *Article 1* of the Convention and certainly does not constitute a measure to encourage and promote collective bargaining.

Thirdly, with regard to discrimination at the time of termination of employment, the Committee notes that whereas refusal to negotiate in connection with an AWA is provided as a prohibited ground for dismissal in section 170CK(2)(g), such refusal is not a prohibited ground for dismissal under section 298L. As a result, the wide categories of workers who are excluded from the scope of section 170CK by virtue of section 170CC (employees on contracts of employment for a specified period of time or a specified task, employees on probation or engaged on a casual basis, those “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 undertakings in which they are employed”, and those whose remuneration falls below a certain threshold), do not seem to be protected against anti-union dismissals if they refuse to negotiate an AWA (thereby insisting on having their conditions and terms of employment governed by collective agreements). The Committee considers that these provisions are contrary to *Article 1* of the Convention and constitute an obstacle to collective bargaining contrary to *Article 4*.

The Committee therefore requests the Government to indicate in its next report all measures, taken or envisaged, to revise sections 170CC, 170WG and 298L of the WR Act so that sufficient legal protection is provided against all acts of

anti-union discrimination (committed at the time of recruitment, during employment, and for the wide categories of workers excluded from the scope of section 170CK, at the time of dismissal) against workers who refuse to negotiate an AWA and insist on having their terms and conditions of employment governed by collective agreements.

2. *Protection against anti-union discrimination in case of negotiation of multiple business agreements.* The Committee recalls that in its previous comments it had expressed concern at the exclusion from the scope of section 170ML, by section 170LC(6) of the WR Act, of industrial action taken with regard to the negotiation of multiple business agreements which was therefore not considered as “protected action” and was not covered by legal immunity. The Committee notes that this exclusion means that workers negotiating a multiple business agreement are not protected from anti-union dismissals under section 170MU and that, if they undertake industrial action, this might be regarded as coercion under section 170NC and would not appear to afford them the protection provided for lawful trade union activities under sections 298K and 298L(1)(n). The Committee takes note of the Government’s statement that, although the provisions of the Act are directed towards facilitating agreement at the enterprise or workplace level, the parties are free to negotiate and make multiple employer agreements outside the formal system if they so choose, and the Act expressly contemplates such bargaining. The Committee notes, however, that according to ACTU such agreements outside the formal system would be difficult to enforce and could not be adequately negotiated because any industrial action taken would be unlawful in common law. The Committee therefore observes that, by not affording adequate protection against anti-union discrimination during the negotiation of multi-employer agreements, the WR Act introduces obstacles to such negotiation. The Committee recalls in this respect that in its previous comments it had emphasized that the choice of the bargaining level should normally be made by the partners themselves and that the parties “are in the best position to decide the most appropriate bargaining level” (see General Survey, op. cit., paragraph 249). The Committee once again requests the Government to indicate in its next report any measures taken or contemplated to amend sections 170LC(6) of the WR Act so as to ensure that workers are adequately protected against discrimination for negotiating a collective agreement at whatever level the parties deem appropriate and that employers’ and workers’ organizations have a free choice as to the level at which they wish to negotiate collectively.

Articles 2 and 4. Protection against acts of interference in the framework of collective bargaining. The Committee notes that section 170LJ(1)(a) enables an employer to make an agreement “with one or more organisations of employees” where each organization has “at least one member” employed in the single business and is entitled to represent the industrial interests of the member in relation to work that will be subject to the agreement. It appears to the Committee that the effect of this provision read together with the non-discrimination provision in section 170NB(1) (which requires that in negotiating an agreement, an employer must not discriminate between employees who are members of an organization and those who are not members, or between those who are members of a particular organization and others who are members of a different one) is that collective bargaining in the name of all workers may take place regardless of the representativeness of a trade union in the particular undertaking and of the wishes of the employees. The Committee notes in this respect that, according to the ACTU, these provisions allow employers to “shop around” amongst unions to see whether they can gain an advantage by dealing with one union over another. The Committee notes that the provisions of section 170LJ(1)(a) in conjunction with those of section 170NB might enable an employer to unduly influence the choice of workers as to the trade union that should represent them in negotiations thereby enabling the employer to interfere in the functioning of trade unions, contrary to *Article 2* of the Convention. It also recalls that the determination of representative trade unions should be based on objective and pre-established criteria so as to avoid any possibility of partiality and abuse (see General Survey, op. cit., paragraph 97). The Committee therefore requests the Government to indicate in its next report any measures taken or contemplated to amend section 170LJ(1)(a) of the WR Act so as to establish appropriate guarantees against employer interference in the context of the selection of a bargaining partner. In particular, the Committee would suggest the establishment of a mechanism for the rapid and impartial examination of allegations of acts of interference in the context of the selection of a bargaining partner, and the adoption of safeguards like objective and pre-established representativeness requirements.

Article 4. Measures to promote free and voluntary collective bargaining. 1. *Relationship between AWAs and collective agreements.* The Committee recalls that in its previous comments it had noted that under section 170VQ(6)(c) of the WR Act, once an AWA is in place, it operates to the exclusion of a certified collective agreement (unless the latter was already in operation and until its expiry, according to section 170VQ(6)(a)(i) and (ii) or if the certified collective agreement expressly allows a subsequent AWA to operate to its exclusion, according to section 170VQ(6)(a)(iii)). It further notes that according to the Government, if an AWA has not passed its nominal expiry date, it excludes the application of a certified collective agreement which has taken effect in the meantime, even where the collective agreement contains more favourable terms and conditions of employment (section 170VQ(6)(b) of the WR Act). The Committee is of the view that the fact that a collective agreement which is subsequent to an AWA may prevail over it only after the expiration of the duration of the AWA, constitutes discrimination with regard to workers who may wish to join a union during their employment, since such workers will not be able to profit from any favourable provisions of the collective agreement despite their affiliation. It also notes that a special issue exists in this respect with regard to newly recruited workers because the WR Act enables employers to offer an “AWA-or-nothing” at the time of recruitment without this being considered as duress (see above); such workers will be unable to benefit from the provisions of a collective agreement until the expiry of their AWA. Thus, the Committee considers that section 170VQ(6) of the WR Act contains disincentives to trade union affiliation by unduly restricting the field of application of collective agreements. The

Committee requests the Government to indicate in its next report any measures taken or contemplated to amend section 170VQ(6) of the WR Act so as to eliminate these disincentives and restrictions. The Committee also requests the Government to provide information on the evolution of affiliation levels since the adoption of the WR Act.

2. *Collective agreements with non-unionized workers.* The Committee observes that whereas section 170LJ is entitled “Agreement with organisations of employees”, section 170LK is entitled “Agreement with employees” without any reference to workers’ organizations. Section 170LK(1) provides that “[t]he employer may make [an] agreement with a valid majority of the persons employed at the time whose employment will be subject to the agreement”. Section 170LH requires the AIRC to certify agreements made by corporations either with trade unions or directly with employees. It appears to the Committee that (as also noted by ACTU), these provisions allow for collective negotiations over individual agreements to take place directly with employees, even where unions exist in an enterprise. The Committee notes that, according to the Government, section 170LK is in conformity with the Convention because individual workers are entitled under section 170LK(4) to request that they be represented by a trade union of which they are members in “meeting and conferring” with the employer. The Committee notes that the outcome of such request for trade union representation appears to be uncertain as section 170LK(6)(b) provides that the right of workers to be represented by trade unions will cease if any of the conditions stipulated in section 170LK(4) cease to be met. Thus, as noted by ACTU, even where workers are initially entitled to be represented by trade unions in negotiations, the employer may subsequently avoid any union involvement by unilaterally changing the scope and content of the negotiations (so that section 170LK(4)(b) no longer applies) or by simply declaring that it does not any longer wish to pursue an agreement under section 170LK. The Committee considers that if there is a possibility in the law that a request for trade union representation may lead to the partial or total abandonment of negotiations, then the law establishes a disincentive to request such representation. Recalling that *Article 4* requires measures to encourage and promote the full development and utilization of machinery for voluntary negotiation *between employers or employers’ organizations and workers’ organizations*, the Committee requests the Government to indicate in its next report any measures taken or contemplated to amend section 170LK(6)(b) so as to ensure that the right to trade union representation is effectively guaranteed and that negotiations with non-unionized workers can take place only where there is no representative trade union in the enterprise.

3. *Collective bargaining level.* The Committee takes note of a long list of multiple business agreements certified by the AIRC, which is provided by the Government in its report. However, the Committee also notes from the Government’s report that during the reporting period the AIRC refused two applications to certify a multiple-business agreement on public interest grounds because the agreement applied to a number of employees whose operations were substantial and the matters would be more appropriately dealt with by single business agreements. The Committee recalls that section 170LC(4) of the WR Act provides that the AIRC must not certify a multiple-business agreement unless it is satisfied that it is in the public interest to do so, having regard to: (a) whether the matters dealt with therein could be more appropriately dealt with by agreement other than a multiple-business agreement; and (b) any other matter that the AIRC considers relevant. The Committee considers that approval should be refused only if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation; if legislation allows the authorities full discretion to deny approval (as seems to be the case under section 170LC(4)(b) of the WR Act) or stipulates that approval must be based on criteria such as compatibility with general or economic policy (in this case, the public interest), it in fact makes the entry into force of the collective agreement subject to prior approval, which is a violation of the principle of autonomy of the parties (see General Survey, op. cit., paragraph 251). The Committee therefore requests the Government to indicate in its next report any measures taken or contemplated to amend section 170LC(4) so as to eliminate the requirement of prior approval of multiple business agreements by the AIRC.

4. *Negotiations over strike pay.* The Committee further recalls that in its previous comments it had raised the issue of strike pay as a matter for negotiation noting that although the mere fact that there are deductions for days on strike is not contrary to the Convention, it is incompatible with the Convention to impose such deductions in all cases (as under section 187AA) as, in a system of voluntary collective bargaining, the parties should be able to raise this matter in negotiations. The Committee notes that, according to the Government, it is reasonable to prevent improper demands for payment for periods where employees or unions that come within the norms of the system have taken industrial action. The Committee once again recalls that in a system of voluntary collective bargaining, the parties should be able to raise the matter of strike pay in negotiations and that by preventing them from doing so, the law unduly constrains the permissible scope of collective bargaining. The Committee therefore once again requests the Government to indicate in its next report any measures taken or contemplated to amend section 187AA in accordance with the above.

5. *Greenfields agreements.* The Committee recalls that in its previous comments it had referred to the pre-selection by an employer of a bargaining partner before workers are employed according to section 170LL of the WR Act (“greenfields agreements”) and had noted that this is permissible only for a first agreement and that since the Act permits the duration of any agreement to be up to three years (section 170LT(10)) section 170LL potentially prejudices the workers’ choice of bargaining agent for a considerable period. The Government states in its report that the Committee’s view that three years is a considerable period is a substantive judgement and expresses the view that it would take three years for a new business to get established, and that it is a reasonable amount of time to provide for “greenfields agreements”. The Committee notes that its view that restrictions on collective bargaining for three years are too long is shared by other supervisory bodies like the Committee on Freedom of Association (see *Digest of decisions and principles*

of the *Freedom of Association Committee*, 4th edition, 1996, paragraph 887). It also notes that this view is implicitly shared by the Government itself as section 170LT(10) prohibits a duration of more than three years for (freely negotiated) certified collective agreements. The Committee considers that being an exceptional situation, “greenfields agreements” should not have the same duration as freely negotiated certified agreements. The Committee therefore once again requests the Government to indicate in its next report any steps taken or contemplated to amend section 170LL of the WR Act so that the choice of bargaining agent can be made by the workers themselves, including in the case of a new business.

Western Australia

In its previous comments the Committee had taken note of the Western Australia Government’s intention to repeal the 1993 Workplace Agreements Act, give preference to collective bargaining, repeal restrictions on unions’ access to workplaces, introduce a good-faith bargaining principle and strengthen the role of the Western Australian Industrial Relations Commission. The Committee notes with interest from the Government’s report that the Workplace Agreements Act will be repealed in stages by the Labour Reforms Act, which now formally recognizes the primacy of collective over individual agreements and contains new provisions relating to good faith bargaining, entry of authorized union representatives to working places (with due respect for the rights of property and management) and reinstatement as the primary remedy in cases of unfair dismissal. The Committee also notes, however, with regard to its previous comments concerning the absence of provisions prohibiting acts of discrimination for trade union activities in the Industrial Relations Act, 1979, that the Government does not indicate any new provision protecting workers against anti-union discrimination on the basis of trade union activities. The Committee requests the Government to indicate in its next report whether the concept of unfair dismissal encompasses anti-union dismissals and to indicate any further measures taken or contemplated so as to afford full protection against anti-union discrimination at the time of recruitment, during employment and at the time of dismissal, and provide for specific remedies and penalties where there has been anti-union discrimination.

A request on certain other points, including comments made by ACTU and those of ACCI, is being addressed directly to the Government.

Azerbaijan

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1992)

The Committee notes that the Government’s report has not been received. The Committee notes the text of the Criminal Code of 1999. It will examine the conformity of the relevant provisions of the Code at its next session. As concerns other previously commented upon issues, the Committee repeats its previous observation which read as follows:

Article 3 of the Convention. Right of workers’ organizations to organize their activities and to formulate their programmes. The Committee notes with regret that the Government does not provide any new information with regard to the Committee’s previous comments concerning the political activities of trade unions (section 6(1) of Act No. 792 on trade unions of 24 February 1994).

The Committee once again urges the Government to amend section 6(1) of Act No. 792 on trade unions, so as to eliminate the absolute prohibition of all types of political activity by trade unions and to strike a balance between, on the one hand, the legitimate interests of organizations to express their point of view on issues of economic and social policy affecting their members and workers in general and, on the other hand, the separation of political activities in the strict sense of the term from trade union activities.

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

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1993)

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 Act respecting the public service has been adopted by Parliament but that it is undergoing internal approval procedures.

The Committee hopes that all internal procedures will be completed in the very near future, and requests the Government to provide a copy of the said Act as soon as possible.

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

Bangladesh

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

The Committee notes the Government’s report. The Committee notes the discussions in the Conference Committee on the Application of Standards in June 2004. The Committee further notes the comments of the International

Confederation of Free Trade Unions (ICFTU) raising questions about the application of the Convention. The Committee requests the Government to send its observations thereon in its next report.

1. *Protection of workers' and employers' organizations against acts of interference by each other.* The Committee notes that the Government merely repeats its previous statement and refers to sections 15, 16, 47, 47A, 47B, 48, 53 and 63 of the Industrial Relations Ordinance of 1969. The Committee once again points out that these sections concern the protection of workers against "acts of anti-union discrimination" and once again recalls that *Article 2 of the Convention* requires the prohibition of "acts of interference" by organizations of workers and employers (or their agents) in each other's affairs, designed in particular to promote the establishment of workers' organizations under the domination of employers or 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. The Committee therefore once again requests the Government to adopt specific measures, coupled with effective and sufficiently dissuasive sanctions, against acts of interference, and keep it informed in this respect.

2. *Trade union rights in export processing zones (EPZs).* In its previous comments, the Committee requested the Government to transmit the Declaration of 31 January 2001 (SRO No. 24, Law/2001) concerning the right of association in EPZs. The Committee notes the Government's indication that a new Act entitled "The EPZs Workers' Association and the Industrial Relation Act 2004" has been enacted by the Parliament and published in the *Bangladesh Gazette* on 18 July 2004. The Committee requests the Government to provide the copy of this text.

3. *Thirty per cent requirement for registration of a trade union and the requirement to have one-third of employees as its members in order to be able to negotiate at the enterprise level (sections 7(2) and 22 of the IRO).* The Committee notes that the Government reiterates its previous statement to the effect that these requirements are justified in the national socio-political and economic context and are not opposed by social partners. The Government explains that the aim of section 7(2) is to "avoid mushroom growth of trade union and to maintain unity of workers in an establishment". The Committee is bound to point out once again that these requirements may impair and make difficult the development of free and voluntary collective bargaining and 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 the existing unions, at least on behalf of their own members. It therefore once again requests the Government to lower the percentage requirements set for registration of a trade union and recognition of a collective bargaining agent and to keep it informed in this respect.

4. *Practice of determining wage rates and other conditions of employment in the public sector by means of government-appointed tripartite wages commissions (section 3 of Act No. X of 1974).* The Committee notes the statement of the Government in this respect. The Industrial Workers' Wages and Productivity Commission (IWWPC) was formed by the Government under the principle of tripartism with equal numbers of members from the Government, the employers and the workers. The recommendations of the IWWPC cover only the rates of wages and other conditions of employment through a government-appointed wages commission on the interests of workers. Various other issues concerning workers are not covered by the recommendations of the IWWPC. For those issues, a collective bargaining agent (CBA) enjoys the right of bargaining with the stakeholders. The CBAs in the public sector enterprises have regularly exercised the right to bargain in connection with the proper implementation of the recommendations of the Commission. Voluntary bargaining is thus not at all restricted in the public sector enterprises. The Committee once again recalls that, in line with the Convention, free and voluntary collective bargaining should be conducted between the directly interested workers' organization and employers or their organizations, which should be able to appoint freely their negotiating representatives. It therefore once again requests the Government to amend its legislation and to modify the present practice so as to bring them into conformity with the Convention. The Committee requests the Government to keep it informed in this respect.

5. The Committee notes the Government's statement that it is taking the necessary action in order to submit the draft Labour Code to the Parliament. The Government states that the workers' side has submitted some new proposals and that these points need thorough examination. At present, the tripartite Labour Code Review Committee headed by the Secretary of the Ministry of Labour and Employment and consisting of ten members is examining the new proposals received from different agencies. The Committee notes that the Government considers that in the absence of a new Labour Code, the existing laws reasonably protect the rights of workers, but that it nevertheless desires to finalize the Labour Code as soon as possible. In this respect, the Committee, once again, strongly encourages the Government to ensure that the above comments are duly taken into consideration and reflected in the future legislation. The Committee requests the Government to inform it in its next report of any progress made in this respect.

Belarus

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

The Committee recalls that a Commission of Inquiry was established at the 288th Session of the Governing Body (November 2003) to examine a complaint presented under article 26 of the ILO Constitution alleging the failure of the Government of Belarus to observe the present Convention and Convention No. 98. The Committee notes that the

Commission of Inquiry completed its work in July 2004, and that its report was submitted to the Governing Body of the International Labour Office at its 291st Session (November 2004).

The Committee further notes the reply of the Government to the report of the Commission of Inquiry by virtue of article 29 of the ILO Constitution, which was noted by the Governing Body at its 291st Session (GB.291/6/1), in which the Government has indicated certain measures it intends to take in order to implement the recommendations of the Commission and referred to its need for ILO technical assistance in this regard. In particular, it notes the Government's indication that it has established a special experts group, including representatives of government, trade unions, employers' associations, non-governmental organizations and academics, to conduct a comprehensive review of its entire system of social and labour relations. The Committee trusts that the advisory group will represent a broad spectrum of society and, in particular, that the trade union representation will include all the national-level trade unions. It requests the Government to specify, in its next report, the composition of this advisory group, and to indicate the progress made in its review.

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) and the Belarusian Congress of Democratic Trade Unions (CDTU) on the application of the Convention in their communications dated 24 September 2003 and 27 August 2004, respectively, and requests the Government to provide its observations thereon.

The Committee recalls that it has been making comments on the observance of the Convention over recent years on many of the same points examined by the Commission of Inquiry. It notes that the Commission has confirmed and expanded upon the concerns this Committee has been raising, as well as the Conference Committee on the Application of Standards, as to the application of this fundamental Convention.

Article 2 of the Convention. The Committee recalls that in its previous comments it had requested the Government to take the necessary measures to amend Presidential Decree No. 2 on some measures for the regulation of activities of political parties, trade unions and other public associations and its accompanying rules and regulations, particularly as concerns the legal address requirement and the minimum membership requirement of 10 per cent of workers at enterprise level in order to constitute enterprise trade unions.

The Committee notes in this respect that the conclusions and recommendations of the Commission of Inquiry confirm the Committee's previous understanding that these requirements, as applied, amount to a condition of previous authorization for the formation of unions contrary to *Article 2* of the Convention. It especially notes with concern the Commission's findings that these requirements have impacted uniquely on those unions that are outside the structures of the Federation of Trade Unions of Belarus (FPB) or oppose its leadership, thus giving rise to apprehensions that they are being applied intentionally to suppress certain trade unions. Finally, it notes the Commission's conclusions in respect of the Republican Registration Commission through which all decisions on registration appear to be made and its recommendation that, in the interests of transparency in decision-making and so as to ensure that registration is conducted as an administrative formality and not granted using arbitrary discretionary authority, the Republican Registration Commission should be disbanded.

The Committee therefore once again urges the Government to amend the relevant provisions of Presidential Decree No. 2 and its rules and regulations so as to eliminate any further obstacles that might be caused either by the legal address requirement or by the 10 per cent minimum membership requirement at enterprise level and to disband the Republican Registration Commission, so as to bring the Decree and its application into conformity with the provisions of the Convention.

The Committee further notes with deep concern the comments made by the CDTU in which it transmits information concerning draft amendments to the Law on Trade Unions, initiated by the Ministry of Justice. According to the CDTU these amendments, if adopted, would substantially increase the requirements for trade union registration at various levels. The criterion for a Republican level trade union would be increased from 500 to 30,000. The concept of territorial trade unions would also be introduced with a minimum membership requirement of 5,000.

The Committee recalls in this respect that the Commission of Inquiry had observed with concern indications made by the Government that it was reconsidering the representative nature of unions such as the CDTU on the National Council on Labour and Social Issues. The Commission considered that restricting social dialogue to one trade union federation, whose independence had been called into question on the basis of its findings, would not only have the effect of further anchoring a de facto state-controlled trade union monopoly, but would also infringe upon the right of workers to form and join organizations of their own choosing, provided in *Article 2*.

The Committee must express its deepest concern at the fact that the Government appears to be considering changes to the legislation that would ensure that there were no meaningful possibilities for trade union pluralism in the country. Indeed, as the result of these proposals would be to guarantee that the only social partner representing workers in the national consultative bodies would be the FPB, whose independence was called into question by the Commission of Inquiry, the Committee considers that these proposals infringe upon the right of workers to form and join organizations of their own choosing by treating one federation with such favouritism and placing it at such an advantage as to influence unduly the workers' choice of organization. The Committee therefore urges the Government to retract the proposals referred to by the CDTU and to indicate the progress made in this regard.

Article 3. The Committee recalls that its previous comments referred to the need to amend the legislation as concerns certain restrictions relevant to industrial action, in particular sections 388, 390, 392 and 399 of the Labour Code, Presidential Decree No. 11 on several measures taken to improve the procedure for holding assemblies, rallies, street marches, demonstrations and other mass events and picketing actions, and the Fundamental Principles of Employment in the Public Service of 1993.

The Committee notes from the findings of the Commission of Inquiry that the Law on Mass Activities has for all intents and purposes replaced Presidential Decree No. 11. This Law maintains the restrictions on mass activities that were laid down in the Decree and further permits for dissolution of an organization for a single breach of its provisions, while organizers may be charged with a violation of the Administrative Code and thus subject to administrative detention. It further notes the Commission's findings on the practical application of the Law on Mass Activities, in particular that the authorities routinely and unilaterally change the venue requested for a demonstration to an obscure and unfrequented location. In this respect, the Committee notes the findings of the Commission on the administrative detention of Mr. Bukhvostov, the then chairperson of the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU), who was immediately arrested when, despite the authorities refusal to grant permission to his request to demonstrate in a prominent public square and their unilateral changing of the venue to a square far from the centre of town, he carried out a one-man protest in the prominent public square. It notes with particular concern the Commission's finding that the application of the Law gave rise to a serious breach of Mr. Bukhvostov's civil liberties.

The Committee therefore urges the Government to take the necessary measures to amend the Law on Mass Activities (as well as Decree No. 11 if it has not yet been repealed), so as to bring it into line with the right of workers' and employers' organizations to organize their activities. With reference to its previous comments, it further requests the Government to indicate the measures taken to amend sections 388, 390, 392 and 399 of the Labour Code and to ensure that National Bank employees, presently covered by the Fundamental Principles of Employment in the Public Service of 1993, may have recourse to industrial action, without penalty.

More generally, as regards its previous comments concerning Government interference in internal trade union affairs, the Committee notes with deep concern the Commission's conclusions that:

The failure of the Government to provide a clear denial that instructions were issued by the Presidential Administration in 2000 to interfere in the internal affairs of trade unions, the fact that instructions were issued in 2001 and that, in March 2003, the President of the Republic gave the Minister of Industry two months to deal with Mr. Fedynich and Mr. Bukhvostov, the involvement of the Ministry of Industry and enterprise managers and the subsequent creation of the BIWU, and the involvement by the Chairperson of the State Aviation Committee in the decline and deregistration of the BTUATC, taken in conjunction with the changed affiliation of primary level organizations previously affiliated to the REWU or the AAMWU together with the actions taken against Mr. Fedynich and Mr. Bukhvostov give rise to the inescapable conclusion that the trade union movement has been and continues to be the subject of significant interference on the part of government authorities. That conclusion is reinforced by the failure of the Government to investigate the serious allegations made by the complainants or to take steps to guarantee the basic rights of freedom and independence of trade unions as repeatedly requested by the supervisory bodies of the ILO. The Commission concludes that this interference has resulted in undermining one of the most essential prerequisites of freedom of association: trade union independence. (See Trade Union Rights in Belarus, Report of the Commission of Inquiry, July 2004, paragraph 614.)

In the light of these conclusions, the Committee urges the Government to take steps immediately, in accordance with the recommendations of the Commission, to declare publicly that such acts of interference are unacceptable and will be sanctioned and to issue instructions to the Prosecutor-General, the Minister of Justice and court administrators so that any complaints of external interference made by trade unions are thoroughly investigated. It requests the Government to provide detailed information on the measures taken in this regard.

Articles 5 and 6. The Committee recalls its previous comments concerning the need to amend section 388 of the Labour Code and Presidential Decree No. 8 of March 2001 regarding certain measures aimed at improving the arrangement for receiving and using foreign gratuitous aid to bring them into conformity with *Articles 5 and 6* of the Convention. The Committee notes from the findings of the Commission of Inquiry that Presidential Decree No. 24 on the receipt and use of free foreign aid has replaced Decree No. 8, but that it retains the previous restrictions placed on the use of foreign gratuitous aid by organizations, including workers' and employers' organizations. In its conclusions, the Commission stated that legislation which prohibits the acceptance by a national trade union or employers' organization of financial assistance from an international workers' or employers' organization, unless approved by the Government, and provides for the banning of any organization where there is evidence that it has received such assistance, is not in conformity with the right of workers' and employers' organizations to benefit from the relations that may be established with an international workers' or employers' organization.

The Committee therefore once again urges the Government 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.

In light of the above and of the information obtained from the Commission of Inquiry report, the Committee considers that all of these matters taken together demonstrate that there exist, both in law and in practice, serious discrepancies with the provisions of the Convention such that the survival of any form of an independent trade union movement in Belarus is truly at risk. The Committee therefore urges the Government to take all necessary measures in the

nearest future so that workers may freely form and join organizations of their own choosing and so that these organizations may exercise their activities without government interference.

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

The Committee takes note of the conclusions and recommendations of the Commission of Inquiry established to examine the observance by the Government of Belarus of the present Convention and Convention No. 87. The Committee further notes the reply of the Government to the report of the Commission of Inquiry by virtue of article 29 of the ILO Constitution, which was noted by the Governing Body at its 291st Session (GB.291/6/1), in which the Government has indicated certain measures it intends to take in order to implement the recommendations of the Commission and refers to its need for ILO technical assistance in this regard. In particular, it notes the Government's indication that it has established a special experts advisory group, including representatives of Government, trade unions, employers' associations, non-governmental organizations and academics, to conduct a comprehensive review of its entire system of social and labour relations. The Committee trusts that the advisory group will represent a broad spectrum of society and, in particular, that the trade union representation will include all the national-level trade unions. It requests the Government to specify, in its next report, the composition of this advisory group, and to indicate the progress made in its review.

Articles 1 and 3 of the Convention. The Committee notes the conclusions and recommendations of the Commission of Inquiry as regards the allegations of anti-union discrimination, harassment and retaliatory acts. It notes in particular that the Commission considered:

... that the number of cases of workplace harassment and discrimination brought to its attention, the details provided by the individuals concerned, their systematic link to either the CDTU and its national affiliates (in particular the Belarussian Independent Trade Union (BITU), the BFTU and the Free Metal Workers' Union (FMWU) or the dissident branch trade unions in the FPB (the AAMWU and the REWU), lead to the conclusion that there is sufficient evidence available to call for a thorough investigation of all these matters. The Commission regrets that the Government has not taken any steps in this regard, nor does it seem to take any of these allegations seriously. The Commission is particularly concerned that a number of these cases concern the actual livelihood of entire families, where trade union activists appear to have not only lost their jobs, but find it impossible to obtain any further employment. In these circumstances, the Commission considers that the Government has not complied with its obligation under Convention No. 98 to ensure effective measures of protection against anti-union discrimination, accompanied by sufficient and dissuasive sanctions, nor has it properly ensured the right of all workers to form and join organizations of their own choosing as provided in *Article 2 of Convention No. 87* (see *Trade union rights in Belarus*, report of the Commission of Inquiry, July 2004, paragraph 617).

It further notes the serious issues raised in the Commission's report concerning the discriminatory use of fixed-term contracts against certain trade union leaders and members. The Committee notes the indication in the Government's response that the Commission's recommendations designed to improve procedures and mechanisms of protection are particularly important. It asks the Government to indicate, in its next report, the measures taken to review and redress all complaints of anti-union discrimination and the progress made in putting into place truly effective procedures for protection against anti-union discrimination and other retaliatory acts.

Article 2. As regards the findings by the Commission that there had been several important acts of interference in internal trade union affairs at the enterprise level, the Committee notes the Government's indication that it is taking measures to inform all directors of enterprises, including those who are trade union members, of the inadmissibility of any form of interference in trade union activities. It requests the Government to provide further information, in its next report, on the precise measures taken in this regard, as well as any notable impact such measures have had in curbing managerial interference in trade union affairs.

Articles 1, 2, 3 and 4. Finally, the Committee notes from the Commission's conclusions that it has observed that many of the acts of interference and anti-union discrimination, as well as the consequences of non-registration caused by Presidential Decree No. 2 (see observation on Convention No. 87), have resulted in a denial of collective bargaining rights of a number of primary-level trade unions and have further hindered the rights of these organizations even to enter into negotiations with their employer. The Committee refers the Government to its comment under Convention No. 87 and trusts that it will take all necessary measures to ensure that the collective bargaining rights of these organizations are not impeded.

Finally, the Committee also takes note of the observations made by the Belarussian Congress of Democratic Trade Unions (CDTU) on the application of the Convention and requests the Government to provide its observations thereon.

Bosnia and Herzegovina

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1993)

The Committee notes that the Government's report has not been received. It also takes note of the comments of the Confederation of Independent Trade Unions of Bosnia and Herzegovina (CITU of BiH), dated 29 July 2004, concerning the follow-up to the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2225.

Article 2 of the Convention. The right of workers and employers to form organizations of their own choosing.

1. The Committee notes that in its conclusions and recommendations in Case No. 2225, the Committee on Freedom of Association deplored the unreasonable period which has elapsed since the filing of a registration request by the CITU of BiH, and noted that the refusal to register this longstanding organization on clearly unjustified grounds was a violation of *Article 2* of the Convention, strongly requesting the Government to take all necessary measures urgently with a view to rapidly finalizing the registration of this Confederation. The Committee notes that, according to the CITU of BiH, the Government still refuses to grant registration and has impeded the initiation of court proceedings on this issue by indicating in June 2004 that a government commission in charge of examining complaints prior to their submission to Court has no seal and therefore cannot operate. The CITU of BiH adds that this refusal, which is aimed at confiscating the organization's belongings and disqualifying it from operating at the level of the whole country, takes place in the context of ongoing preparations for the establishment of the Economic and Social Council, to which it will be unable to participate regardless of the fact that it is the most representative workers' organization with the largest number of members. It will also be prevented from engaging in collective bargaining.

The Committee recalls that according to *Article 7* of the Convention, when legislation makes the acquisition of legal personality a prerequisite for the existence and functioning of organizations, the conditions for acquiring legal personality must not be such that they amount to a de facto requirement for previous authorization to establish an organization, which would be tantamount to calling into question the application of *Article 2* of the Convention (see General Survey on freedom of association and collective bargaining, 1994, paragraph 76). The Committee requests the Government to indicate in its next report the measures taken or contemplated in order to grant registration to the CITU of BiH as soon as possible.

The Committee notes that this is the third reported case of serious delay in registering a national employers' or workers' organization. It notes however, with interest that one of these organizations, the Associated Workers' Trade Union of Bosnia and Herzegovina (URS/FbiH), has now been registered at federal level (see 334th Report of the Committee on Freedom of Association, Case No. 2053, paragraphs 12-14).

As regards employers' organizations, the Committee must once again request the Government to take all necessary measures in the very near future to amend its legislation so as to ensure that employers' confederations can obtain registration under a status conducive to the full and free development of their activities as employers' organizations both at the level of the Republic of Bosnia and Herzegovina and its two entities, and to indicate the progress made in this regard in its next report. The Committee further requests the Government once again to provide information on the measures taken for the effective registration of the Employers' Confederation of the Republic of Bosnia and Herzegovina.

2. The Committee also notes that the Committee on Freedom of Association has drawn its attention to the legislative aspects of Case No. 2225, in particular, article 32 of the Law on the Associations and Foundations of Bosnia and Herzegovina which authorizes the Minister of Civil Affairs and Communication to accept or refuse a request for registration and provides that the request shall be considered as rejected if the Minister does not adopt a decision within 30 days. The Committee notes that according to the CITU of BiH, there has been no initiative so far to bring the legislation into conformity with the Convention. The Committee notes that it has already raised this point with the Government in a direct request and requests the Government to provide its response to all of the Committee's comments contained therein.

3. The Committee finally recalls that in its previous comments it had raised the issue of the time limitations prescribed in sections 30(2), 34 and 35 of the Law on the Associations and Foundations of Bosnia and Herzegovina in relation to the registration of an association, including employers' and workers' organizations, and had noted that these limits are very short and entail in case of non-implementation, disproportionate penalties such as the dissolution of the organization in question or the cancellation of its registration. The Committee once again requests the Government to amend the legislation so as to provide more reasonable limitations with respect to the registration of employers' and workers' organizations and to ensure that they shall not suffer disproportionate consequences as a result of a delayed request.

The Committee trusts that the Government will make every effort to submit its report and to take the necessary action in the very near future with a view to addressing the pending comments of the Committee.

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

The Committee takes note of the comments of the Confederation of Independent Trade Unions of Bosnia and Herzegovina dated 29 July 2004. The comments which concern both Conventions Nos. 87 and 98 are treated under Convention No. 87.

The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos. 2140 and 2225 (see 298th Report, paragraphs 290-298, and 332nd Report, paragraphs 363-381). The Committee notes in particular that the current legislative framework prevents the registration of employers' and workers' organizations and that in the absence of such registration, these organizations are not able to engage in collective bargaining at the level of the Republic as a whole, and are not invited to any consultations. The Committee requests the Government to indicate in its next report any measures taken or contemplated in order to encourage and promote the full

development and utilization of machinery for voluntary negotiation between employers' and workers' organizations in accordance with *Article 4 of the Convention*.

Botswana

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

The Committee notes Government's report. The Committee notes the adoption of the Trade Unions and Employers' Organizations (Amendment) Act, 2003 (TUEO Act) and in particular notes with satisfaction that the Act ensures the right to organize for the public services and teachers by extending its coverage to these categories of workers.

The Committee further notes with satisfaction that the following sections of the TUEO Act were either repealed or amended in accordance with the Committee's previous comments:

- section 10(4)(a), which provided for the Registrar's power to refuse registration of a trade union or employers' organization if he or she considers that another registered trade union or employers' organization sufficiently represents the interests of workers or employers concerned, was repealed;
- section 10(2)(b), according to which the Registrar could refuse to register a trade union or an employers' organization if its constitution did not comply with the Schedule, was repealed;
- section 10(2)(c) was amended so that the Registrar may now only refuse to register a trade union or an employers' organization if its principal objects or any other provision of its constitution are unlawful;
- section 10(2)(g), according to which registration of an organization could be refused if any of its officers was a person who has, within five years from the date of the application for the registration, been convicted of "an offence under the Act", was repealed;
- section 10(3), which granted the Registrar the power to refuse to register a trade union or a federation of trade unions if one of its officers was not a citizen of Botswana, was repealed;
- section 12(3), which provided that the registration of a trade union or a federation of trade unions could be cancelled if any of its officers was not a citizen of Botswana was repealed;
- provisions previously contained in sections 28 and 29 of the Act, which regulated in a fair amount of detail the internal functioning of trade unions particularly as concerns their meetings and provided the Registrar and the Minister with the right to request and to convene general meetings, as well as making a default in holding a meeting a punishable offence, were amended;
- section 64 (section 63 following the new numbering) of the Act providing for the restriction concerning receipt of funds originating from outside Botswana, was repealed; and
- sections 47 and 63 (sections 45 and 62 following the new numbering) of the Act, which provided that trade unions should ask for the prior consent of the Minister in order to form a federation or to be affiliated to any body outside Botswana were respectively amended and repealed.

The Committee is also addressing a request directly to the Government.

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

The Committee notes the Government's report. The Committee notes the adoption of the Trade Unions and Employers' Organizations (Amendment) Act, 2003. It further notes the adoption of the Trade Disputes (Amendment) Act, 2004, and requests the Government to provide a copy thereof.

Article 2 of the Convention. In its previous comments, the Committee requested the Government to amend its legislation so that all public servants other than those engaged in the administration of the State can enjoy the right to bargain collectively. The Committee notes with satisfaction the Government's indication that the Trade Disputes Act and the Trade Unions and Employers' Organizations Act have been amended to include public officers in the definition of employee in both Acts. With the amendment, public officers other than the armed forces, the police and the prison services can now establish and join trade unions and bargain collectively. The Committee recalls that the guarantees provided by the Convention apply to prison staff and requests the Government to amend its legislation in this respect and to keep it informed of measures taken or envisaged in this respect.

A request on certain other points is being addressed directly to the Government.

Bulgaria

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

The Committee takes note of the comments made by the World Confederation of Labour (WCL) and its affiliate, the Association of Democratic Trade Unions (ADU) on the application of the Convention in a communication dated 14 July 2004. The Committee further takes note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2047 relating to the matters raised by WCL and ADU.

Article 3. Right of workers' and employers' organizations to organize freely their activities without interference of the public authorities. The Committee recalls in this respect that in its previous comments, it had asked the Government for information on the application of the representativeness criteria set out in sections 34 and 35 of the Labour Code. It had also requested the Government to indicate how it intends to carry out the inspection mentioned in section 36(a) of the Labour Code and to provide information on the manner by which organizations that are not considered to be representative may request a review of their status after a reasonable period has elapsed since the last election.

The Committee notes that according to WCL and ADU, as per paragraph 1 of the recently adopted Ordinance No. 64/18, only organizations acknowledged as representative were required to submit by 15 October 2003 the necessary documents to certify their representativeness. ADU had therefore sought a clarification from the Government as to whether the Ordinance would be applicable to assess its representativeness and that of NTU (formerly, PROMYANA). The Committee notes that ADU received a reply dated 17 September 2003 from the Deputy Minister of Labour and Social Policy informing them that while ADU had been recognized by a decision of the Council of Ministers in 1997, that decision was subsequently revoked by the Council of Ministers in 1999 in respect of ADU and other workers' organizations and therefore, ADU is not recognized as representative at the national level. The letter further stated that the Ordinance does not apply to ADU or to other workers' organizations whose representativeness had been repealed by the Council of Ministers.

The Committee notes the explanation given by the Government to the Committee on Freedom of Association in respect of Case No. 2047 that as per section 1 of the Transitional Provisions of the Council of Ministers Decree No. 152 promulgating Ordinance No. 64/18, only workers' and employers' organizations that had been recognized as representative at the national level by a decision of the Council of Ministers were required to submit by 15 October 2003 the necessary documents to assess their representative status. According to the Government, this provision was in accordance with section 36(a), paragraph 2, of the Labour Code and this was affirmed by the Supreme Administrative Court. The Committee also takes note of the observation of the Government that it was however open for ADU and NTU on the basis of section 36, paragraph 2, of the Labour Code, to have made a request to the Council of Ministers in order to have their representativeness assessed for recognition at the national level.

Taking into account the information provided by both WCL and the Government and the contents of the aforesaid letter from the Deputy Minister of Labour and Social Policy to ADU and the fact that the letter does not indicate the avenues which should be taken to assess their representativeness, the Committee considers that access to established mechanisms for determining representativeness is far from evident. The Committee further considers that in order to ensure that the determination of representative organizations is based on clear, precise and objective criteria and not on arbitrary decision-making authority, all relevant workers' and employers' organizations must have an opportunity to prove their representative status at regular intervals so that they may freely organize their activities accordingly. In this respect, it notes with concern that ADU and PROMYANA (now, NTU) have since 1999 been unable to participate in a poll to determine their representativeness at the national level.

The Committee trusts that the Government will rapidly take the necessary measures to enable ADU and NTU to establish their representativeness at the national level and requests the Government to indicate, in its next report, the progress made in this regard.

The Committee further requests the Government to reply to the other issues raised by WCL in its observations as well as to the outstanding matters raised in respect of the application of the Convention (see 2003 observation and direct request, 74th Session) in its next report due for the regular reporting cycle in 2005.

Burundi

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1993)

The Committee notes the information supplied in the Government's report and the Government's reply to the comments on the application of the Convention by the International Confederation of Free Trade Unions (ICFTU) and the Confederation of Burundi Trade Unions (COSYBU).

Article 2 of the Convention. 1. Right of public employees without distinction whatsoever to establish and join organizations of their own choosing. In its previous comments, the Committee noted the entry into force of Act No. 1-001 of February 2000 amending the magistrates' regulations, and observed that the Act contained no express reference to

magistrates' right of association. Since magistrates are not governed by the same rules as public servants, the Committee requested the Government to indicate in its next report the provisions that ensure the right to organize of magistrates. It notes in this connection that, according to the Government, the Union of Magistrates of Burundi (SYMABU) was registered by Ministerial Ordinance No. 660/100/94 of 1 June 1994 and is operating normally. It notes, however, that according to COSYBU's comments of 3 November 2003, following a magistrates' strike, the Minister of Justice denied SYMABU's existence in law and asserted that magistrates do not have the right to organize.

Recalling that all public service employees should have the right to establish occupational organizations, the Committee asks the Government to specify in its next report whether magistrates have the right to organize and, if so, to indicate the provisions laying down this right for magistrates. The Committee also requests the Government to reply in its next report to COSYBU's assertion that SYMABU has been denied existence in law.

2. *Right to organize of minors.* For several years the Committee has been raising the matter of the compatibility of section 271 of the Labour Code with the Convention. Section 271 provides that minors under the age of 18 may not join a trade union without express permission from their parents or guardians. The Committee notes the Government's statement in its report that minors will be given the right to organize in the forthcoming revision of the Labour Code. The Committee notes this information and requests the Government to ensure fully the right to organize of minors of working age without authorization from their parents or guardians.

Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes without interference from the public authorities. 1. *Election of trade union officers.* In its previous comments the Committee noted that the Labour Code sets a number of conditions for holding the position of trade union officer or administrator.

(a) *Criminal record.* Under section 275(3) of the Labour Code, anyone sentenced to more than six months' imprisonment with no suspension of sentence may not hold trade union office. In its report for 2002, the Government stated that it was planning to amend this provision after consulting the National Labour Council, in the light of the Committee's observation that conviction for an act which, by its nature, does not call into question the integrity of the person and implies no real risk for the performance of trade union duties should not constitute grounds for exclusion from trade union office.

(b) *Belonging to the occupation.* Section 275(4) of the Labour Code requires trade union leaders to have belonged to the occupation or trade for at least one year. The Committee requested the Government to make the legislation more flexible by allowing persons who formally worked in the occupation to stand for office or by lifting this requirement for a reasonable proportion of trade union officers. In its report for 2002, the Government stated that it was planning to amend this provision after consulting the National Labour Council.

The Committee trusts that the revision of the Labour Code will fully take into account the abovementioned principles.

2. *The right to strike.* In its previous comments the Committee raised the matter of the series of compulsory procedures to be followed before taking strike action (sections 191 to 210 of the Labour Code), which appears to authorize the Minister of Labour to prevent all strikes. The Committee noted in this connection the ICFTU's assertion that there are procedural requirements that empower the authorities to determine whether or not a strike is lawful. In practice, this has enabled the authorities to prevent or end strikes on the grounds that they were detrimental to the national economy and sought to support the "enemies" of the Government. Lastly, in the course of the last three years several trade union leaders have been imprisoned for calling strikes. The Committee notes that the Government has not responded to the ICFTU's comments. Recalling that the right to strike is one of the essential means available to trade unions of furthering and defending the interests of their members, the Committee again requests the Government to respond to the ICFTU's comments on this matter and to provide the draft text implementing the Labour Code with regard to procedures for the exercise of the right to strike to which it referred in its previous reports, so that the Committee may ascertain whether it is consistent with the provisions of the Convention.

The Committee further noted that, under section 213 of the Labour Code, strikes are lawful when they are called with the approval of a simple majority of the employees of the workplace or enterprise, whereas according to the Government, in practice, no vote has been required and a consensus has sufficed. The Committee recalled that, when voting on strikes, the ballot method, quorum and majority required should not be such that the exercise of the right to strike becomes difficult in practice. If a member State sees fit to establish in its legislation provisions requiring 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 majority and quorum are fixed at a reasonable level (see General Survey on freedom of association and collective bargaining, 1994, paragraph 170). The Committee accordingly asks the Government once again to indicate in its next report the measures taken or envisaged to amend section 213 in the light of the comments recalled above.

The Committee requests the Government to report on progress made in revising the Labour Code and to provide a copy of the new text as soon as it is adopted.

Lastly, the Committee noted the ICFTU's assertion that the Government is preventing trade unions from choosing their representatives on national tripartite bodies, as a result of which the work of the National Employment Council has come to a standstill. The Committee notes the Government's statement that it raises no obstacles to trade union elections

and that it has observed that, on the contrary, most trade unions fail in their statutory obligation to renew the membership of their bodies periodically. The Committee takes note of this information and hopes that the Government will take the necessary steps to ensure that trade union organizations may exercise in full the right to organize their activities freely, including the right to choose their representatives on national tripartite bodies without interference from the public authorities.

In addition, the Committee is addressing certain other matters in a request directly to the Government.

Cameroon

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 made by the International Confederation of Free Trade Unions (ICFTU) in its communications dated 24 September 2003 and 19 July 2004, as well as the comments made by the Central Public Sector Trade Union Organization of Cameroon (CSP), dated 2 September 2004.

The Committee recalls that it has been commenting for several years on the following points.

1. *Article 2 of the Convention.* The Committee has been pointing out for many years that Act No. 68/LF/19, of 18 November 1968, under which the existence in law of a trade union or occupational association of public servants is subject to prior approval by the Minister for Territorial Administration, and section 6(2) of the Labour Code of 1992, under which persons forming a trade union which has not yet been registered and who act as if the said union has been registered shall be liable to prosecution, are not consistent with *Article 2* of the Convention. Noting the assurances given by the Government that provisions should be adopted before the 92nd Session of the Conference (June 2004) to bring the legislation into conformity with the Convention (particularly relating to the repeal of Act No. 68/LF/19 and of Decree No. 69/ST/7 of 6 January 1969, and the amendment of sections 6(2) and 11 of the Labour Code of 1992, the Committee nevertheless must note that no practical legislative progress has been achieved in this respect. As regards more specifically the Act of 1968 respecting trade unions and occupational associations of public servants, the Government indicates in its latest report that the amendment process is still under way. In view of the length of time that has elapsed since its first observations on this subject, the Committee once again urges the Government to take the necessary measures promptly to bring its legislation into conformity with the Convention, in particular to amend Act No. 68/LF/19 in order to ensure that public servants have the right to establish organizations of their own choosing without prior authorization, and to provide copies of the relevant legislative texts.

2. *Article 5. Prior authorization for affiliation to an international organization.* The Committee has been pointing out for several years that section 19 of Decree No. 69/DF/7 which provides that trade unions or associations of public servants may not join a foreign occupational organization without obtaining prior authorization from the Minister responsible for "supervising public freedoms", is inconsistent with *Article 5* of the Convention. The Committee once again refers to its previous comments in this respect, as the provision in question has not been repealed despite the assurances given by the Government. It once again urges the Government to amend the legislation as soon as possible in order to eliminate the requirement for public servants' unions to obtain prior authorization before joining an international organization.

3. The Committee notes the comments of the ICFTU concerning the situation in the CAMRAIL enterprise, and particularly the arrest of Mr. B. Essiga, and the Government's reply in this respect, including the fact that this trade unionist has benefited from provisional release and that the judicial procedures are following their course. Recalling that the guarantees set out in the Convention can only be effective if civil and political rights are fully protected (see General Survey on freedom of association and collective bargaining, 1994, paragraph 43), the Committee requests the Government to provide information in its next report on developments relating to the prosecution of Mr. Essiga and to provide a copy of any decision made in this case.

4. The Committee requests the Government to provide its observations on the other comments made by the ICFTU, as well as those of the CSP.

Emphasizing once again that all of the issues referred to above have been raised for many years both by the Committee of Experts and the Conference Committee on the Application of Standards, including in June 2003, the Committee urges the Government to take the necessary measures very promptly to bring its legislation into conformity with the Convention and to provide copies of the relevant legislative texts in the very near future.

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1976)

The Committee notes the Government's report. It also notes the comments on the application of the Convention made by the Confederation of Public Service Unions of Cameroon (CSP), dated 2 September 2004, and the General Union of Cameroon Workers (UGTC), dated 27 August 2004. The Committee requests the Government to reply to these comments.

Canada

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

The Committee notes the comments on the application of the Convention submitted by the International Confederation of Free Trade Unions (ICFTU), dated 19 July 2004, raising many points which were covered in its previous comments. The Committee requests the Government to provide its observations on these comments in its next report. The Committee further notes the oral information provided by the Government representative to the Conference Committee in 2004, as well as the discussion which took place therein.

The Committee recalls that, following the discussion at the last International Labour Conference, it was noted that several matters remained pending concerning, in particular, the exclusion from the scope of the labour relations legislation of workers in agriculture and horticulture, who are thereby deprived of full and complete protection in relation to the right to organize. The other matters relate to the specific reference in the law to the trade union recognized as the bargaining agent, as well as the trade union rights of teachers and education sector workers in certain provinces. The Committee therefore requests the Government to provide detailed information in its next report in reply to its previous comments (see 2003 observation, 74th Session). Taking due note of the measures adopted by the federal Government, in collaboration with the ILO, to draw the attention of the governments of the various provinces to the Committee's comments, it also reminds the Government of the possibility of having recourse to ILO technical assistance to facilitate the implementation of the Convention.

Central African Republic

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

The Committee notes that, once again, the Government's report does not address the matters raised in its previous observation, which concerned the right to elect trade union officers freely, government powers of requisition in the event of a strike and the trade union monopoly established by the Labour Code. It therefore requests the Government to provide a reply to the outstanding matters raised in respect of the application of the Convention (see 2003 observation, 74th Session) in its next report due for the regular reporting cycle in 2005.

Chad

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. It must therefore repeat its previous observation, which read as follows:

1. *Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations without previous authorization.* On several occasions, the Committee has requested the Government to amend Ordinance No. 27/INT/SUR of 28 July 1962 regulating associations, so as to guarantee that it does not apply to occupational organizations. This Ordinance contains several provisions on the establishment of associations and the supervision of their operation by the authorities; it makes the existence of associations subject to authorization by the Ministry of the Interior and confers upon the authorities broad supervisory powers over the administration of associations, under threat of administrative dissolution. The Committee noted that, in its 2000 report, the Government stated that, following the intercession of the Ministry of Public Service, Labour and Employment Promotion with the Ministry of the Interior, the 1962 Ordinance no longer in practice applies to trade union organizations. The Government also stated that all workers' and employers' organizations in the country recognize that this is indeed the case. While noting that the Labour Code does not provide for such authorization for trade unions, the Committee has always considered that it is desirable for occupational organizations to be explicitly excluded from the scope of the Ordinance to prevent them from falling within its scope of application, as was the case in the past. The Committee requests the Government to take the necessary measures for this purpose and to keep it informed thereof in its next report.

Recalling that all workers have the right to freedom of association, the Committee noted in previous comments that, under the terms of section 294(3) of the Labour Code, fathers, mothers or guardians may oppose the right to organize of young persons under the age of 16 years. The Committee emphasized that *Article 2* guarantees all workers, without distinction whatsoever, the right to establish and join organizations. In its report in 2000, the Government indicated that section 294(3) is due to be repealed when the texts implementing the Labour Code are adopted. Noting that, by virtue of section 52 of the Labour Code, the minimum age for admission to employment is 14 years, the Committee hopes that subsection 3 of section 294 will be amended in the near future to guarantee the right to organize of young persons who are legally entitled to work, both as workers and as apprentices, without parental authorization being necessary. It requests the Government to supply copies of any implementing texts relating to freedom of association that are adopted.

2. *Article 3. Right of workers' and employers' organizations to organize their administration and activities in full freedom.* The Committee noted in previous comments that section 307 of the new Labour Code continues to provide that the accounts and supporting documents for the financial transactions of trade unions must be submitted without delay to the labour inspector, when so requested. In this respect, the Government indicated in previous reports that the texts to be issued under the Labour Code should establish further provisions governing the conditions for such supervision, which could be carried out following a claim or a complaint by a trade unionist. The Committee trusts that the Government will take the necessary measures

to provide effective guarantees of the right of occupational organizations to organize their administration without any interference by the public authorities, which involves, among other measures, ensuring that financial supervision is confined to an obligation to submit periodic financial reports and that any verification of accounts is limited to exceptional cases, such as the lodging of a complaint. It requests the Government to keep it informed in this respect in its next report and to indicate, in the event that the texts issued under the Labour Code have still not been adopted, the conditions under which supervision of the financial management of trade unions by labour inspectors is carried out in practice.

The Committee requested the Government to provide information on the application in practice of Decree No. 96/PR/MFPT/94 of 29 April 1994 issuing regulations respecting the exercise of the right to strike in the public service. The Committee recalls that this Decree provides for a conciliation and arbitration procedure prior to the calling of a strike and for a compulsory minimum service in certain public services the interruption of which would result in extremely serious disruption of the life of the community. In its report in 2000, the Government indicated that the above Decree had given rise to strong opposition by trade union confederations and that it had therefore never been applied in practice. The Government stated that the texts that are due to be issued under the Labour Code should explicitly repeal this Decree. The Committee wishes to recall that the right to strike may be restricted, or even prohibited, only 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, that is services the interruption of which would endanger the life, personal safety or the health of the whole or part of the population. Furthermore, 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, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility. The Committee requests the Government to provide copies of the texts of the Act of 31 December 2001 issuing the general conditions of service of the public service and its implementing Decree of 23 June 2003, and of any other text repealing or amending Decree No. 96/PR/MFPT/94, and to indicate the manner in which the right to strike is exercised in practice in the public service.

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

Colombia

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

The Committee notes the Government's report. The Committee also notes the discussions in the Conference Committee on the Application of Standards in 2004. Furthermore, the Committee notes the reports of the Committee on Freedom of Association on the various current cases relating to Colombia adopted by the Governing Body at its sessions in March, June and November 2004.

The Committee further notes the comments on the application of the Convention made by the Single Confederation of Workers (CUT), the General Confederation of Democratic Workers (CGTD) and the Confederation of Workers of Colombia (CTC) in a communication of 1 June 2004 and by the International Confederation of Free Trade Unions (ICFTU) in a communication of 23 July 2004.

In the first place, the Committee observes that the above organizations refer to numerous acts of violence against trade union leaders and trade unionists (the ICFTU reports 20 murders of trade union leaders or trade unionists between January and April 2004, death threats against leaders of the ANTHOC, ASEDAR, SINTRAMUNICIPIO, SINALTRAINAL (Barranquilla, Palmira and Cali branches), SINTRAEMCALI and SINTRAMINERCOL trade union organizations, the break-in at the premises of the Rural Workers' Association of Arauca, the attempted murder with firearms of a leader of the SINTRAMETAL trade union organization, Yumbo branch, and the kidnapping of the Vice-President of the Association of Departmental Employees (ADEA); the trade union federations, CUT, CGTD and CTC, and the ICFTU refer to the issue of the impunity enjoyed by the perpetrators of acts of violence against trade union leaders and trade unionists in 95 per cent of cases and recall that social protest is subject to various forms of repression.

In this respect, the Committee notes that the Government provides information on Case No. 1787, which is currently before the Committee on Freedom of Association and relates to the murders of trade unionists and trade union leaders, presumably for their involvement in trade union activities. The Government also indicates that some of them were not murdered as a result of their trade union activities. The Government adds that regional agreements have been concluded (in Valle del Cauca, Valledupar, Bucaramanga, Arauca, Barrancabermeja, Barranquilla, Medellín and Risaralda) relating to the subjects of prevention, protection, guarantees for freedom of association and measures to combat impunity, and that protective measures have also been taken (for example, the provision of national permits so that those under threat can leave the area concerned) for leaders and/or the provision of armouring for the premises of the ANTHOC, SINALTRAINAL and SINTRAMINERCOL trade union organizations.

The Committee notes with grave concern the persistent climate of violence in the country and the conclusions of the Committee on Freedom of Association in Case No. 1787 in November 2004, and of the Committee on the Application of Standards, citing further murders and other acts of violence. As emphasized in the conclusions of the Committee on the Application of Standards, the Committee of Experts recalls that workers' and employees' organizations can only exercise their activities freely and effectively in a climate free of violence and it once again urges the Government to guarantee the right to life and security, and to reinforce urgently the necessary institutions in order to put an end to the situation of impunity, which is a serious obstacle to the exercise of the trade union rights guaranteed by the Convention. The

Committee notes that the climate prevailing in the country is not favourable to the exercise and development of trade union activities more generally.

The Committee recalls that it has been commenting for many years on certain provisions of the law concerning:

- The prohibition on the calling of strikes by federations and confederations (section 417(i) of the Labour Code).

The Committee notes the Government's indication that: (i) the legislation has followed for a long time the tendency espoused by many other legislations to strengthen trade unionism at the enterprise level and that this is the outcome of the conviction that this approach is most suited to the purposes of strengthening the trade union movement and collective bargaining and that focusing on these organizations is not contrary to the Convention; (ii) the legislator intended that the provision of special protection and the strengthening of the lower levels of the trade union movement were not an obstacle to the promotion of trade unionism at the level of federations and confederations, as illustrated by the fact that the law has afforded such federations and confederations all the same attributes as those accorded to enterprise trade unions; and (iii) this situation, to which the sole exception is the calling of strikes, has resulted in strong federations and confederations which are sufficiently representative of workers' rights. In this respect, the Committee considers that higher level organizations should be able to have recourse to strike action in cases of disagreement with the Government's social and economic policies. The Committee therefore requests the Government to take measures to amend section 417(i) of the Labour Code.

- The prohibition on strikes, not only in essential services in the strict sense of the term, but also in a wide range of services which are not necessarily essential (section 450(1)(a) of the Labour Code 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 of dismissing trade union officers who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), even where the unlawfulness of the strike rests on requirements which are contrary to the principles of freedom of association.

In this respect, the Committee notes the Government's indication that: (1) in Colombia the concept of public services is understood as those provided by the State directly or through private entities to address the needs of the population and in which the general interest is implicit; (2) the legislator, based on the criterion of general interest, indicated in the Labour Code some of the activities which, in view of the situation of Colombia, give expression to and encompass the general interest; (3) none of the Conventions on freedom of association and collective bargaining explicitly refer to the right to strike, and even less to the concept of essential services; and (4) the Political Constitution of 1991 was intended to take up the ILO concept of essential services as merged with the Colombian legal tradition, for which reason Article 53 refers to essential public services with a view to prohibiting the right to strike in them; according to the Government, this is a concept which cannot be divorced from its origin, which goes well beyond labour matters.

In this regard, the Committee recalls that in its General Survey of 1994 it indicated that, under *Article 3, paragraph 1*, of Convention No. 87, "the right to organize activities and to formulate programmes is recognized for workers' and employers' organizations. In the view of the Committee, strike action is part of these activities under the provisions of *Article 3*; it is a collective right exercised, in the case of workers, by a group of persons who decide not to work in order to have their demands met. The right to strike is therefore considered as an activity of workers' organizations within the meaning of *Article 3*" and "in the light of the above, the Committee confirms its basic position that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87" (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 149 and 151). With regard to services considered to be essential in which the right to strike may be limited or even prohibited, the Committee emphasized that "the principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively: the Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health or the whole or part of the population" (see General Survey, *op. cit.*, paragraph 159). In view of the above, the Committee requests the Government to take measures to amend the legislative provisions in question and to provide information in its next report on any measure adopted in this respect.

- The authority of the Minister of Labour to refer a dispute to arbitration when a strike exceeds a certain period (section 448(4) of the Labour Code).

In this regard, the Committee notes the Government's confirmation that the legislation permits the Minister to adopt this measure, but that it is necessary to take into account that: (1) in practice, it is a provision which can be said to have been used on very few occasions in the labour history of the country; (2) the provision sets out, not an obligation for the Minister, but a faculty, and in the event that the Minister chooses to give effect to this provision, the measure adopted by the will of the administration can be appealed through the courts; and (3) the fact that the Minister may submit the dispute to arbitration does not mean that workers are denied recourse to the court of arbitration. The Committee considers that the use of compulsory arbitration to bring an end to a strike is only acceptable when it has been requested by the two parties involved in the dispute or in cases in which the strike may be restricted or even prohibited, that is in cases of dispute within the public service involving public servants

exercising authority in the name of the State or essential services in the strict sense of the term, namely, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. In these conditions, and taking into account the Government's indication that this ministerial power is little used in practice, the Committee requests the Government to take measures to repeal this provision of the Labour Code and to provide information in its next report on any measure adopted in this respect.

Finally, the Committee recalls that in its previous observation it noted that the World Confederation of Labour (WCL) had sent comments on the application of the Convention referring to the legislative matters raised by the Committee and the situation of violence in the country, which means that the exercise of freedom of association involves great risk. With regard to these matters, the Committee refers to the comments made above in the present observation. The WCL also indicates that: (1) the official responsible for registering trade unions is competent to make comments and has been granted the power to oppose registration; and (2) employers are permitted to oppose the registration of a trade union organization or to impugn the election of a new trade union board. With regard to the registration of trade unions, the Committee notes that, notwithstanding this power to oppose registration, the Government has indicated that there is no difficulty in the establishment of trade union organizations and that the registration of a trade union organization is an administrative act which can be appealed through the courts. The Committee recalls that problems of compatibility with the Convention also arise where the registration procedure is long and complicated or when registration regulations are applied in a manner inconsistent with their purpose and the competent administrative authorities make excessive use of their discretionary powers (see General Survey, *op. cit.*, paragraph 75). The Committee therefore requests the Government to provide further information on the practical application of the registration procedure and, in particular, the number of cases where registration has been denied, the reasons for such refusal, whether the refusal was appealed and the final outcome of the appeal. It further asks the Government to provide comments with its next report on the other observations made by the WCL.

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

The Committee notes the comments submitted by the Single Confederation of Workers (CUT), the General Confederation of Democratic Workers (CGTD) and the Confederation of Workers of Colombia (CTC) in a communication of 1 June 2004 on the application of the Convention, and by the International Confederation of Free Trade Unions (ICFTU) in a communication of 23 July 2004. The Committee requests the Government to communicate its observations on these comments in its next report.

The Committee will examine the other matters it raised in its previous observation (see observation of 2003, 74th Session) next year in the context of the regular reporting cycle.

Congo

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

The Committee notes the information provided by the Government in its report.

In its previous comments, the Committee 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 notes that the Government indicates that section 248-15 has indeed been amended but that it is not in a position at this stage 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 on freedom of association and collective bargaining, 1994, paragraph 161). The Committee 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.

As regards its previous comments concerning the deduction of trade union dues from workers' wages, the Committee will continue its discussion with the Government during the regular supervisory cycle relating to the application of Convention No. 98.

Finally, the Committee requested the Government to keep it informed of 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 notes that the Government's report indicates that the revision work has been completed and that the draft was submitted for opinion to the National Labour Advisory Commission at its ordinary

session held in Brazzaville from 22 to 29 December 2003. The Committee requests the Government to send it a copy of the draft revised Labour Code and to continue to keep it informed in this regard.

Costa Rica

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

The Committee notes the comments on the application of the Convention made by the Confederation of Workers Rerum Novarum (CTRN) and the International Confederation of Free Trade Unions (ICFTU), as well as the reply provided by the Government.

The Committee will examine these observations and the Government's reply next year in the context of the regular reporting cycle on the application of the Convention, together with the other pending issues (see 2003 observation, 74th Session).

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

The Committee takes note of the Government's report and of an extensive reply by the Government to the comments submitted by the International Confederation of Free Trade Unions (ICFTU) and the Workers' Confederation Rerum Novarum (CTRN). For the most part the above organizations raised matters already dealt with by the Committee in its observation of 2003. Their comments will be examined together with the Government's reply in 2005 in the context of the regular reporting cycle for the application of this Convention.

The Committee notes the discussion on the application of the Convention that took place in the Conference Committee in June 2004 and particularly the following conclusions: (1) the Government is in agreement with the changes requested by the Committee of Experts; (2) the request by the Government representative for a dialogue process at the ILO headquarters with the participation of the legislative and judicial authorities as well as the Ombudsman, in order to find a solution to the problems through dialogue with ILO experts and officials; and (3) the hope expressed by the Conference Committee that the process of social dialogue will facilitate the solution of the questions raised by the Committee of Experts.

The Committee observes that the envisaged dialogue meeting did not take place so as to discuss the following problems: (1) slow and ineffectual procedures for penalties and redress in the event of anti-union acts, and drafting of a Bill, with tripartite consensus, which provides for a rapid procedure; (2) restrictions on the right to collective bargaining in the public sector under various decisions of the Constitutional Chamber of the Supreme Court; drafting of various Bills including a constitutional reform Bill to overcome this problem; and adoption of a Decree in May 2001 to address the problem; (3) requirement of proportionality and rationality in public sector collective bargaining; the Constitutional Chamber has ruled that several clauses of a public sector collective agreement are unconstitutional and according to the latest comments by the ICFTU and the CTRN the problem is spreading to other collective agreements; and (4) the huge disproportion in the private sector between the number of collective agreements concluded with trade unions – 12, with a coverage of 7,200 workers – and the number of direct arrangements concluded by non-unionized workers – 130; the Committee of Experts had requested an independent inquiry into this matter.

The Committee notes that the Government has requested a technical assistance mission for March 2005 and hopes that at its next meeting the dialogue process at the ILO headquarters requested by the Government will take place.

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1977)

The Committee takes note of the Government's report.

In its previous observation, the Committee noted that the number of protected trade union representatives was small (section 365 of the Labour Code – one leader for the first 20 workers unionized and one for every additional 25 up to a maximum of four), and expressed the view that it would be appropriate to extend protection to a larger number of representatives without prejudice to satisfactory general protection for all workers against acts of anti-union discrimination.

In its previous report the Government provided information on a Bill before the Legislative Assembly to extend and improve protection against anti-union discrimination. The Committee observed that the Bill (to reform several provisions of the Labour Code) which has tripartite consensus, addresses very fully the acts of anti-union discrimination and interference (dismissals, transfers, blacklists, etc.) and provides for very rapid procedures prior to dismissal which have to be discharged by the employer and for summary proceedings before the judicial authorities, with compulsory time limits to ascertain the reasons for the dismissal and severe penalties for refusal to reinstate the worker where justified grounds are not found to exist. It is provided expressly that, in the situations described above, dismissal without due cause as provided in the Labour Code shall be void (that is, subject to compensation) as already established in the case law of the Constitutional Chamber.

In its last report the Government states that it has noted the Committee's comments and hopes to be able to provide information in the near future on the adoption of the abovementioned Bill. The Committee requests the Government to keep it informed on this matter.

Cuba

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

The Committee notes the comments presented by the International Confederation of Free Trade Unions (ICFTU) concerning issues raised in the Committee's previous comments and the Government's reply thereto.

The Committee will examine these matters, as well as all other outstanding issues raised in respect of the application of the Convention (see 2003 observation, 74th Session) during the regular reporting cycle in 2005.

Czech Republic

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

The Committee notes the Government's report as well as its reply to the comments made by the Czech-Moravian Confederation of Trade Unions (CMKOS), dated 25 October 2004.

1. Taking into account allegations of slowness of a certain number of judicial procedures, the Committee had requested the Government to send additional information on the judicial procedure in case of anti-union discrimination or interference and, in particular, to indicate precisely the average duration of the procedure. The Committee had also requested the Government to transmit the text of the draft law on the civil service, which according to the Government makes it possible to collectively bargain in the public service. The Committee notes the information provided by the Government, according to which: (1) not all legal possibilities are always sufficiently utilized; (2) it is often difficult to prove acts of discrimination and a draft law on labour inspection has been submitted to Parliament in June 2004; the methodological rules for inspection will be checked before the adoption of the law in order to improve the situation; (3) draft legislation on extra-judicial settlement of disputes will be submitted to Parliament as well as a review of measures adopted to speed up civil-law litigation.

The Committee requests the Government to keep it informed of developments concerning these matters.

2. The Committee notes that Act No. 218/2002 amending certain provisions of the Public Service Act has not yet entered into force. The Committee is not in a position to establish from the Government's report whether the trade unions representing public servants not engaged in the administration of the State can negotiate or can only benefit from consultations. The Committee requests the Government to indicate in its next report the collective bargaining procedures in place for the negotiation of the terms and conditions of employment of public servants not engaged in the administration of the State and to transmit any relevant legislative texts.

3. The Committee takes note of the comments made by CMKOS on the current trend of replacing collective agreements with internal regulations and individual employer-employee relations and requests the Government to provide its observations thereon.

Democratic Republic of the Congo

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

The Committee notes the information contained in the Government's report. However, it notes that this report does not provide the observations requested by the Committee on the comments made by the Conscience of Workers and Farmers of the Congo (CTP), dated 10 July 2003, and the World Confederation of Labour (WCL), of 29 August 2003. The Committee also notes the comments on the application of the Convention made by the Confederation of Trade Unions of Congo (CSC), an affiliate of the WCL, dated 31 May 2004.

The Committee notes that the comments made by the CTP concern Convention No. 98. It will examine them on the occasion of its regular examination of Convention No. 98.

In its comments, the WCL indicates that the Government has unilaterally suspended trade union elections in enterprises and establishments of all types in the Democratic Republic of the Congo.

The Committee recalls in this respect that the autonomy of organizations can be effectively guaranteed only if their members have the right to elect their representatives in full freedom. The public authorities should therefore refrain from any interference which might restrict the exercise of this right, whether as regards the holding of trade union elections, conditions of eligibility or the re-election or removal of representatives (see General Survey on freedom of association and collective bargaining, 1994, paragraph 112). The Committee therefore requests the Government to reinstate trade union

elections as soon as possible in enterprises and establishments of all types in the Democratic Republic of the Congo and to keep it informed of the measures adopted in this respect.

In its comments, the CSC indicates that flagrant violations of Convention No. 87 occur day after day, and take the form of the arrest of trade unionists and threats by the public authorities upon trade union delegates, particularly in public enterprises. The CSC refers in this respect to two cases of arrest and detention. The Committee recalls 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, *op. cit.*, paragraph 31). The Committee requests the Government to ensure that an investigation is opened into the matters raised by the CSC regarding the cases of arrest and detention and to keep it informed in this respect.

The Committee is also addressing a request directly to the Government on certain other matters.

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

The Committee notes with regret that the Government's report has not been received and that the Government has not replied to the comments made by the Conscience of Workers and Peasants of Congo (CTP), dated 10 July 2003. The Committee also notes the comments made by the Confederation of Trade Unions of Congo (CSC), an organization affiliated to the World Confederation of Labour (WCL), dated 31 May 2004.

Article 2 of the Convention. The Committee recalls that, although section 235 of the new Labour Code prohibits all acts of interference by workers' and employers' organizations in each other's affairs, section 236 provides that acts of interference shall be defined more specifically in a ministerial order. The Committee therefore once again requests the Government to provide a copy of this order as soon as it is adopted.

Article 4. The Committee notes that in its comments the CTP indicates that certain enterprises, such as the National Electricity Company (SNEL), exclude representative trade union organizations from collective bargaining without taking into account section 13 of the national inter-occupational collective labour agreement, concluded and signed by the organizations of workers and employers of the Democratic Republic of the Congo, which provides that only trade unions whose representativeness is confirmed by the election of at least one trade union delegate may participate in collective bargaining in the enterprise. The Committee therefore requests the Government to reply to the CTP's comments and requests it to take all necessary measures to promote collective bargaining with representative organizations.

Article 6. With regard to collective bargaining in the public sector, the Committee had noted in its previous comment that section 1 of the Labour Code, which specifies its scope of application, explicitly excludes 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 the state public services) and career employees and officials of the state public services governed by specific conditions of service. Noting that the CSC's comments indicate that no measures have been taken to establish mechanisms to promote collective bargaining in the public sector, the Committee once again requests the Government to indicate whether public servants who are not engaged in the administration of the State have the right to bargain collectively, and to keep it informed in future reports of measures intended to encourage and promote the negotiation of terms and conditions of employment between the public authorities and workers' organizations in this sector.

The Committee hopes that the Government will make every effort to provide its report as soon as possible and is also addressing a request directly to the Government.

Denmark

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

The Committee takes note of the observations made by the Danish Confederation of Trade Unions (LO) as well as the Government's observations thereon. The observations and the Government's reply which concerned both the application of this Convention, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), will be treated under Convention No. 98 (see below).

The Committee reiterates the request previously addressed to the Government to indicate in its next report the measures taken to ensure that Danish trade unions may represent all their members – residents and non-residents employed on ships sailing under the Danish flag – without any interference from the public authorities, in accordance with *Articles 3 and 10 of the Convention* and whether, in particular, these unions may freely represent seafarers who are not Danish residents in respect of their individual grievances.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1955)

The Committee takes note of the comments made by the Danish Confederation of Trade Unions (LO) as well as the Government's observations thereon.

1. *Article 4 of the Convention.* The comments and the Government's reply concern section 10 of Act No. 408 of 23 June 1988 which sets up a Danish International Shipping Register (DIS). The Committee has been requesting since 1989 the amendment of this provision because it has the effect of prohibiting workers employed on ships sailing under the Danish flag who are not residents of Denmark from being represented in collective bargaining, if they so wish, by Danish trade unions of which they are members.

The Committee notes that according to the LO, the Government continues to avoid amending the Act and maintains that it is not in contravention of the Convention. The LO indicates that the Government considers that Denmark continues to meet its international obligations although it acknowledges that the Committee has been critical of the DIS. The LO cites to this effect a statement made by the responsible Minister in the Danish Parliament on 14 November 2003 according to which the previous and present Governments have both held the view that a decision on the DIS issue would have to be based on a broad discussion in the ILO of international or secondary registers, such as the DIS. The LO adds that, on that occasion, the Government also announced that it would launch a comparative study of the DIS and other international registers; this comparative study has now been completed and the Government has sent a memorandum to Parliament which contains information on conditions in ship registers in other countries. The LO points to the fact that no other ship register has provisions that correspond to section 10 of the Act.

The Committee takes note of the observations made by the Government on the above comments. The Government points out that: (1) the memorandum noted by LO concerning the comparative study of the DIS and other ship registers has provided Parliament with a detailed description of different national register schemes; (2) the discussion with the social partners on DIS has been and continuously is an agenda item of the regular tripartite meetings of the Danish ILO Committee; (3) the ILO will be kept informed of any development concerning the tripartite discussions on DIS; (4) the Danish Workers' organizations have had during the years variable approaches on the issue of the DIS as well as the agreements which allow Danish trade unions to be present during negotiations between owners of ships sailing under the Danish flag and foreign trade unions in order to ensure that the results in respect of wages and other working conditions are at an internationally acceptable level (namely, the agreement on mutual information, coordination and cooperation concerning DIS ships and the framework agreement relating to the conclusion of collective agreements with foreign trade unions which, as noted by the Committee in its previous comments, entered into force on 1 March 2002 for a period of three years).

The Committee recalls that out of a total of 7,729 seafarers, 3,350 were foreigners as of September 2001, according to the figures previously presented by the Government. The Committee recalls from its earlier comments that the abovementioned agreements allowing Danish trade unions to be present during negotiations between owners of ships sailing under the Danish flag and foreign trade unions do not cover all relevant Danish unions as two of them had decided to no longer be parties to the agreements currently in force (the General Workers' Union in Denmark/Seamen's Union in Denmark and the Association of the Restaurant Business). The Committee observes moreover that the abovementioned agreements do not enable workers aboard ships sailing under the Danish flag who are not Danish residents to be represented by Danish trade unions even if they are affiliated to them; Danish trade unions can participate in the negotiations only in an observer capacity, while the terms and conditions of employment of the non-residents are determined through negotiations only with foreign trade unions.

In these circumstances, the Committee concludes that section 10 of Act No. 408 has the effect of, on the one hand, restricting the scope of negotiable issues by Danish trade unions by excluding from their bargaining power seafarers working on ships under the Danish flag who are not Danish residents and on the other hand, preventing these seafarers from freely choosing the organization they wish to represent their interests in the collective bargaining process. The Committee therefore requests, once again, the Government to indicate in its next report, the measures taken or envisaged to amend section 10 of Act No. 408 so that Danish trade unions may freely represent all their members – Danish residents and non-residents working on ships sailing under the Danish flag, in the collective bargaining process in conformity with *Article 4* of the Convention.

2. The Committee also requests the Government to provide in its next report the information requested by the Committee in its previous comments concerning the collective bargaining rights of majority organizations (see 2003 observation, 74th Session).

Ecuador

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

The Committee notes the comments submitted by the International Confederation of Free Trade Unions (ICFTU) in a communication dated 19 July 2004 on the application of the Convention and the Government's reply thereto.

As most of the matters raised by the ICFTU were examined last year in the context of the regular reporting cycle, the Committee will examine these comments, the Government's reply and its observations on the other outstanding issues raised by the Committee (see 2003 observation, 74th Session) when it receives the Government's report due for examination in 2005.

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

The Committee notes that the Confederation of Workers of Ecuador (CTE) and the World Federation of Trade Unions (WFTU) sent comments on the application of the Convention by letters of 17 December 2003 and 14 January 2004, objecting to section 8 of Executive Decree No. 44 of 30 January 2003 prohibiting an increase in wages and remuneration in the budgets of public sector entities for the financial year 2003. They also refer to a decision of the National Remuneration Council (No. 197) prohibiting wage increases in 2004 and 2005. The Committee notes with regret that the Government's communication dated 17 August 2004 does not provide a reply to the Committee's comments. The Committee requests the Government to provide its observations in its next report. In any case, the Committee recalls that in its previous observation it referred to the Decree in question and reiterates what it said on that occasion, namely that:

... all workers in the public administration who are not engaged in the administration of the State must be able to enjoy the guarantees laid down in the Convention and, consequently, negotiate collectively their conditions of employment, including wages, and that if, under an economic stabilization or structural adjustment policy, i.e. for imperative reasons of national economic interest, wage rates cannot be fixed freely by means of collective bargaining, these restrictions should be applied as an exceptional measure and only to the extent necessary, should not exceed a reasonable period and should be accompanied by adequate safeguards to effectively protect the standard of living of the workers concerned, in particular those who are likely to be the most affected (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 262 and 260).

The Committee also notes that the CTE objects to the Civil Service and Administrative Careers and Unification and Standardization of Public Sector Remuneration Act of 6 October 2003, which, in its opinion, infringes Conventions Nos. 87 and 98 (the CTE states that it requested the Constitutional Court to declare certain sections of the Act unconstitutional), as well as to a draft amendment to the abovementioned Act presented to the National Congress on 16 December 2003. The Committee requests the Government to send the ruling handed down by the Constitutional Court. The Committee also hopes that the draft in question will be in conformity with the Conventions on freedom of association and collective bargaining. The Committee requests the Government to send it a copy of the draft and reminds it that it may avail itself of the technical assistance of the Office if it so wishes.

The Committee intends to examine the remaining issues concerning the application of the Convention in the context of its regular reporting cycle (see 2003 observation and direct request, 74th Session).

Ethiopia

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

The Committee takes note of the observations of the International Confederation of Free Trade Unions (ICFTU) in its communication dated 19 July 2004. The Committee also takes note of the reply of the Government to its observations of 2003.

Articles 2, 3 and 10. Right of teachers to unionize and the right of teachers' organizations to organize their activities and formulate their programmes without interference by the public authorities. The Committee takes note of the Government's observation that privately employed teachers can exercise the right to unionize and engage in collective bargaining as per the new Labour Proclamation No. 377/2003, and that teachers in the public sector can form professional associations.

The Committee further notes however, the ICFTU's observations that the Ethiopian Teachers' Association (ETA) is being harassed by the authorities, that its funds are frozen, that it is prevented from collecting membership fees and that its members are being harassed, intimidated and jailed, while the Acting Secretary-General Abate Angori has been summoned for questioning on several occasions by the Criminal Investigation Bureau. In addition, the ICFTU indicates that on 5 October 2003, the police prevented ETA from holding a public meeting to celebrate World Teachers' day in Addis Ababa. According to the ICFTU, armed police surrounded ETA premises and prevented ETA from holding the meeting by blocking the routes to the square where the meeting was to take place and dispersing all those who were going to take part. The Committee further notes that according to the ICFTU, the police alleged that ETA had not given them the required 72 hours' notice of the meeting while ETA states that it had received a letter alleging that it had not complied with the law or given proof of its legal status.

The Committee notes that the Government in its reply has indicated that all legally established organizations including ETA are free to hold meetings provided that they comply with the relevant law by giving prior notice of the meeting. According to the Government, this is necessary to ensure the maintenance of law and order during meetings. The Government has further indicated that ETA ought to have given prior notice and if it was not satisfied by the decision of the appropriate authority thereon, it could have moved the court for relief.

The Committee recalls in this respect that the right to organize public meetings constitutes an important aspect of trade union rights. Nevertheless, organizations must observe the general provisions relating to public meetings, which are applicable to everyone. The prohibition of demonstrations or processions on public streets, in particular in the busiest parts of the city, when it is feared that disturbances might occur, does not necessarily constitute an infringement of trade union rights, but the authorities should strive to reach agreement with organizers of the meeting to enable it to be held in some other place where there would be no fear of disturbances. While reasonable restrictions are acceptable, they should not result in breaches of fundamental civil liberties (see General Survey on freedom of association and collective bargaining, 1994, paragraph 37). The Committee trusts that the Government will take all measures necessary to ensure that any restrictions on the organization of public meetings by trade unions are reasonable and do not constitute infringement of fundamental civil liberties.

The Committee further notes the Government's indication that the comments made by the ICFTU relating to the harassment of the officials and members of ETA are of a broad and sweeping nature and that there is no police record showing that Mr. Abate Angori has been summoned for questioning by the Criminal Investigation Bureau. The Committee observes the contradiction between the ICFTU's comments and the Government's reply and that the ICFTU has referred to other matters of interference in trade union activities, including the freezing of union funds and obstacles to the collection of dues, to which the Government has not replied. The Committee therefore requests the Government to provide further information on all the matters raised by the ICFTU and trusts that the Government will take all necessary measures to ensure that workers' organizations may organize their activities and formulate their programmes without interference from the public authorities.

The Committee will examine other aspects of the Government's report in respect of the application of the Convention during the regular reporting cycle of 2005.

Fiji

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1974)

The Committee takes note of the Government's report as well as the comments made by the Fiji Trades Union Congress (FTUC) dated 25 August 2004 and the Fiji Mine Workers' Union dated 26 August 2004. It also notes with interest the text of the (further amended) draft Industrial Relations Bill handed over by the Government on 3 June 2004.

Article 1 of the Convention. 1. Protection against anti-union discrimination. The Committee notes that according to the FTUC, although section 59(1) of the Trade Unions Act prohibits acts of anti-union discrimination, in reality workers are not accorded any protection because the controlling authority often refrains from acting as vigorously as it should. Thus, no employer has been successfully prosecuted to date despite numerous complaints referred to the Ministry of Labour and Industrial Relations for action. The FTUC attaches documents concerning delays in treating six complaints of anti-union discrimination, including one which has been brought before the Committee on Freedom of Association (Case No. 2316) and on which it is stated that although the union had notified the Ministry of the dismissals of 44 workers by the Turtle Island Resort in a letter dated 24 July 2002, no appropriate measures were taken resulting in the union's recognition as representative being eventually withdrawn.

The Committee notes that according to the Government, the Ministry has received complaints that some employers are frustrating the rights of workers to form and join unions of their own choosing and these employers have been cautioned on the potential breach of the Trade Unions Act and the subsequent prosecution. It adds that the Trade Unions Act makes it an offence for an employer to stipulate the cessation of union membership as a condition of employment.

The Committee notes that according to the mechanism for dealing with acts of anti-union discrimination provided in sections 2, 3(1), 4 and 5 of the Trade Disputes Act, the complainant trade unions and their members do not have the standing to bring their cases to the courts or any other independent body so as to have their grievances examined; trade disputes may only be reported to the Permanent Secretary for Labour who has full discretion to reject the report, cause an investigation into it, or report it to the Minister who may in turn refer it to a Tribunal. The Committee emphasizes that in cases of anti-union discrimination the parties should have access to authorities like the ordinary courts or specialized bodies, which should have all the necessary powers to rule rapidly, completely and in full independence and in particular to decide the most appropriate form of redress in the light of the circumstances (General Survey on freedom of association and collective bargaining, 1994, paragraph 219). The Committee requests the Government to indicate in its next report any measures taken or contemplated to amend the legislation, possibly in the framework of the draft Industrial Relations Bill, so as to enable trade unions and their members to have access to the Labour Court on their own initiative for the examination of allegations of anti-union discrimination, if all other efforts at a rapid conciliation and negotiation fail, and to ensure that the Labour Court has the competence to order appropriate remedies.

2. The Committee further notes that according to the FTUC, section 24 of the Employment Act enables employers to terminate the services of employees by giving them short notice or pay in lieu of notice. The Committee notes that the Employment Act contains no obligation to show cause for dismissals and no provision prohibiting dismissals on anti-union grounds. The Committee recalls that legislation which allows the employer in practice to terminate the employment

of a worker on condition that he pay the compensation provided for by law in all cases of dismissal, when the real motive is his trade union membership or activity, is inadequate under the terms of *Article 1* of the Convention (General Survey, op. cit., paragraph 220). The Committee requests the Government to indicate in its next report any measures taken or contemplated to amend the Employment Act so as to introduce a specific prohibition of anti-union dismissals accompanied by sufficiently dissuasive remedies.

Article 2. Protection against acts of interference. The Committee notes that the FTUC refers to various acts of interference including the open promotion of in-house unions instead of independent ones and delaying tactics before the courts which enable employers to undermine unions seeking recognition while the trial is pending, by dismissing their members or intimidating them into resigning (this is what allegedly happened in the abovementioned Case No. 2316).

The Committee notes that according to the Government, section 59 of the Trade Unions Act (which prohibits anti-union discrimination) forbids by implication the exercise of control by employers over workers and workers' organizations and that the recent ratification of Convention No. 87 as well as the amendments that will be made to the draft Industrial Relations Bill will ensure that there will be no interference whatsoever. The Government also indicates that the social partners reached an understanding in the Labour Advisory Board not to interfere with each other's organizations.

The Committee observes that section 59 of the Trade Unions Act does not contain a specific prohibition of acts of interference and is not accompanied by the relevant implementation machinery while the draft Industrial Relations Bill does not seem to currently contain any provision in this respect. The Committee welcomes the information contained in the Government's report on the understanding reached between the employer and worker members of the Labour Advisory Board. The Committee notes however that nothing in the Government's report permits to affirm that this understanding is a legally binding agreement accompanied by sufficiently effective and dissuasive sanctions. The Committee hopes that the amendments to be made to the draft Industrial Relations Bill according to the Government, will ensure adequate protection, including sufficiently rapid machinery and dissuasive sanctions, against acts of interference by employers or their organizations into workers' organizations, in particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations. The Committee requests the Government to keep it informed in this respect.

Articles 1 and 4. With regard to its previous comments on the dispute in the Vatukoula Joint Mining Company (refusal to recognize a union and dismissal of striking workers), the Committee notes that according to the Fiji Mine Workers' Union, on 11 June 2004, a final judgement was given in favour of the employer to the effect that the recommendations of the 1995 Commission of Inquiry were "null and void". According to the Fiji Mine Workers' Union, the inactivity of the Government and its misinterpretation of the Trade Disputes Act have been largely responsible for the long delay in the resolution of this dispute which has lasted for 15 years and has caused great hardship to the dismissed workers. The Committee expresses regret at the long delay in the resolution of this dispute and requests the Government to transmit the text of the judgement in its next report.

The Committee also notes the claims put forward by the Fiji Mine Workers' Union in its communication, namely: (1) the filing of an appeal on this case by the Solicitor General; (2) the payment of compensation to mitigate the hardship suffered by the workers; and (3) the provision of assistance to help the workers re-establish themselves within Vatukoula or elsewhere as recommended by a Senate Select Committee on 6 July 2004. The Committee requests the Government to indicate in its next report any measures taken or contemplated in this respect.

Article 4. The Committee notes with interest that the draft Industrial Relations Bill contains positive measures for the promotion of collective bargaining, in particular, provisions concerning good faith bargaining (section 156), the provision of information during bargaining (section 158) and the possibility of any trade union (without representativeness requirements) to report trade disputes to the Labour Tribunal (section 173). The Committee requests the Government to indicate in its next report any progress made with a view to the adoption of the Bill.

The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.

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

France

French Southern and Antarctic Territories

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

The Committee notes the information provided in the Government's report. The Committee notes the indication in the report that protocols of collective agreements have been concluded reflecting the collective bargaining between the representative organizations of seafarers and shipowners. The Committee also notes the Government's indication that, in most cases, the owners of vessels registered in the French Southern and Antarctic Territories refer to the provisions of the national collective agreement for the merchant navy and apply it either through contracts or directly, which results in the

Protocol agreement on the representation of French seagoing personnel in enterprises registering vessels in the French Southern and Antarctic Territories being made applicable. Finally, the Committee notes that the process of establishing the maritime labour inspectorate, under Act No. 96-151 of 26 February 1996 respecting transport and Decree No. 99-489 of 7 June 1999, issued under section L-742-1 of the Labour Code, has been under way since September 2001 and should make it possible for employees on vessels registered in the French Southern and Antarctic Territories to have the possibility of having recourse to a maritime labour inspector, particularly to supervise the application of the applicable collective agreements.

The Committee also notes the Government's indication that the reform of the Overseas Labour Code is envisaged, providing for the possibility for trade unions representing seafarers on board vessels registered in the French Southern and Antarctic Territories to conclude agreements. The Committee takes due note of this information and requests the Government to provide a copy of the amended Overseas Labour Code once it has been adopted.

Germany

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

The Committee takes note of the comments made by the International Confederation of Free Trade Unions (ICFTU) concerning the denial of the right to strike in the civil service. The Committee recalls that it has been examining this issue for a number of years and dealt with it in its latest comments (see 2003 observation, 74th Session). The Committee also notes that several other comments made by the ICFTU (denial of collective bargaining rights of teachers in the public service) concern Convention No. 98 and have also already been raised by the Committee in its previous comments under that Convention. The Committee requests the Government to transmit its observations on the comments made by the ICFTU and the pending comments of the Committee in its next reports on Conventions Nos. 87 and 98 due for the regular reporting cycle in 2005.

Ghana

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

The Committee takes note of the Government's report.

With regard to its previous comments concerning the steps taken for the adoption of the draft Labour Bill which had been prepared with the assistance of the ILO, the Committee notes that the Government indicates that since 8 October 2003 the Bill has received presidential assent as Labour Act 2004 (Act 561), and that it will transmit a copy of the Act in its next report. The Committee requests the Government to provide a copy of the Labour Act 2004, so as to enable it to examine its conformity with the Convention.

The Committee also notes that according to the Government, its previous comments concerning the Emergency Powers Act, 1994, which grants extensive powers to suspend the operations of any law and to prohibit public meetings and processions, have been well noted. The Committee recalls that the Government had indicated in a previous report that the Emergency Powers Act will be reviewed in accordance with the Committee's comments. It therefore once again requests the Government to take the necessary measures in the near future to repeal this Act or to exclude explicitly the exercise of freedom of association from its scope of application.

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 report of the direct contact mission which took place in Guatemala from 17-20 May 2004, the discussion which took place in the Conference Committee in June 2004 and the comments on the application of the Convention submitted by the following organizations: Trade Union of Workers of Guatemala (UNSI TRAGUA), the World Confederation of Labour (WCL) and the International Confederation of Free Trade Unions (ICFTU). The Committee also notes the Government's reply to many of these comments. The Committee invites the Government to examine in the National Tripartite Committee the issues raised by UNSI TRAGUA, many of which have been submitted to the Committee on Freedom of Association or refer to problems of interpretation relating to legislation or jurisprudence. The Committee requests the Government to keep it informed in this regard.

The Committee welcomes the fact that the Government has extended the mandate of the direct contact mission in the context of Convention No. 98 to the issues raised in the context of the application of Convention No. 87.

The Committee notes the Government's statements in its detailed report. The Committee notes that: (1) the labour inspectorate has duties within the new system of sanctions and precise instructions have been issued to inspectors for the effective safeguarding of trade union rights; it has also dealt with all complaints received, resolving them through

conciliation or applying the corresponding sanction; (2) the Government indicates that the “pro operario” principle is contained in the Constitution and allows the interpretation of certain matters raised by the Committee of Experts since that principle allows the most favourable standard to prevail; (3) in the last three years, with regard to a wave of strikes, there has been a declaration of illegality and a declaration of legality; the latter is partly due to the reluctance of civil society to use institutional means for resolving labour disputes; (4) in May 2003, a national trade union requested technical assistance from the Ministry to ascertain legal aspects concerning industry trade unions; this may result in the formation of the first industry trade union; (5) there are 1,640 registered trade unions, including 389 which are active (56 of these were set up in 2002 and 52 in 2003); two trade unions with 53 members are registered and active in the export processing sector; the total number of members in the country is 24,554; solidarist associations exist in some 550 enterprises and account for 100,000 members; (6) the registration of trade union organizations is carried out within a reasonable time, as far as possible in line with the period laid down in the Labour Code; some delays are the result of omissions by the applicants; the Government will provide information on the average time for the registration of unions; (7) there is no knowledge of the Public Prosecutor’s Office having initiated penal or civil actions against public servants in the case of a strike; and (8) trade union organizations are exempt from paying taxes but they must be entered in the tax register, even though in principle they cannot be subject to taxation.

1. *Acts of violence against trade unionists.* The Committee notes the information obtained by the direct contacts mission which was supplied by the Special Public Prosecutor’s Office responsible for investigating offences against trade union members. According to this information, during the period 2003-04, one trade unionist was the subject of an attempted murder, another suffered serious injuries, 30 cases involved threats and ten offences involved coercion. The mission report indicates that physical violence has decreased significantly but has not completely disappeared, while the number of cases involving threats and coercion has increased considerably. It should also be emphasized that, according to the information from the Special Public Prosecutor’s Office and the Government, the perpetrators in the murder cases (three cases in 2001 and one attempted murder in June 2002) have been identified but all cases relating to murder and other offences are still at the investigation stage. The Committee expresses its grave concern at this situation and observes that the WCL alleges that criminal proceedings are extremely slow and impunity is the norm in cases concerning trade unionists.

The Committee notes that, among the commitments made by the Government during the mission, the Ministry of Labour undertook, in the case of death threats or aggression towards trade unionists or employers, to arrange with the Ministry of the Interior the necessary personal protection measures for them, if requested by the persons in question.

The Committee emphasizes that trade union rights can only be exercised in an atmosphere which is free of violence and expresses the sincere hope that the Government will make every effort to ensure the full respect of the human rights of trade union members. The Committee requests the Government to provide information on any offences against trade unionists which are reported to the Special Public Prosecutor’s Office.

2. *Detention of CGTG trade union leaders Mr. Rigoberto Dueñas and Mr. Victoriano Zacarías.* This matter was reported by the World Confederation of Labour (WCL). The Committee notes that the mission visited these leaders in prison and interviews were held with the members of the court responsible for judging Mr. Rigoberto Dueñas for the purpose of stating the conclusions and recommendations of the Committee on Freedom of Association with regard to the detention of this leader (see 334th Report of the Committee, Case No. 2241, paragraphs 524 and 526).

The Committee notes with satisfaction that the abovementioned court acquitted trade union leader Mr. Rigoberto Dueñas in August 2004 and that the other court acquitted Mr. Victoriano Zacarías.

The Committee is grateful to the Ministry of Labour for taking all necessary steps to ensure that the mission could hold interviews with the detained trade union leaders Mr. Rigoberto Dueñas and Mr. Victoriano Zacarías and with the judicial authorities which had competence in these cases.

3. *Legislative problems.* The legislative provisions which pose problems of conformity with the Convention are as follows:

- restrictions on the formation of organizations in full freedom (under section 215 (c) of the Labour Code, the need to have “50 per cent plus one” of those working in the enterprise to form industry trade unions), delays in the registration of trade unions or refusal to register them;
- restrictions on the right to elect trade union leaders in full freedom (need to be of Guatemalan origin and to be a worker in the enterprise or economic activity in order to be elected a trade union leader, under sections 220 and 223 of the Labour Code);
- restrictions on the free financial administration of trade union organizations under the Organic Act on supervision of the tax administration, which allows in particular inspections without prior notice;
- restrictions on the right of workers’ organizations to perform their activities freely (under section 241 of the Code, strikes are declared not by a majority of the voters 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 fuel-related services, 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 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 (section 390(2) and 430 of the Penal Code and Decree No. 71-86).

The Committee notes that the Government expressed to the mission its willingness to make progress in relation to the issues raised by the Committee of Experts. The Committee welcomes certain measures that were taken and commitments of varying scope that were made by the Government during the mission, which were approved in the presence of the mission by the Tripartite Committee on International Labour Affairs, and it emphasizes in particular that:

- (1) the Ministry submitted to the Tripartite Committee the legislative issues raised in the Committee of Experts so that it could examine the latter periodically with a view to possible amendments;
- (2) the Ministry requested the Labour Committee of the Congress of the Republic to consult the Tripartite Committee on International Affairs concerning initiatives awaiting approval with regard to substantive and procedural reforms;
- (3) the Ministry agrees to the setting up of a rapid intervention mechanism for the examination of complaints intended for the ILO so that an attempt can be made to find a solution within 15 days to the problems put forward before the complaints in question are transmitted to the ILO. This mechanism would enable the ministerial authorities to follow special procedures and the matter in question might be entrusted to a subcommittee of the Tripartite Committee;
- (4) the Ministry will organize a tripartite seminar on the general problems in the export processing sector regarding trade union rights; the seminar will be attended by the ILO and will provide for a plan of action which will be evaluated in the context of follow-up activities.

The Committee notes that the Tripartite Committee on International Labour Affairs has held several meetings with the Labour Committee of the Congress of the Republic. The Committee requests the Government to provide information on the fulfilment of all the commitments made during the mission and expresses the hope that the Government will be in a position in the near future to provide information on progress made in relation to the abovementioned legal provisions. As indicated in the mission report, the Committee emphasizes the number of pending issues and notes the gravity of some of them which have been continuing for years and which include key aspects of trade union rights. The Committee therefore urges the Government to make every effort to ensure that the legislative provisions in question are modified or abolished.

4. *Other matters.* The Committee also notes that the draft Civil Service Act and Government Agreement No. 700-2003 concerning essential public services in which compulsory arbitration may be imposed, raise problems of conformity with the Convention. These specifically include as essential public services urban and non-urban transport of passengers or freight, postal services, hotels and other lodging premises and their services, social communication media involving the written word, radio, television or any other electronic medium, port and airport operations, etc.

The Committee also notes that, according to the mission report, there is some confusion as regards the competence of the Ministry of Labour in the case of violations of trade union rights in the public sector. The Committee emphasizes the importance of clearly determining the authority responsible for examining complaints concerning the violation of trade union rights.

In general, the Committee notes that, in its comments on the application of the Convention, the ICFTU and UNSITRAGUA refer to a large number of major problems of application of the Convention in practice, which confirm the impact of the legal provisions the amendment or abolition of which has been called for by the Committee of Experts. The ICFTU emphasizes that section 390 of the Penal Code, which provides for imprisonment of one to five years for any persons who perform acts with the purpose of paralysing or disrupting the functioning of enterprises which contribute to the economic development of the country and with the purpose of harming national production, is still in force. The Committee notes that the Government has confirmed that this provision is still in force. The Committee notes that UNSITRAGUA indicates that the only case of a legal strike referred to by the Government is the one of 2002 and not even one industry trade union has been able to be formed.

As regards the exercise of trade union rights in the export processing industry, the Committee notes that, according to the Government, there are currently two trade unions and a total of 53 members. The Committee notes that the mission report mentions the setting up of a specialized labour inspection unit for the export processing industry (where four collective agreements have been signed). The Committee requests the Government to provide information on any complaint concerning the exercise of trade union rights which occurs in that sector, on the corresponding administrative or judicial decisions, and on the manner in which respect for the rights laid down by the Convention for that sector is ensured.

The Committee notes the statements to the mission by the trade union confederations, according to which, in Guatemala, trade unions have a monopoly over collective bargaining; no cases have occurred of collective bargaining undertaken by solidarist associations and the leaders of those associations do not participate in joint committees.

The Committee hopes that it will be able to note concrete progress on the abovementioned points in the near future.

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

The Committee notes the information provided by the Government, the discussion in the Conference Committee on the Application of Standards in June 2003, the report of the direct contacts mission which visited Guatemala from 17 to

20 May 2004 and the comments on the application of the Convention made by the following organizations: the Trade Union Confederation of Guatemala (UNSI TRAGUA), the World Confederation of Labour (WCL) and the International Confederation of Free Trade Unions (ICFTU). The Committee also notes the Government's reply to many of the matters raised in these comments. The Committee requests the Government to examine in the framework of the National Tripartite Commission the issues raised by UNSI TRAGUA, many of which have been submitted to the Committee on Freedom of Association or relate to problems of legal interpretation or case law. The Committee requests the Government to provide information in this respect.

The problems referred to by the Committee relate to restrictions on the exercise of trade union rights in practice, as follows:

- cases of failure to comply with court orders to reinstate dismissed trade union members;
- tardiness of the procedure to impose penalties for breaches of the labour legislation (including violations of trade union rights), with some cases taking five years to process;
- the need to promote trade union rights (particularly collective bargaining) in *maquila* enterprises (there only exist two trade unions and there appear only to be two collective accords);
- numerous anti-trade union dismissals; UNSI TRAGUA has referred to a very high number of anti-trade union dismissals in the private sector and the public sector; according to the Union of Guatemalan Workers (UGT), one-third of municipal trade union leaders have been dismissed;
- the insufficiency of the guarantees in the procedure for the termination of public servants (section 79 of the Civil Service Act; section 80 of the Regulations under this Act; Decree No. 35-96 amending Decree No. 71-86 of the Congress of the Republic and Government Accord No. 564-98 of 26 August 1998);
- the violation of collective accords (in over 60 per cent of cases, according to UNSI TRAGUA); and
- the need for the Code of Labour Procedures to be the subject of in-depth consultations with the most representative organizations of workers and employers.

The Committee notes the Government's statements that: (1) meetings are being held between the Tripartite Commission on International Labour Affairs and the Labour Commission of the Congress of the Republic on the questions raised by the Committee; (2) there are three drafts of procedural reform, one of which is more likely to be adopted in the very near future, and that these initiatives will be the subject of consultations with the social partners; (3) there are two trade unions active in the *maquila* sector, with 53 members; (4) the new system of penalties set forth in the legal reform of 2002 is beginning to be operational and its dissuasive effects are perceivable; up to February 2004, around 5,000 fines were imposed for violations of labour laws; action has been taken to accelerate procedures for the collection of fines and to make the administrative process relating to penalties more efficient; (5) information will be provided on court rulings relating to the offence of non-compliance (failure to comply with orders for the reinstatement of workers); (6) there are four collective accords in the *maquila* sector; (7) there are no indications of actual complaints relating to the dismissal of municipal leaders, although they have the right not to be removed from their positions (section 223 of the Labour Code); (8) there are 50 collective accords in private enterprises and 20 in the public sector; (9) there is no concrete information (judicial or administrative) as to the existence of massive dismissals on grounds of anti-union discrimination; (10) information will be provided on the allegations of violations of collective accords; and it is not possible to affirm with certainty that 60 per cent of the accords are not complied with; and (11) the lack of speed of the procedures is not the result of an anti-union policy, but rather a structural problem of any administration of justice.

The Committee notes that the report of the direct contacts mission emphasizes certain of the measures adopted by the Government, and particularly the establishment of a special unit of the labour inspectorate for the *maquila* sector (where four collective accords have been concluded), and the new alternative system for the settlement of disputes which began operating in September 2004, as well as the reinforcement of penalties in the event of failure to comply with court orders or awards. The Committee noted previously that section 414 of the Penal Code has been updated and provides for a fine of up to 51,000 quetzales for failure to comply with an order issued by an authority. Moreover, the Committee of Experts had already been informed of the existence of three draft texts for the Procedural Labour Code which were before Congress and the Government had indicated that this matter would be submitted to the Tripartite Commission.

The Committee observes that, in their comments, the ICFTU and UNSI TRAGUA refer to a very high number of anti-union dismissals in both the public and the private sectors, as well as to cases which illustrate the tardiness and ineffectiveness of legal proceedings, and to violations of the right to collective bargaining.

The Committee expresses appreciation of the measures adopted and the commitments made by the Government during the direct contacts mission, with particular reference to the following:

- (1) the Ministry has submitted to the Tripartite Commission the legislative matters raised by the Committee of Experts so that it can review them regularly with a view to their possible amendment;
- (2) the Ministry has requested the Labour Commission of the Congress of the Republic to consult the Tripartite Commission on International Labour Affairs concerning the initiatives that are awaiting approval in relation to substantive and procedural reforms;

- (3) the Ministry is in agreement with the establishment of a mechanism for rapid intervention for the examination of denunciations and complaints to the ILO so that an attempt can be made to find a solution to the problems raised within 15 days before the complaints and denunciations are forwarded to the ILO. This mechanism would make it possible for the ministerial authorities to take special action and could be referred to a subcommittee of the Tripartite Commission;
- (4) the Ministry has issued a circular to labour inspectors instructing them in cases of anti-union discrimination not to complete the administrative procedures without having identified situations of anti-union discrimination which merit preventive measures or sanctions with a view to applying the penalties envisaged in the Labour Code; and
- (5) the mediators and conciliators of the alternative dispute system could address the issue of the failure to comply with collective accords. In this respect, the Ministry will request the collaboration of the ILO and other organizations for the training of these mediators and conciliators. Other labour inspectors could also be included in this type of activity.

The Committee requests the Government to provide information on the effect given to all of these commitments undertaken during the direct contacts mission and hopes that in the near future the Government will be in a position to report on concrete progress in relation to the problems raised.

The Committee emphasizes that developments in relation to the outstanding problems depend principally on the work of the Tripartite Commission and the future Procedural Labour Code (which will have to address the problems relating to the shortcomings in the functioning of justice, and particularly the excessive slowness of procedures and the failure to comply with court orders relating to acts of anti-union discrimination). The Committee emphasizes the significant number of outstanding problems and the seriousness of a number of them. The Committee urges the Government to make every effort to overcome the problems raised and to ensure the full exercise of the rights set out in the Convention.

The Committee requests the Government to provide detailed information on: (1) the current procedures for the dismissal of public servants, particularly from the point of view of their right of defence and the recourse available; (2) cases which have arisen in recent years of failure to comply with orders for the reinstatement of dismissed workers; and (3) the average duration of administrative and judicial proceedings in cases of the violation of trade union rights.

Finally, noting the limited number of collective agreements, the Committee requests the Government to take measures, in consultation with the social partners, to promote collective bargaining in the country and to ensure that effect is given in practice to the collective agreements concluded.

Guinea

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

In its previous comments, the Committee noted that public transport and communications do not in themselves constitute essential services in the strict sense of the term, but that they appear on the list contained in Order No. 5680/MTASE/DMTSL/95 of 24 October 1995, which defines and determines essential services in the context of the exercise of the right to strike. While noting the provisions of section 4 (according to which a minimum service shall be established in essential services and that the determination of the jobs necessary for the implementation of the minimum service and the designation of the workers responsible for their execution are the responsibility of the employer and the trade union body) it observes that, where the parties do not reach an agreement, it is for the public authorities to take the necessary measures to ensure the provision of indispensable minimum services (section 5). The Committee recalls that, where the parties do not reach an agreement, minimum services should be determined by an independent body. The Committee therefore requests the Government to indicate whether, in cases where the parties do not reach an agreement on a negotiated minimum service in transport and communications (which are not considered to be essential in the strict sense of the term), measures are envisaged for an independent body to examine rapidly the difficulties encountered in the definition of the minimum service.

The Committee also recalled that recourse to compulsory arbitration should only be imposed by one of the parties to a conflict in cases in which the right to strike may be limited or even prohibited, that is in essential services in the strict sense of the term or in the event of an acute national crisis. Noting that sections 342, 350 and 351 of the Labour Code permit recourse to arbitration at the request of one of the parties or of the minister in relation to essential services (the above Order includes public transport and communications in such services), the Committee once again requests the Government to provide information on the application in practice of these sections in recent years, and particularly the number of occasions on which recourse has been had to these provisions, the services concerned and the circumstances. The Committee requests the Government to keep it informed of any measures adopted or envisaged to ensure that compulsory arbitration is limited to cases in which the two parties agree to request it, except in essential services in the strict sense of the term or in the event of an acute national crisis.

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

Haiti

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

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) and by the Coordinated Trade Unions of Haiti (CSH) concerning the application of the Convention in Haiti. It requests the Government to send its observations thereon.

The Committee recalls that for many years it has been commenting on:

- the need to repeal or amend section 236bis of the Penal Code under which government consent is required in order to form an association of more than 20 persons; section 34 of the Decree of 4 November 1983 conferring on the Government broad powers of supervision over trade unions; and sections 185, 190, 199, 200 and 206 of the Labour Code allowing compulsory arbitration at the request of only one of the parties to a labour dispute in order to end a strike, thereby imposing excessive restrictions on the right to strike;
- the need to recognize by law the right to organize of public servants, in order to bring its legislation into conformity with article 35(3) and (4) of the 1987 Constitution providing constitutional safeguards for the freedom of association of workers in the public sector and the private sector and recognizing their right to strike with adopting specific legislative measures to this end.

The Committee expresses the firm hope that the Government will take all necessary steps in the near future to bring its legislation into full conformity with the provisions of the Convention. It again points out that the Government may call upon the Office for technical assistance should it so wish.

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

The Committee is also raising a certain number of points in a request addressed directly to the Government.

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

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 requested the Government to provide information on developments concerning: (i) the adoption of a specific provision envisaging protection against anti-union discrimination at the time of recruitment; (ii) the adoption of provisions coupled with effective and expeditious procedures and sufficiently dissuasive sanctions guaranteeing workers general and adequate protection against acts of anti-union discrimination; and (iii) the amendment of section 34 of the Decree of 4 November 1983 which empowers the Social Organizations Service of the Department of Labour and Social Welfare to intervene in the elaboration of collective agreements.

Furthermore, the Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) in a communication dated 24 May 2002, and by the Haitian Trade Union Coordination (CSH) in a communication dated 26 August 2002. The Committee requests the Government to provide its observations on these comments as soon as possible.

It also expresses the firm hope that the Government will take all the necessary measures to bring its legislation into full conformity with the provisions of the Convention and requests the Government to keep it 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.

Indonesia

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

The Committee notes the Government's report. It further notes the comments received from the International Confederation of Free Trade Unions (ICFTU) and the reply of the Government thereon. The Committee notes the promulgation of Act No. 2 on industrial relations dispute settlement, which will enter into force on 14 January 2005.

Article 1 of the Convention. Protection against acts of anti-union discrimination. With respect to its previous request to indicate whether in cases of anti-union dismissals (section 153 of Act No. 13 of 2003 concerning manpower) the affected workers have the right to obtain economic compensation, the Committee notes with interest section 153(2), pursuant to which, any anti-union dismissal is null and void; in such a case, the entrepreneur is obliged to re-employ the affected worker.

In its previous observation, the Committee requested the Government to supply statistics on the number of complaints lodged in the last two years and the most frequent problems examined. The Committee notes that the Government states that up until now, there have been no cases of anti-union dismissals lodged before the courts. The Committee notes that the ICFTU points out frequent cases of anti-union discrimination and explains that such cases are handled by the regional and national labour disputes resolution committees, decisions of which can be appealed to the

State Administrative Court. The ICFTU indicates that legal procedures are long and could take up to six years. The Committee notes the Government's statement that it expects Act No. 2 on industrial relations dispute settlement to improve the speed with which labour disputes are processed. The Committee requests the Government to keep it informed of the statistics of the number of complaints of anti-union discrimination lodged and examined by the courts.

Article 2. Protection against acts of interference. In its previous observation, the Committee requested the Government to amend section 122 of the Manpower Act so as to discontinue the presence of the employer during a voting procedure held in order to determine which trade union shall have the right to represent the workers in an enterprise. The Committee notes the Government's statement that it has not considered amending this section, as it believes that the section is in conformity with people's interests. The Committee also notes the Government's indication that the courts have never judged any cases concerning infringement of freedom of association. Considering that the presence of the employer may affect the choice of the workers, the Committee once again requests the Government to amend section 122. It requests the Government to keep it informed of measures taken or envisaged in this respect.

Article 4. The Committee notes that, pursuant to sections 5, 14 and 25 of the new Act on industrial relations dispute settlement, if the dispute is not settled through conciliation or mediation, one of the parties can file a legal petition to the Industrial Relations Court. The Committee recalls that provisions which permit either party unilaterally to file a petition to court to settle the dispute do not promote voluntary collective bargaining. It recalls that compulsory arbitration at the request of only one party is only admissible for public servants and workers in essential services in the strict sense of the term. The Committee requests the Government to amend the abovementioned sections so as to bring its legislation into conformity with the Convention.

Export processing zones (EPZs). In its previous observation, the Committee requested the Government to provide information with regard to the allegations of violent intimidation and assault of union organizers, as well as dismissals of union activists in the EPZs. The Committee notes the Government's statement to the effect that the allegations of intimidation of trade unionists in EPZs should be considered as merely singular cases and that discrimination and intimidation of trade unionists is not allowed and such cases are to be settled in accordance with the legislation. The Committee once again requests the Government to provide information on the number of collective agreements in force in the EPZs and the percentage of workers covered.

The Committee is also addressing a request directly to the Government.

Japan

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

The Committee takes note of the comments of the Japanese Trade Union Confederation (JTUC-RENGO) dated 1 September 2004 on the public service system reform. The Committee recalls that it has examined this issue in its previous observation. The Committee also takes notes of the comments of the Zentoitsu Workers' Union dated 17 March and 7 October 2004 and observes that they concern anti-union discrimination issues dealt with under Convention No. 98. The Committee requests the Government to transmit in its next report its observations on the comments made by JTUC-RENGO and the pending comments of the Committee on Convention No. 87 (see 2003 observation, 74th Session).

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1953)

The Committee takes note of the comments of the Zentoitsu Workers' Union on several issues related to anti-union discrimination and collective bargaining, the Japanese Trade Union Confederation (JTUC-RENGO) on the public service system reform and the negotiation rights of public employees not engaged in the administration of the State, as well as the comments of the Japan National Hospital Workers' Union (JNHU/ZEN-IRO) on the exclusion of certain matters from negotiations in national medical institutions. The Committee notes that it has been commenting on these points for a number of years and requests the Government to provide its full observations on the comments made by the Zentoitsu Workers' Union, JTUC-RENGO and JNHU/ZEN-IRO, as well as the pending comments of the Committee, in its next report (see 2003 observation, 74th Session).

Jordan

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1979)

The Committee notes the information contained in the Government's report.

In its last comments, the Committee had noted that, at present, the only facility granted by law to workers' representatives is paid leave of 14 days to attend courses and requested the Government to take the necessary steps to ensure that trade union representatives are granted facilities enabling them to carry out their trade union duties rapidly and efficiently. The Committee had also noted that the Ministry of Labour is endeavouring to encourage workers' and employers' organizations to include most of the provisions of the Convention in their collective agreements. The

Committee notes that the Government's report indicates that its comments will be taken into account when a legislative modification will be adopted and requests the Government to keep it informed of any measures adopted in that sense. The Committee recalls that the Workers' Representatives Recommendation, 1971 (No. 143), lists examples of such facilities: time off from work to attend trade union meetings, congresses, etc.; access to all workplaces in the undertaking, where necessary; access to the management of the undertaking, as may be necessary; distribution to workers of publications and other written documents of the union; access to such material facilities and information as may be necessary to carry out their duties, etc.

Kenya

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

Articles 4 and 6 of the Convention. The Committee notes the Government's report as well as the comments from the International Confederation of Free Trade Unions (ICFTU). The Committee had trusted that the Government would take the necessary measures to ensure that public employees (with the possible exception of those engaged in the administration of the State) benefit from the guarantees laid down in the Convention, and in particular the right to collective bargaining. The Committee takes note of the Memorandum of Understanding concluded on 14 May 2004 between the Government and the Union of Civil Servants concerning recognition, negotiating and grievance procedures for civil servants. The Committee notes with interest that the Memorandum provides for collective bargaining machinery for negotiation of terms and conditions of employment. The Committee notes, however, that it does not apply to employees of the Prison Department, the National Youth Service and Teachers under the Teachers Service Commission. While recalling that these categories should enjoy the right of collective bargaining, the Committee requests the Government to indicate if they can negotiate under other legislative provisions. The Committee requests the Government to keep it informed of any amendment to the legislation in relation to the right to collective bargaining of public employees covered by the Convention.

The Committee is addressing a request on this matter directly to the Government.

Kuwait

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

The Committee takes note of the Government's report. It notes in particular the Government's indication that it is making diligent efforts towards the adoption of the new draft Labour Code of the Private Sector, through the setting up of a tripartite committee by virtue of Ministerial Order No. 168/2003 responsible for reviewing the draft Code and following up on its procedures for promulgation.

The Government reports that it has requested the technical assistance of the Office in reviewing the conformity of the provisions of the draft Code with international labour standards, so that it could take these comments into account prior to the Code's adoption. The Government adds that it has taken into account the previous comments made by the Committee of Experts in the drafting of the Labour Code, so as to bring the text into conformity with the provisions of ratified Conventions. The sections that are in conflict with the provisions of Conventions were imposed by the special conditions arising out of the terrorist attacks that are currently afflicting the world. The Government will transmit a copy of the Code as soon as it is adopted.

The Committee notes with interest the provisions of the draft Labour Code, which would appear to resolve numerous discrepancies between the legislation and the provisions of the Convention that had been raised in its previous comments. In particular, the Committee notes 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 notes, however, that there remain in the draft Labour Code some provisions upon which it had previously made comments in respect of the following provisions of the Convention.

Article 2 of the Convention. The Committee notes that section 5 of the draft Labour Code maintains the exclusion of domestic workers from the scope of its application and further excludes more generally workers governed by other laws, as provided in the said laws. The Committee recalls that this Article of the Convention provides that all workers, without

distinction whatsoever, shall have the right to establish and join organizations of their own choosing and the only possible exception in this regard concerns the police and the armed forces, as stipulated in *Article 9*. The Committee therefore requests the Government to indicate the manner in which this right is ensured to domestic workers and to clarify the types of workers governed by other laws referred to in the exclusion in section 5.

The Committee further notes that section 94 provides that Part 5 of the draft Code concerning workers' and employers' organizations and the right to organize shall apply to the oil and public sectors to the extent that the provisions are not inconsistent with the applicable laws thereto. The Committee requests the Government to provide a copy of the special laws applicable in the oil sector and in the public sector and to indicate the manner in which they might restrict the application of Part 5 to the workers in these sectors.

The Committee notes that section 95 of the draft Code provides that employers shall have the right to form federations, according to the terms and conditions issued by the Minister. The Committee trusts that any such terms and conditions do not restrict the right of employers to form organizations and federations of their own choosing and requests the Government to keep it informed of any regulations issued by the Minister in this regard.

The Committee also notes that section 98 of the draft Code provides generally for the legal personality of a workers' or employers' organization upon the decision of the Minister approving the constitution thereof. The Committee recalls that legislation that does not clearly define the procedures of the formalities which must be observed or the reasons which the competent authority may give for refusal or that confers on the competent authority a genuinely discretionary power to grant or withhold approval required for the establishment and functioning of an organization, may be tantamount to requiring previous authorization, contrary to this Article of the Convention. The Committee therefore requests the Government to consider revising this draft provision so that the Minister's authority to refuse approval of a constitution is strictly limited and to impose a time limit for the decision which, if not respected, shall give rise to the registration of the organization.

Finally, the Committee notes that, while having apparently eliminated the elements of trade union monopoly at enterprise and sectoral level, section 101 of the draft Code maintains the restriction to one single general federation. The Committee requests the Government to take the necessary measures so that the draft Code will ensure the right of workers to establish the organization of their own choosing at all levels, including the possibility for more than one general federation.

Article 3. The Committee notes that section 100 of the draft Code grants the Minister excessive power to examine the financial books and records of workers' and employers' organizations and provides a global prohibition for engagement in political activities and for accepting donations and legacies without approval of the Ministry. The Committee recalls 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. The Committee considers that there is no infringement of the right of organizations to organize their administration if, for example, the supervision is limited to the obligation of submitting periodic financial reports or if there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe the principles of freedom of association); similarly, there is no violation of the Convention if such verification is limited to exceptional cases, for example in order to investigate a complaint, or if there have been allegations of embezzlement. Both the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 124 and 125).

The Committee considers that the powers vested in the Minister by virtue of section 100 of the draft Code, both in terms of the unrestricted access to organizations' books and records and as regards the requirement that donations and legacies receive prior approval, go beyond the limits set forth in the paragraph above and requests the Government to consider revising this section accordingly.

As regards the overall prohibition of political activities, the Committee recalls that legislation which prohibits all political activities for trade unions gives 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, *op. cit.*, paragraph 133). The Committee therefore requests the Government to consider revising section 100 of the draft Code so as to eliminate the total ban on political activities in keeping with the above mentioned principle.

The Committee further notes that sections 116-125 of the draft Code set up a system of compulsory arbitration contrary to the right of workers' organizations to organize their activities and formulate their programmes free from government interference. The Committee therefore requests the Government to take the necessary measures to ensure that final and binding arbitration is only imposed with respect to essential services in the strict sense of the term, public servants exercising authority in the name of the State and in cases of acute national crises, or in the event that both parties agree.

The Committee trusts that the Government will take the necessary measures in the near future to bring the provisions of the draft Labour Code into conformity with the points raised above and that the Code will be adopted shortly so as to ensure greater conformity with the provisions of the Convention. It requests the Government to indicate, in its next report, the progress made in this regard and to transmit a copy of the Labour Code as soon as it has been adopted.

Kyrgyzstan

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

The Committee notes with regret that since the entry into force in respect of Kyrgyzstan of this Convention in 1993, the Government's first report has not been received. It hopes that a report will be provided for examination by the Committee at its next session and that the report will contain detailed replies to the questions raised in the report form on the application of the Convention, which has been forwarded to the Government.

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

The Committee is also raising a certain number of points in a request addressed directly to the Government.

Lebanon

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

The Committee notes the information transmitted in the Government's report.

Articles 1 and 2 of the Convention. In its previous comments, the Committee expressed the hope that the future Lebanese Labour Code would prohibit all acts of anti-union discrimination and interference and would contain effective and sufficiently dissuasive sanctions against such acts, as well as rapid remedy procedures. In this regard, the Committee notes with interest that sections 138 and 139 of the draft amendment to the Labour Code protect workers against all acts of anti-union discrimination both in the recruitment process and during employment, and employers' and workers' organizations against acts of interference against each other. The Committee requests the Government to indicate what sanctions are provided for in the draft amendment to the Labour Code.

Article 4. In its previous comments, the Committee noted that the draft amendment to the Labour Code reduced the percentage of representation required by a trade union for collective bargaining from 60 to 51 per cent and requested the Government to take the necessary measures to ensure that, if no trade union represents the percentage required to be declared as exclusive bargaining agent, collective bargaining rights are granted to the most representative unions of the unit concerned, at least on behalf of their members. In this regard, the Committee notes that the Government indicates that the Convention does not specify any percentage for negotiating and asks whether the legislation must specify a certain percentage, if the right to collective bargaining is granted to the most representative workers' organizations of the unit in question for the purpose of negotiating on behalf of their members.

Recalling that problems may arise when the law stipulates that a trade union must receive the support of 51 per cent of the members of a bargaining unit to be recognized as a bargaining agent (see General Survey on freedom of association and collective bargaining, 1994, paragraph 241), the Committee requests the Government to take the necessary measures to ensure that the draft amendment to the Labour Code guarantees that a trade union which fails to secure an absolute majority is not denied the possibility of negotiating on behalf of its own members.

Article 6. In its previous observation, the Committee requested the Government to amend the legislation so that workers in the public sector governed by Decree No. 5883 of 1994 benefit from the right to collective bargaining and that recourse to compulsory arbitration in the three public sector enterprises covered by Decree No. 2952 of 20 October 1965 is only at the request of both parties. As regards the right of workers in the public sector to benefit from the right to collective bargaining, the Committee notes with interest that section 131 of the draft amendment to the Labour Code states that workers in public administrations, municipalities and public enterprises responsible for administering public services on behalf of the State or on their own account shall have the right to collective bargaining. However, as regards recourse to compulsory arbitration for the three public sector enterprises concerned, the Committee notes that section 224 of the draft amendment to the Labour Code states that, should mediation fail, the dispute will be settled by an arbitration board.

Recalling that outside the public service and essential services in the strict meaning of the term, arbitration imposed by the authorities or 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, 1994, op. cit., paragraph 257), the Committee requests the Government to take all the necessary measures to ensure that section 224 of the draft amendment to the Labour Code is amended in such a way that recourse to compulsory arbitration is only at the request of both parties.

Lesotho

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 of the Congress of Lesotho Trade Unions (COLETU) dated 14 November 2001 and the Government's observations thereon. Finally, the Committee takes note with interest of the text of the draft Public Service Bill 2003.

The Committee recalls that in its previous comments it had examined sections 35 and 31 of Public Service Act No. 13 of 1995 which prevent public servants from engaging in collective bargaining through their organizations. The Committee had requested the Government to take measures to bring its legislation into full conformity with the Convention allowing all public servants who are not employed in the administration of the State to bargain collectively in respect of their employment conditions.

The Committee notes that according to COLETU, Public Service Act No. 13 of 1995 and the University Act bar civil servants and university lecturers from forming or joining trade unions. In addition to this, the Government has removed the jurisdiction of the Labour Court over cases involving public employees so that affiliates of COLETU, i.e. the Lesotho Union of Public Employees (LUPE) and the Lesotho Teachers' Trade Union, have been silenced and cannot assist their members. The Committee notes that the Government states that the constitutionality of its action was confirmed in the High Court and that it is currently in the process of reviewing the legislation relating to the public service in consultation with the social partners including COLETU.

The Committee notes with interest that sections 20 and 21 of the draft Public Service Bill 2003 guarantee freedom of association to public officers and enable them to form officers' associations for the purposes of collective bargaining. Section 14(1)(a)(iv) also provides that the Minister may issue and table before Parliament a (binding) code of practice on collective bargaining to guide the public officers and registered public officers' associations on how to bargain collectively with the employer on matters of mutual interest without outside interference. Finally, section 17 provides that appeals arising from grievances, disciplinary actions or otherwise shall be brought before the Public Service Tribunal. The Committee requests the Government to keep it informed of steps taken with a view to the adoption of the draft Public Service Bill 2003 and to communicate the text of any code of practice adopted in this respect.

Liberia

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

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

The Committee recalls that its previous comments concerned the need to amend or repeal:

- 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 prohibiting the workers of state enterprises and public service from organizing.

The Committee had recalled that these provisions were contrary to *Articles 2, 3, 5 and 10 of the Convention*.

The Committee had noted the indication in a Government's previous report that it had submitted Decree No. 12 prohibiting strikes and all of the remaining provisions above to the national legislature for their repeal. It further noted that the Government had received assurances from the legislature that these repealing Acts would be passed at its then current session. The Committee requests the Government to indicate in its next report the progress made in this regard and to supply copies of any and all of the repealing Acts as soon as they have been adopted.

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: 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:

Articles 1, 2 and 4 of the Convention. The Committee recalls that for many years it has been emphasizing the need for national legislation to guarantee workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions. The Committee has also stressed that national legislation must ensure adequate protection of workers' organizations, accompanied by sufficiently effective and dissuasive sanctions, against acts of interference by employers and their organizations. Finally, the Committee had noted that the possibility of engaging in collective bargaining was not offered to employees of state enterprises and other authorities since

these categories were excluded from the scope of the Labour Code, whereas under *Article 6* of the Convention, only public servants engaged in the administration of the State are not covered by the Convention.

The Committee had noted the information given by Government that a draft Decree and a Bill have been submitted to the national authorities. The draft Decree is aimed at recognizing and protecting freedom of association and the right to organize and bargain collectively, and at preventing discrimination in employment and occupation.

The Committee hopes that the draft Decree and Bill will integrate the abovementioned observations of the Committee, to bring the legislation in conformity with the Convention. The Committee requests the Government to keep it informed of any developments in this respect and to transmit the texts of the draft Decree and Bill as soon as they are adopted.

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

Libyan Arab Jamahiriya

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

The Committee takes note of the Government's report as well as the comments made by the International Confederation of Free Trade Unions (ICFTU) dated 18 September 2002.

Article 1 of the Convention. 1. *Protection against anti-union discrimination.* The Committee recalls that its previous comments concerned section 34 of Act No. 107 of 1975 which protects workers against acts of anti-union discrimination during the employment relationship but not at the time of recruitment. The Committee notes from the Government's report that the conditions required from workers at the time of recruitment do not include the condition of not being a member of a trade union and that the Law on Trade Unions No. 23 of 1998 grants the right to every citizen to constitute or join a trade union. The Committee observes that nothing in the Government's report permits to affirm that there is an explicit provision in the law affording protection against anti-union discrimination at the time of recruitment as required by *Article 1* of the Convention. It therefore once again requests the Government to indicate in its next report any measures taken or contemplated to amend section 34 of Act No. 107 of 1975 so as to afford protection against acts of anti-union discrimination not only during the employment relationship but also at the time of recruitment.

2. With regard to its previous comments regarding the protection of 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 from the Government's report that even if it is not stated clearly in the Law on Trade Unions No. 23 of 1998, the current legislation affords the necessary protection to all employees in all workplaces including domestic workers, agricultural workers and seafarers. The Government also states that it shall subsequently take the Committee's observation into account by adopting the necessary measures whenever it is deemed appropriate, in order to realize maximum benefits to all employees in any workplace, regardless of their job. The Committee takes note of the Government's intention to take the necessary measures. The Committee hopes that the legislation will protect 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, and requests the Government to indicate in its next report any steps taken or contemplated in this respect.

Article 4. 1. The Committee takes note of the comments made by the ICFTU to the effect that the Government must approve all collective agreements to ensure that they are in line with the nation's economic interests. The Committee recalls that it has previously raised this issue, requesting the repeal of 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 from the Government's report that a new bill which is under discussion shall look into the annulment of sections 63, 64, 65 and 67 of the Labour Code. The Committee hopes that the Government will make every effort to take the necessary action in the very near future and requests the Government to indicate in its next report the steps taken in this respect.

2. In its previous comments concerning the right to bargain collectively of public servants not engaged in the administration of the State, agricultural workers and seafarers, the Committee had requested the Government to indicate the legislative provisions that grant these categories of workers the right to bargain collectively and to give examples of collective agreements in force in these sectors. Noting that the Government's report does not contain any information in this respect, the Committee once again requests the Government to indicate the legislative provisions that grant public servants not engaged in the administration of the State, agricultural workers and seafarers the right to bargain collectively and to give examples of collective agreements in force in these sectors.

Lithuania

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

The Committee notes the information contained in the Government's report and comments made by the Lietuvos Darbo Federacija (LDF).

Articles 3 and 10 of the Convention. Right of workers' organizations to organize their activities without interference from the public authorities. (a) Prohibition of the right to strike by workers who are not employed in essential services in the strict sense of the term. The Committee recalls that, in its previous observation, it requested the Government to amend section 78 of the Labour Code so as to lift the prohibition of the right to strike by workers in the heating and gas supply companies. The Committee considers that, in order to avoid damages to third parties, namely the users or consumers, the authorities could establish a system of minimum service in services which are of public utility, such as the heating and gas supply, rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term, i.e. those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

(b) Unilateral determination of minimum service. In its previous comments, the Committee 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 negotiations on the minimum service, the definition of the service to be ensured may be determined by an independent and impartial body. 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 on freedom of association and collective bargaining, 1994, paragraphs 159-161). The Committee considers that the final decision concerning minimum services should therefore rest with an independent body and not with the Government.

The Committee notes the Government's indication that the Committee's comments with regard to the Labour Code will be transferred to the working group for preparing a draft Law on Amendments to the Labour Code formed by Decision No. 2149 of the Seimas Board of the Republic of Lithuania of 24 May 2004. The Committee trusts that the above comments will be taken into account in the Law on Amendments to the Labour Code and requests the Government to keep it informed of the developments in this respect.

A request on certain other points is being addressed directly to the Government.

Luxembourg

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)

The Committee notes the information contained in the Government's report.

Article 3 of the Convention. Right of workers' organizations to elect their representatives in full freedom without interference from the public authorities. In its previous comments, the Committee requested the Government to communicate the text of the act concerning conditions of eligibility for social elections which, inter alia, was to amend section 6(1) of the Act of 6 May 1974 in order to enable workers who are not nationals of Luxembourg or other European Union States to be able to belong to joint works committees. The Committee also requested the Government to communicate any text which had been drawn up in the context of the reform relating to staff representation.

The Committee notes with satisfaction section III of the Act of 18 July 2003 amending section 6 of the Act of 6 May 1974 establishing joint committees in private sector enterprises and organizing the representation of employees in limited liability companies. It notes that foreign workers may belong to joint committees as staff representatives, subject to certain conditions. Workers who are nationals of a non-Member State of the European Economic Area Agreement and who hold a "B" or "C" work permit or another kind of work permit are eligible. In this latter case, the workers concerned may be elected to up to one-third of the seats available for staff representation.

The Committee also notes the Government's indication that, with regard to the overall reform of staff representation, the preliminary draft act is on the point of being finalized and will soon be submitted to the social partners for their opinion before being placed on the agenda of the Council of Ministers. The Committee requests the Government to keep it informed in this regard and to send the text of the relevant act.

Madagascar

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

The Committee notes the information supplied by the Government in its report. It takes note of the entry into force of Act No. 2003-011 of 3 September 2003 issuing the General Civil Service Regulations and notes in particular that section 11 of the Act establishes the right to strike of civil servants. It also notes from this information that, in accordance with the usual procedure, the draft Labour Code is being discussed in the Senate before being remanded to the National Assembly for adoption. However, the Committee notes in this connection that the Government's report on Convention No. 98 indicates that the draft new Labour Code was adopted by Parliament and has been submitted to the Office of the President. The Committee infers from this that the new Labour Code has not yet been promulgated. The Committee asks the Government to provide a copy of the text and to clarify the date on which the new Labour Code will come into force.

Article 2 of the Convention. In its previous observation the Committee noted that the 2003 draft of the new Labour Code maintains the exclusion from its scope of workers covered by the Maritime Code. It also recalled that the current version of the Maritime Code lacks sufficiently clear and precise provisions guaranteeing the workers to whom it applies the right to establish and join trade unions and the related rights. It requested the Government to take the necessary steps to ensure that the Maritime Code affords the workers to whom it applies recognition of their right to organize, and to provide practical information on seafarers' trade unions including the number of such unions and of their respective members. The Committee takes due note of the Government's statement in its report that 2004 saw the birth of the first legally constituted national maritime union, grouping together seafarers' countrywide, the General Maritime Union of Madagascar (SYGMMA), which has more than 1,000 members and whose main role is to group together workers in the maritime sector so as to ensure the collective and individual defence of their interests.

Noting that the Government's report contains no specific response regarding recognition of the right to organize of workers governed by the Maritime Code, the Committee requests the Government to take the necessary steps to ensure that this right is established in the legislation and to keep it informed on this matter. It also requests the Government to specify the provisions of the law under which SYGMMA was constituted and the provisions governing its working.

Article 3. In its previous observation the Committee noted that section 199 of the draft new Labour Code provides that the right to strike "may be limited by requisitioning only in the event of an acute crises or where the strike would endanger the life, safety or health of the whole or part of the population", and expressed the hope that Act No. 69-15 of 15 December 1969, which allows workers to be requisitioned in the event of proclamation of a state of national necessity or a threat to a sector of national life or a part of the population, would be formally amended to take into account the new provisions of the Labour Code. The Committee notes in this connection that, according to the Government, following promulgation of the new Labour Code, any texts that are not consistent with it will have to take account of the new provisions of the new Labour Code. The Committee requests the Government to keep it informed on this matter.

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

Malaysia

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

The Committee notes with regret that the Government's report does not contain a full reply to all of its previous comments and urges the Government to include, in its next report, full information on the following matters raised in its previous observations.

1. Noting a delay of a number of years, the Committee urged the Government to ensure that there were no further delays in repealing section 15 of the Industrial Relations Act (IRA), which limits the scope of collective agreements for companies granted "pioneer status", and requested a copy of the repealing legislation as soon as it was adopted. The Committee notes that the Government has provided no new information in this regard and it again requests that section 15 of the IRA be repealed in the near future and to keep it informed in this regard, including in relation to the progress of any repealing legislation currently in the draft stage.

2. The Committee had urged the Government to amend the legislation to bring section 13(3) of the IRA, which contains restrictions on collective bargaining in relation to transfer, dismissal and reinstatement (certain of the matters known as "internal management prerogatives"), into full conformity with *Article 4 of the Convention*. The Committee notes that the Government has provided no new information in this regard, and it again requests that section 13(3) of the IRA be amended to ensure that transfer, dismissal and reinstatement are not excluded from the scope of collective bargaining in Malaysia.

3. Noting that without detailed information it has not been in a position to determine whether genuine collective bargaining exists in the public service, the Committee had requested the Government to provide it with specific information on how collective bargaining is encouraged and promoted in practice between public employers and public servants and, in particular, on the number of employees covered and the specific issues discussed, as well as examples of

the process that has been followed to reach specific collective agreements for public servants. The Committee had further requested the Government to indicate the steps taken or envisaged to bring section 52 of the IRA, which provides for certain restrictions on the right to bargain collectively for public servants, other than those engaged in the administration of the State, into conformity with the Convention.

The Committee notes the information provided by the Government in its report that the National Joint Council and Departmental Joint Council serve as the nationwide forum for information sharing, discussion and consultation between government/management and public sector employees, in a positive environment and concerning matters including consolidation of schemes of service, terms and conditions of service and improvements to the existing remuneration structure. The Committee further notes that the Government indicates its view that this is a better approach rather than granting full collective bargaining rights to public sector unions/employees. The Committee requests the Government to indicate in its next report whether any limitations exist in relation to the outcome of consultations within the National Joint Council and Departmental Joint Council as to the terms and conditions of service and remuneration structure, as well as the form and scope of any agreements reached.

The Committee recalls that under *Article 6* of the Convention all public servants other than those engaged in the administration of the State should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment (see General Survey on freedom of association and collective bargaining, 1994, paragraph 262), and that simple consultations do not satisfy the requirements of *Articles 4 and 6* of the Convention.

Mali

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

The Committee takes note of the information contained in the Government's report.

Article 3 of the Convention. Right of organizations to formulate their programmes without interference from the public authorities. In its previous comments, the Committee had pointed out the need to amend section L.229 of the Labour Code of 1992 in order to limit the Ministry of Labour's authority to impose arbitration in order to end strikes liable to cause an acute national crisis. This provision allows the Minister of Labour to refer certain 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 in cases where the dispute is liable to "jeopardize the normal operation of the national economy or involves a vital industrial sector". The Government stated previously in this connection that it had embarked on a revision of the Labour Code in which section L.229(2) would be worded: "For disputes involving essential services, the interruption of which would be likely to endanger the life, personal safety or health of the population, the Minister of Labour, in the event of disagreement of one of the two parties, shall refer the dispute to the Council of Ministers, which may make the decision of the Arbitration Tribunal binding". The Committee notes that in its report the Government states that every effort is being made to revise section L.229 and that in the context of bilateral cooperation, a re-reading of the Labour Code is under way. The Committee notes with interest that, according to the Government, the wording of new section L.229(2) will be the same as the wording above. The Committee hopes that the new wording will shortly be adopted and requests the Government to provide the amended text of this section as soon as it becomes law. It further requests the Government to explain the manner in which recourse may be had to arbitration for workers in essential services and the circumstances in which the arbitration award becomes legally binding.

In its previous comments, the Committee had also noted that the regulations on the maintenance of a minimum service were inconsistent with the provisions of the Convention and that the views of the social partners had not been sought in the formulation of Decree No. 90-562 P-RM of 22 December 1990, establishing the list of services, positions and categories of employees strictly indispensable to the maintenance of a minimum service in the event of a strike in the public services. Noting that the Government's report contains no reply to this comment, the Committee once again asks the Government to report on progress in the revision of the Decree of 1990 to determine, in full consultation with the social partners, the minimum services to be maintained in the event of a strike in the public services.

The Committee raises another matter in a request addressed directly to the Government.

Malta

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

The Committee takes note of the information provided in the Government's report. It further notes that the Employment and Industrial Relations Act, 2002, replaces the Industrial Relations Act, 1976.

Article 3 of the Convention. The Committee notes with interest the provision of compensatory guarantees in section 72 of the Employment and Industrial Relations Act, 2002, in relation to those workers employed in the specified essential services and minimum services whose right to strike is limited or denied.

The Committee observes that section 74 of the Act appears to substantially repeat the provisions of the repealed Industrial Relations Act, 1976, imposing a compulsory arbitration procedure for labour disputes leading to a final award binding on all parties. It is unclear, however, whether the jurisdiction of the Industrial Tribunal pursuant to section 75(1) of the Act is limited to binding decisions on disputes of rights, or will also allow binding decisions in relation to disputes of interest. Noting that restrictions on strike action through a compulsory arbitration procedure constitute a prohibition that 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 (see General Survey on freedom of association and collective bargaining, 1994, paragraph 153), the Committee requests 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.

Further, the Committee notes the information provided by the Government that eight strikes were held in Malta during 2003 and requests the Government to provide details of how each of these strikes were resolved and, in particular, whether they were resolved by recourse to the Industrial Tribunal. The Committee requests the Government to continue to provide information on the number of strikes and use of the Minister's power to refer disputes to the Industrial Tribunal at the request of only one party.

The Committee is addressing a request concerning further matters raised by the Employment and Industrial Relations Act, 2002, directly to the Government.

Mauritania

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

The Committee notes the information contained in the Government's report. It also notes Act No. 2004-017 of 6 July 2004 issuing the Labour Code.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations of their own choosing without previous authorization. In its previous comments, the Committee noted the observations made by the Free Confederation of Mauritanian Workers (CLTM) and the International Confederation of Free Trade Unions (ICFTU), relating to the situation under the former Labour Code, under which no trade union could exist and function without previous authorization. The CLTM contended that in practice over 100 applications had been blocked at the registry of the Prosecutor of the Republic since the adoption of Act No. 93-038 introducing trade union pluralism. The Committee therefore requested the Government to provide precise information on this matter. In its report, the Government indicates that, to its knowledge, no application for the establishment of trade unions is in the hands of the competent authorities. It recalls that any obstacle to freedom of association is subject to the penalties applicable in relation to obstacles to labour freedom.

The Committee notes the information provided by the Government. It observes in this respect that the new Labour Code provides, under sections 274 to 277, for a procedure that is applicable for the establishment of trade unions and federations of unions. According to this procedure, a trade union has to deposit its statutes with the competent authorities, including the Prosecutor-General of the Republic, through the competent court. These authorities issue a receipt and, within two months of issuing the receipt that the statutes have been deposited, the Prosecutor-General informs the trade union of her or his conclusions. If the statutes have been lawfully deposited and are considered to be in accordance with the law, the Prosecutor-General issues a receipt of registration. If not, she or he notifies the trade union of the refusal to issue the registration receipt. The trade union only acquires legal personality and capacity when the registration receipt is issued. Finally, if once the two-month period has expired the Prosecutor-General has not informed the trade union of the decision or notified it of a decision to refuse to issue the registration receipt the representatives of the trade union may appeal to the court of the Wilaya to obtain a judicial decision with the effect of a registration receipt.

The Committee notes that, in comparison with the former Labour Code, the procedure for the acquisition of legal personality envisaged by the new Labour Code sets out specific time limits and is ultimately subject to the control of the courts. The Committee requests the Government to report any cases of refusal to issue a registration receipt. Furthermore, noting that the procedure for the establishment of trade unions is also applicable to the modification of the internal rules of trade union organizations, the Committee requests the Government to inform it of any rejection of modifications under this procedure.

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. 1. The Committee notes that section 278 of the new Labour Code extends the procedure for the establishment of trade unions to any changes in their administration or management. This provision therefore has the effect of subjecting such changes to the approval of either the Prosecutor-General or the courts, and therefore gives rise to serious risks of interference by the public authorities in the organization and activities of trade unions and trade union federations. The Committee requests the Government to amend section 278 so as to provide that any change in the administration or management of a trade union can take effect as soon as the competent authorities have been notified and without the requirement of their approval.

2. In its previous comments, the Committee raised the question of the access of foreign workers to office as trade union leaders. The Committee notes with satisfaction that, under section 273 of the Labour Code, the members responsible for the administration or management of an occupational trade union may be foreign nationals if they have exercised within the Islamic Republic of Mauritania the occupation defended by the trade union for at least five consecutive years.

3. In its previous comments, the Committee recalled that it had been drawing the Government's attention for many years to the restrictions on the right to strike contained in the former Labour Code, and particularly on the referral of a collective dispute to compulsory arbitration in situations which could not be considered as essential central services in the strict sense of the term or as constituting an acute national crisis. The Committee notes that the new Labour Code maintains the referral to compulsory arbitration. Under section 362, a strike is unlawful when it occurs either during the course of mediation, for a maximum duration of 120 days, or after notification of the decision of the Minister of Labour to refer it to arbitration under the conditions set out in section 350, or following the award of the arbitration council. The Committee notes in this respect that, under section 350, the Minister of Labour may decide at his or her discretion to refer a collective dispute to arbitration in view, among other matters, of the circumstances and impact of the dispute and where she or he considers that the strike is prejudicial to public order or contrary to the general interest. Under section 355, the arbitration award cannot be appealed, but may be referred to the Supreme Court on matters of law. Section 356 provides that arbitration awards, which have not been referred to the Supreme Court, and rulings of the Supreme Court are final.

The Committee recalls that the prohibition or restriction of the right to strike by means of compulsory arbitration can only be justified in the cases of: (1) essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; and (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 circumstances governing referral to compulsory arbitration by the Minister of Labour, as established in section 350, go beyond restrictions which are compatible with the Convention. The Committee therefore urges the Government to limit the prohibition on strikes, through referral to compulsory arbitration, to essential services and situations of acute national crisis. The Committee notes in this respect that, with regard to essential services in the strict sense of the term, the Government could have recourse to the Order of 6 June 2004, which determines the list of establishments considered to be essential services for the population, for the purposes of requisitioning staff under the terms of Act No. 70-029 of 23 January 1970. Finally, with regard to the prohibition of strikes throughout the period of mediation, the Committee recalls that it is possible to require that conciliation and mediation procedures must be exhausted 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 (see General Survey on freedom of association and collective bargaining, 1994, paragraph 171). The Committee notes that the maximum period of 120 days appears too long in this respect and requests the Government to reduce it. The Committee asks the Government to keep it informed of the measures adopted or envisaged to amend section 362 so as to guarantee the right of workers' organizations to exercise the right to strike with a view to defending and promoting the occupational interests of their members, in accordance with *Article 3*.

The Committee is raising a number of other points on the provisions of the new Labour Code in a request addressed directly to the Government.

Mauritius

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

The Committee takes note of the Government's report.

Article 2 of the Convention. Protection against acts of interference. In its previous observation the Committee had noted that the authorities were examining a draft Labour Relations Bill and would consider adopting specific legal provisions to guarantee effective protection against acts of interference by the employers and their organizations in the activities of workers' organizations and vice versa, as well as effective and sufficiently dissuasive sanctions in this respect. The Committee notes from the Government's report that the Government is presently examining the replacement of the Industrial Relations Act (IRA) by new legislation with ILO assistance; the provisions of *Article 2* have been considered in this framework and steps are being taken to include relevant provisions in the new legislation. The Committee requests the Government to pursue its endeavours in this direction and to keep it informed of progress made.

Articles 4 and 6. Promotion of collective bargaining in the public service. In its previous comments, the Committee had noted that the Government set wage levels in the public sector through various public bodies (Civil Service Industrial Relations Commission, Civil Service Arbitration Tribunal, Pay Research Bureau, National Tripartite Commission and Central Whitley Council) and requested the Government to take account of the principles of free and voluntary collective bargaining for the determination of the conditions of employment (including salaries) of civil servants not engaged in the administration of the State. The Committee notes that according to the Government, there is consensus by all stakeholders including trade unions representing civil servants, that negotiation on peripheral issues are held at the level of the Central Whitley Council whilst salaries as well as terms and conditions of employment are dealt with by the Pay Research Bureau which is an independent body and makes its recommendations every five years pursuant to consultations with both management and the staff. After each review, officers are given the opportunity to opt for the revised salaries, terms and

conditions of employment. The Government also points out that autonomous public enterprises do not fall under the purview of the Ministry of Civil Service Affairs and Administrative Reforms and that the term “civil servants” refers only to officers employed in the civil service. Thus, as the distinction between civil servants and persons employed by the Government but not engaged in the administration of the State is not clear in the particular circumstances, it is not envisaged to include the principle of collective bargaining for public servants in the new version of the IRA. The Committee takes note of this information.

Article 4. Promotion of collective bargaining in EPZs. With regard to its previous comments on the low rate of collective bargaining in the export processing zones (EPZs), the Committee notes that according to the Government, emphasis will be laid on collective bargaining at enterprise level in the new legislation under preparation to replace the IRA. In this respect, a tripartite workshop on freedom of association and collective bargaining was conducted on 6-8 July 2004 with the assistance of the ILO. In the course of the seminar, several measures have been advocated by stakeholders to encourage and promote voluntary negotiation and the regulation of terms and conditions of employment by means of collective agreements. A White Paper on the subject had been released and a draft bill will be presented to Parliament shortly. The Committee takes note of this information with interest. It requests the Government to indicate in its next report the steps taken for the adoption and enactment of the draft Bill as well as any particular measures adopted with regard to the promotion of collective bargaining in the specific sector of the EPZs.

Mexico

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1950)

The Committee notes the Government’s report.

The Committee recalls that for many years it has been referring to the following matters.

1. *The trade union monopoly in state bodies imposed by the Federal Act on State Employees and by the Constitution.* The Committee recalls that for many years it has been commenting on the following provisions of the Federal Act on State Employees:

- (i) the prohibition of the coexistence of two or more unions in the same state body (sections 68, 71, 72 and 73);
- (ii) the prohibition of a trade unionist from leaving the union of which he or she has become a member (an exclusion clause under which the trade unionist loses his or her job by no longer being a member of the union) (section 69);
- (iii) the prohibition of re-election in trade unions (section 74);
- (iv) the prohibition of unions of public servants from joining trade union organizations of workers or rural workers (section 79);
- (v) the extension of the restrictions applicable to trade unions in general to the Single Federation of Unions of Workers in the Service of the State (section 84); and
- (vi) the imposition by law of the trade union monopoly of the National Federation of Banking Unions (section 23 of the Act issued under article 123(B)(XIIIbis) of the Constitution).

With regard to points (i), (iv), (v) and (vi) above, the Committee notes the Government’s indications that: (1) the Committee’s understanding that the Political Constitution imposes a trade union monopoly is not correct; (2) the principle of the freedom to join organizations of workers in the service of the State is set forth in the Political Constitution; (3) under the terms of ruling No. 43/1999, the Federal Conciliation and Arbitration Tribunal has granted registration to trade union organizations in bodies in which another union exists; (4) in view of the above, it may be inferred that two or more trade unions may coexist in state bodies, provided that it is the will of the workers to be organized into a plurality of associations and that they also meet the requirements set out in law for membership and operation of trade unions; and (5) the legislative authority is the only authority empowered to issue regulations under article 123 of the Political Constitution, in accordance with article 73(X) of the Constitution. Taking into account the practice followed by the Federal Conciliation and Arbitration Tribunal and the above ruling, the Committee requests the Government to take measures to amend the legislative provisions commented upon so as to bring the legislation into conformity with the Convention and with current practice as described by the Government.

With regard to point (ii), which relates to the exclusion clause, the Committee notes the Government’s indication that it is not applicable in relation to workers in the service of the State who are members of trade union organizations, as this is prohibited by section 76 of the Federal Act on State Employees and the Federal Conciliation and Arbitration Tribunal (TFCA) has verified the decisions by workers to end their membership of one trade union and seek the membership of others (the Government refers to the cases of five trade union members). In this regard, the Committee notes that section 69 provides that “all workers are entitled to join the corresponding trade union, although once they have sought and obtained membership, they may no longer leave it unless they are expelled”. The Committee accordingly requests the Government, taking into account the provisions of section 76, to take measures to amend section 69 as indicated above and in accordance with the practice followed by the TFCA.

With regard to point (iii) concerning the prohibition of re-election in trade unions, the Committee notes the Government's indication that the TFCA applies ruling No. CXVII/2000 of the Supreme Court of Justice, which found that section 74 of the Federal Act on State Employees, which prohibits the re-election of trade union leaders, is in contravention of the freedom of association established in article 123 of the Constitution, and that cases of re-election in 20 trade unions have been observed. In this connection, the Committee requests the Government to amend section 74 as indicated by the case law so as to bring it into conformity with the Convention and with current practice.

The Committee once again requests the Government to provide information on any measures adopted in relation to the following matters.

2. *Prohibition of foreign nationals from being members of trade union executive bodies (section 372(II) of the Federal Labour Act).* The Committee notes the Government's indications that: (1) in the context of the "new labour culture", the Central Decision-Making Forum has been established for the reform of the Federal Labour Act, within which the organizations of workers and employers succeeded in formulating a set of draft reforms of the Federal Labour Act; and (2) this draft text was converted into a Bill on 12 December 2002, which is being examined by the legislative authority. In this regard, the Committee hopes that the Bill provides for the amendment of section 372(II). The Committee requests the Government to provide information in its next report on developments related to the Bill.

3. *The limited right to strike of public officials who do not exercise authority in the name of the State:*

- (i) workers, including those who are employed in public banks, are only able to exercise the right to strike in one or more agencies of the public authorities when there is a general and systematic violation of the rights set out in article 123(B) of the Constitution (which provides that workers shall have the right to associate in the defence of their common interests) (section 94(4) of the Federal Act on State Employees and section 5 of the Act on banking and credit issued under article 123(b)(XIIIbis) of the Constitution). The Committee notes that the Government reiterates the comments it made in its report in 2002, and particularly that there is no Bill to amend these legislative provisions. In this regard, the Committee once again emphasizes 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 and it once again urges the Government to take the necessary measures to amend the legislation so as to bring it into conformity with the Convention. The Committee requests the Government to keep it informed in its next report of any measures adopted in this respect;
- (ii) the requirement of two-thirds of workers in the public body concerned to call a strike (section 99(II) of the Federal Act on State Employees). The Committee notes the Government's indication that it is necessary to bear in mind that the Federal Act on State Employees provides in section 93 that strike action is the manifestation of the will of the majority of workers in an entity to withdraw their labour in accordance with the requirements set out in this Act. In this connection, observing that one of the requirements to call a strike is for it to be supported by two-thirds of the workers in the public body concerned, the Committee urges the Government to take the necessary measures to amend section 99(II) (for example, by requiring only a simple majority of the votes cast to call a strike). The Committee requests the Government to provide information in its next report on any measures adopted on this subject.

Furthermore, in its observation in 2002, the Committee observed that various laws on the public services contain provisions relating to the requisitioning of personnel in cases, among others, in which the national economy could be affected (section 66 of the Federal Telecommunications Act, section 56 of the Act regulating the railways, section 112 of the Act respecting general thoroughfares, section 25 of the Act respecting the national vehicle register, section 83 of the Civil Aviation Act, section 5 of the internal rules of the Secretariat for Communications and Transport and section 26 of the internal rules of the Federal Telecommunications Commission). The Committee notes the Government's indications that: (1) requisitioning consists of the expropriation of goods or the forced use of moveable or immovable property, including the temporary control of persons in certain services, as determined by the competent authority, to be able to meet needs or undertake acts required forthwith to maintain calm or public order; and (2) a strike is the right vested in a coalition of workers in the service of the State to suspend work temporarily when the titular head of an entity in her or his capacity as employer does not accede to their labour demands and the rights enshrined in article 123(B) of the Constitution are violated in a general and systematic manner, and as such requisitioning is an administrative act undertaken by the authority in the event of natural disaster, war, a serious deterioration in public order or where an imminent danger is foreseen for national security, the internal peace of the country or the national economy. The Committee considers that the reference to an imminent danger for the national economy is too broad and it therefore reminds the Government that restrictions on the right to strike in circumstances in which the national economy may be affected could be contrary to the principles of the Convention and that the requisitioning of workers who are on strike could be abused where it is used as a means of settling labour disputes (see General Survey on freedom of association and collective bargaining, 1994, paragraph 163). The Committee accordingly requests the Government to take measures to amend the above provisions and to provide information on this subject with its next report.

In its previous comments, the Committee noted the observations made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention and the Government's reply. The Committee notes that the Government has provided further information with its report stating that: (1) the report of the ICFTU seeks to link trade policy with labour standards, whereas the objective of the Committee of Experts when examining reports is to ascertain

the extent to which each State is in compliance with the provisions of Conventions and the obligations accepted in accordance with the Constitution of the ILO; (2) the ICFTU's comments are only one of the elements in all the documentation available to the Committee to review the report on the Convention; and (3) the Committee has to take into consideration the fact that no other information exists supporting the general and groundless contentions of the ICFTU, which cannot therefore be verified. The Committee recalls that the ICFTU referred to numerous aspects described below.

Article 2 of the Convention. 1. Right of workers, without distinction whatsoever, to establish trade union organizations.

- (i) *Workers in export processing zones.* According to the ICFTU, although Mexican laws and regulations guarantee the same trade union rights for all workers, workers in export processing zones (*maquiladoras*) wishing to establish trade union organizations encounter considerable obstacles raised by employers with the connivance of the local authorities. The Committee notes the Government's indication that: (1) in Mexico, export processing zones have no legal existence, and that it is not therefore possible to determine where the alleged obstacles arose which were encountered by workers in establishing trade unions, nor the manner in which the local authorities tolerate them; (2) national laws and regulations recognize the principle of freedom of association and all workers throughout the national territory enjoy the same labour rights and therefore have the right to establish trade union organizations. The Committee observes that in the ICFTU's communication forwarded to the Government, *maquila* enterprises are mentioned by name (for example, the Han Young *maquila*, Kuk-Dong, Duro-Bag plant in Rio Bravo and the Alcoa plant in the state of Coahuila) in which various violations of trade union rights are alleged to have been committed. The Committee accordingly requests the Government to ensure in both law and practice that all workers in export processing zones benefit from the safeguards set out in the Convention.
- (ii) *Workers under service provision contracts.* The ICFTU observes that many workers are treated as service providers and are consequently not covered by labour legislation and are unable to exercise their trade union rights. The Committee notes the Government's indication that all persons engaged in a labour relationship, irrespective of its form or denomination, are governed by the Federal Labour Act and that the provisions of this Act are a matter of public policy and that, consequently, any provision in contracts establishing that the worker renounces any of the rights or prerogatives set forth in labour standards is of no legal effect, nor would it prevent the enjoyment and exercise of such rights.
- (iii) *Domestic workers.* The Committee notes that, according to the ICFTU, domestic workers are not protected under the labour legislation and consequently can neither join nor establish trade union organizations. The Committee notes the Government's reiteration of its statement that domestic workers, in addition to being covered by the rights and obligations laid down in the Federal Labour Act for workers in general, are also covered by the specific protection set out in Chapter XIII, Sixth Title, sections 331 to 343 of the Act. Noting that domestic workers are covered by the protections set out in the Federal Labour Act, the Committee requests the Government to ensure that these workers enjoy the guarantees of the Convention in practice.

2. Right of workers to establish organizations of their own choosing. Delays in registration. The ICFTU refers to obstacles and delays in the registration of new trade unions caused by the Conciliation and Arbitration Boards. The Committee notes the Government's reference to the procedure envisaged in the Federal Labour Act and its indication that if a trade union organization considers that the authority's decision concerning the application for the registration of a trade union is not in accordance with the above Act, it may make use of the means of recourse set out in the law. The Committee once again requests the Government to ensure that in practice the registration of trade unions is carried out without delay in order to allow them to exercise their rights in full.

Article 3 of the Convention. Right of workers' organizations to draw up their programmes. According to the ICFTU, the Conciliation and Arbitration Boards have the authority to declare strikes "non-existent", which can entail the dismissal of workers participating in them. The ICFTU provides figures showing that these Boards make frequent use of this authority, as strikes are seldom deemed to be legal. In its previous comments, the Committee requested the Government to provide statistics on the claims submitted with a view to calling a strike and the strikes actually held, with an indication of the precise number of strikes which were declared non-existent and the reasons given by the administrative authorities. The Committee notes the Government's indication that during the period covered by the report 11,370 claims with notice of strike action were lodged with the Federal Conciliation and Arbitration Board, of which only 66 led to strike action and two were declared non-existent, in one case because it was ruled that it did not comply with the purpose of strike action as set out in section 450(II) of the Federal Labour Act, while in the other case the strike was declared non-existent in compliance with the order of the competent authority as it did not meet the requirements set out in section 290 of the Federal Labour Act.

Morocco

Workers' Representatives Convention, 1971 (No. 135) (ratification: 2002)

The Committee notes the Government's first report and notes with satisfaction the adoption of Act No. 65-99 concerning the Labour Code which gives effect to the provisions of the Convention since its ratification in 2002.

Mozambique

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)

The Committee notes the information supplied by the Government in its last report. It recalls that its previous comments concerned public servants who have no right of association. It noted that section 3(3) of Labour Act No. 8/98 and Act No. 23/91 of 1991, regulating the exercise of freedom of association provide that the employment relationship of public servants is governed by special regulations and that, according to the information sent by the Government, the legislation does not ensure freedom of association for public servants.

In its previous comments, the Committee stressed that all public servants must have the right to establish occupational organizations, whether they are engaged in the state administration at central, regional or local level or whether they are officials of bodies which provide important public services or are employed in state-owned economic undertakings. It requested the Government to state whether the general public service regulations (Decree No. 14/87) were still in force. The Government confirms that this is the case. In its report, the Government indicates that the public sector is currently undergoing a thorough reform and that Labour Act No. 8/98 is likewise in the process of revision. The Committee hopes that the reform process will result in the adoption, in the near future, of the necessary legislative measures to ensure that public servants have the right of association not only for cultural and social purposes, but also for the purpose of furthering and defending their occupational and economic interests (see General Survey on freedom of association and collective bargaining, 1994, paragraph 52). It requests the Government to send with its next report a copy of any relevant bills or texts that have been adopted in this regard.

Myanmar

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)

The Committee takes note of the information contained in the Government's report, the oral information provided by the Government representative to the Conference Committee in 2004, as well as the discussion which took place therein and the resulting special paragraph in the Conference Committee's report for continued failure to implement the Convention. The Committee also notes the observations dated 19 July 2004, received from the International Confederation of Free Trade Unions (ICFTU). Finally, the Committee notes the report of the Committee on Freedom of Association on Case No. 2268 (see 333rd Report, paragraphs 642-770).

In its previous comments, the Committee had urged the Government to take all necessary measures in the very near future to ensure that workers and employers can fully exercise their rights guaranteed by the Convention, in a climate of full security and in the absence of threats or fear.

The Committee notes the indication in the Government's latest report that the Trade Union Act is still in force and that no restriction whatsoever has been imposed on workers' freedom of association. The Government's report also indicates that there are several professional arts and crafts associations and other associations, including workers' welfare associations that are functioning well in Myanmar. On the other hand, the Committee notes that the Government's report also indicates that since 1988, when the Constitution was suspended, there have been no trade unions in Myanmar which would meet the requirements of the Convention and that, until such time as a strong Constitution accepted by the Myanmar people is drawn up, first-level trade unions and appropriate mechanisms cannot be established. In this respect, the Committee notes that the Government representative indicated to the Conference Committee that, on 20 May 2004, the National Convention held deliberations on basic principles for the social sector, including the rights of workers, and that these principles would provide the framework under which detailed provisions would be developed in the process of drawing up the new Constitution. The Committee finally notes that the Government considers that the comments made by the ICFTU are similar to those previously answered by the Government and therefore they do not call for any reply.

The Committee must, once again, point out that it has been commenting upon the Government's failure to apply this Convention, both in law and practice, essentially since its ratification 50 years ago. It notes that the Government's report does not contain any of the information requested by the Conference Committee at its last session, in particular as concerns the communication of all relevant draft laws as well as a detailed report on the concrete measures adopted to ensure improved conformity with the Convention, including a response to the comments presented by the ICFTU. The Committee must note with deep regret that the information provided continues to demonstrate a total lack of progress towards establishing a legislative framework under which free and independent workers' organizations can be established.

With respect to the reference made to encouraging workers' welfare associations to be involved in industrial relations, the Committee reiterates that it has always considered that these associations have none of the attributes characteristic of free and independent workers' organizations that are the objective of the Convention. Like the Committee on Freedom of Association, the Committee considers that such associations fail to present the necessary guarantees of independence in their composition and in their functioning and therefore cannot act as a substitute for freely chosen organizations of workers.

The Committee recalls that, in addition to the concerns arising from the total absence of legislative framework guaranteeing the right to organize, 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. The Committee notes in this respect that: (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; and (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). The Committee urges the Government to take all the necessary measures so as to ensure that Orders Nos. 6/88 and 2/88 and the Unlawful Association Act of 1908, cannot apply to the exercise of the right to organize protected by the Convention and to keep it informed in this respect.

The Committee also notes from the comments of the ICFTU that three Independent Federation of Trade Unions – Burma (FTUB) organizers, Nai Min Kyi, Aye Myint and Nai Yetka, were arrested by the “Junta” on 16 July 2003 and sentenced to death under the high treason Act by the Rangoon District Court on 28 November 2003. The ICFTU states that the evidence presented in the trial related to contacts that these three persons had with the FTUB, possession of a Burmese-language version of the ILO’s 1998 Commission of Inquiry report on forced labour in Myanmar, and possession of a business card of the Acting ILO Liaison Officer in Yangon. In this respect, the Committee notes that the Government representative has indicated to the Conference Committee that the first appeal to the Supreme Court lodged by those three individuals had a positive outcome as their sentences were commuted to much lighter ones. The Committee also notes that a second judgement made by the Supreme Court on 14 October 2004 has commuted the penalty for Nai Min Kyi and Aye Myint to two years’ sentence of imprisonment with labour. It further notes from the second judgement that the Supreme Court has clearly stated that “as the Union of Myanmar is a member of the United Nations Organization and the International Labour Organization, it is carrying out communication and cooperation with such organizations. Any person may communicate and cooperate with these organizations. Communication and cooperation with the ILO does not amount to an offence under the existing laws of Myanmar”.

The Committee recalls that while being engaged in trade union activities does not confer immunity from sanctions under ordinary criminal law, the authorities should not use legitimate trade union activities as a pretext for arbitrary arrest or detention. Moreover, the Committee also takes the view that detention, and in particular detention with labour, when applied to people involved in trade union activities, constitutes a blatant violation of the principles of freedom of association. Noting that the judgements of the Supreme Court make references to contacts with illegal organizations abroad, which are ambiguous, the Committee trusts that the Government will take the necessary measures to ensure that no individual shall be sanctioned for contacts with a trade union or workers’ association, and urges the Government to take all necessary measures so that workers and employers can exercise the rights guaranteed by the Convention in a climate of full security and in the absence of threats or fear.

The Committee asks the Government to provide, with its next report, a detailed reply to the serious matters raised by the ICFTU and urges the Government, once again, to take all necessary measures in the very near future to ensure that workers and employers can fully exercise their rights guaranteed by the Convention and in particular: that they may form and join organizations of their own choosing without previous authorization, for the furtherance and defence of their interests; that these organizations may organize their activities and formulate their programmes freely; that first-level organizations may form federations and confederations and that these in turn may affiliate with international organizations of workers and employers without impediment (*Articles 2, 3, 5 and 6 of the Convention*).

[The Government is asked to reply in detail to the present comments in 2005.]

Namibia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)

The Committee takes note of the Government’s report.

In its previous comments, the Committee had noted with satisfaction the information provided by the Government that Labour Act No. 6 of 1992 was applicable in its entirety to all zones, including export processing zones (EPZs). It requested, in this respect, that the Government transmit a copy of the repealing order relevant to the Export Processing Zones Amendment Act, 1996, which had prohibited any employee from taking industrial action in EPZs. The Committee notes with satisfaction from the Government’s report that the provision in the EPZ Amendment Act lapsed automatically and is thus no longer valid.

Netherlands

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1950)

The Committee notes the information provided in the Government's report. It notes the observations of the National Federation of Christian Trade Unions (CNV) and the Trade Union Confederation for Middle and Higher Level Employees (MHP) and requests the Government to supply its comments in this respect.

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

The Committee takes note of the Government's report. It also notes the comments made by the National Federation of Christian Trade Unions (CNV) and the Trade Union Confederation for Middle and Higher Level Employees' Unions (MHP) concerning the Government's policy with respect to the extension of collective agreements and requests the Government to transmit its observations thereon.

1. The Committee's previous comments concerned the absence of a legal mechanism to examine the independence of trade unions vis-à-vis employers in the framework of collective bargaining. The Committee notes that according to the Netherlands Trade Union Confederation (FNV) and, most recently, the CNV, when the Minister of Social Affairs and Employment declares applicable *erga omnes* a sectoral collective agreement, an employer can be exempted from its application if it has concluded another collective agreement with a trade union at the enterprise level, without any safeguards to ensure trade union independence and avoid the weakening of sectoral collective agreements in this context.

The Committee notes from the Government's report that at the end of June 2003 a survey on the independence of four employees' associations (in respect of which the CNV expresses its appreciation) found sufficient indications that three of them were insufficiently protected against involvement by the respective employers. Thus, the enterprise collective agreements concluded with these organizations were not granted exemption from the extended collective agreement which was applicable to the sector in question (that of temporary workers). The Committee further notes from the Government's report that there is no hierarchical distinction between sectoral and enterprise collective agreements in the legislation and no requirement on the extent to which an employees' organization must be representative in order to enter into a lawful collective agreement; thus, an organization with a relatively low number of members is also entitled to conclude a collective agreement which is placed at the same level as an extended sector agreement. According to the Government, freedom of association and collective bargaining is optimally guaranteed this way. The Government adds that on the basis of the Convention and section 5 of the European Social Charter, it is ensured in the Netherlands that an organization not free from influence by the other party in the collective bargaining process lacks the quality of a trade union and cannot act in terms of concluding a collective agreement.

Noting that the survey made in June 2003 identified some cases of lack of independence of enterprise-level trade unions vis-à-vis employers in the framework of the extension of sectoral collective agreements, the Committee invites the Government to initiate discussions with the most representative workers' and employers' organizations with a view to identifying appropriate means for addressing the issue raised by the FNV and the CNV.

2. In its previous comments the Committee had requested the Government to provide information on the protection afforded to workers against any act of anti-union discrimination other than dismissal. The Committee notes that the Government provides information on the general constitutional and legislative provisions in force as well as case law in this respect; it also refers to collective agreement clauses providing protection to trade union representatives so that they are not placed at a disadvantage because of their activities. The Committee requests the Government to provide in its next report more specific information on any legal provisions, collective agreement clauses or case law specifically providing 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) not only to trade union representatives but also to all trade union members.

3. In its previous comments the Committee had requested information on the announced amendment of the Act on the Legal Status of Judicial Officials following an agreement between the Government and the Netherlands Trade Unions Confederation (NVvR), so as to allow associations other than the NVvR which represent civil servants in the judicial sector to take part in the consultative meetings concerning the terms of employment of judicial officials. The Committee notes with satisfaction that the amendment became effective on 1 January 2002 and that the monopoly position of the NVvR with respect to the negotiation of employment conditions has been abolished.

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 prohibit the right to strike by public employees under threat of imprisonment. The Committee had noted from the Government's report of 1993 that the Department of Labour was undertaking a complete revision of existing labour legislation and that it was considering requesting ILO technical assistance in this regard.

It notes with regret that, in its latest report, the Government simply indicates that no changes have been made to section 374(a) to (c) of the Penal Code or to section 82 of Ordinance No. 159 of 1964, without making any further references to the labour legislation review.

The Committee trusts that the necessary measures will be taken in the near future to bring the abovementioned provisions of the legislation into conformity with the Convention and asks the Government to indicate, in its next report, the measures taken or envisaged in this regard.

In addition, 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.

Nicaragua

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

The Committee notes the Government's report and the comments made by the Confederation of Labour Unification (CUS) seeking the Committee's opinion on Decree No. 93-2004 amending sections 21, 32 and 53 of the Occupational Associations Regulations. The Committee recalls that its previous comments related to the following points:

- (1) the suspension, due to failure to adopt implementing regulations, of the Civil Service and Administrative Careers Act of 1990, section 43(8) of which recognizes the right to organize, to strike and to collective bargaining of public servants;
- (2) restrictions on the access of foreign nationals to trade union office (section 21 of the Occupational Associations Regulations, 1997);
- (3) restrictions on the functions of federations and confederations (section 53 of the 1997 Regulations);
- (4) the possibility of a dispute being submitted to compulsory arbitration 30 days after a strike has been called (sections 389 and 390 of the Labour Code); and
- (5) the grounds on which a worker may lose trade union membership, which are left to the discretion of the public authority (section 32 of the 1997 Regulations).

With regard to the issue raised concerning the Civil Service and Administrative Careers Act, the Committee notes with interest the adoption of new Act No. 476 ("Civil Service and Administrative Careers Act") repealing the Act of 1990. The new Act, in conjunction with Executive Decree No. 87-2004 issuing regulations under the Act, establishes the civil service regulations for certain public servants and public employees. The Committee notes in particular subsections 10 and 11 of section 37 of the Act, which establish as rights of public servants and employees "freedom of trade union organization, trade union protection, collective bargaining and other trade union guarantees which are recognized for all workers by the Constitution and the law", as well as "the exercise of the right to strike, in accordance with the principles and procedures set forth in the Labour Code that is in force". Section 69 also establishes for such public servants and employees the right to establish trade unions, in accordance with the provisions of the Labour Code.

The Committee also observes that, under section 9 of the new Act, workers in public State enterprises, universities and higher technical education institutions remain excluded from its scope of application. The Committee requests the Government to provide information in its next report on the legislative provisions governing the exercise of the rights set forth in the Convention for these workers.

With regard to the restrictions on the access of foreign nationals to trade union office, under section 21 of the Occupational Associations Regulations, the Committee notes with satisfaction the adoption of Decree No. 93/2004 amending the above section so as to eliminate the requirement to be a national of Nicaragua for members of the executive body of the trade union.

With regard to the restriction on the exercise of the right to strike by federations and confederations, which was set out in section 53 of the Occupational Associations Regulations, under which "in labour disputes, federations and confederations shall only intervene by providing advice and the moral and economic support required by the workers affected", the Committee notes with satisfaction the adoption of Decree No. 93-2004 amending the above provision and establishing that "in labour disputes of any nature, federations, confederations and central organizations shall have the right to participate in such disputes in accordance with the procedures established for the resolution of labour disputes".

With reference to the maintenance of compulsory arbitration in sections 389 and 390 of the Labour Code in cases in which 30 days have elapsed from the calling of the strike, the Committee notes that the Government reiterates its previous comments and explains that, once the possibility of negotiations has been exhausted, the dispute has lasted for over 60 days, which constitutes a situation that places the country's economic and social development at risk. The Committee

reiterates its previous observation to the effect that, if a dispute is referred to compulsory arbitration after this time period has elapsed, the arbitration award should be binding only if all the parties agree to it or in cases in which the strike has been called in an essential service in the strict sense of the term, or in the context of an acute national crisis. The Committee requests the Government to indicate in its next report the measures adopted or envisaged to amend these sections as outlined above.

With regard to the reasons for which a worker may lose trade union membership, which are left to the discretion of the public authority under the terms of section 32 of the Occupational Associations Regulations of 1997, the Committee notes with satisfaction the adoption of Decree No. 93-2004, referred to above, amending the above provision and providing that “the reasons for which a member of a trade union organization loses such membership shall be established in the statutes of the trade union when it is constituted or not more than 70 days after the signature of the constituent document”.

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

The Committee notes the Government’s report.

Article 2 of the Convention. The Committee recalls that in its previous direct request it noted that the fines envisaged in the legislation (the Regulations respecting labour inspectors, Decree No. 13-97, providing that in the event of breaches of the provisions of the Labour Code and failure to comply with the measures ordered by inspectors to remedy them, fines of from 2,000 to 10,000 cordobas may be imposed, with 2,000 cordobas being approximately equivalent to US\$147) cannot be considered as dissuasive nor as adequate protection against acts of interference. In this connection the Committee notes that the Government: (1) recognizes that their level may not be adequate to guarantee fully protection against acts of interference and indicates that for this reason the Directorate of Trade Union Associations (DAS) places great importance on the role of labour inspectors, which is essential in preventing labour disputes and maintaining the necessary harmonious industrial relations at the enterprise; (2) indicates that for the establishment of a system of fines based on a specific number of minimum wages it would be necessary to undertake a basic reform of the law respecting labour inspection (Decree No. 13-97), as well as reviewing and amending the Act establishing the General Directorate of Income and the Budget Act, so as to include the fines imposed by inspectors within untaxed income; and (3) reports that, with a view to securing the trust and legal certainty of trade union organizations, the DAS is giving effect to resolution No. 15, of July 2002, of the Technical Council of the Ministry of Labour in the sense that information submitted by workers to the Directorate must not be communicated to persons outside the executive boards of workers’ organizations, unless such information is requested by the judicial authorities.

The Committee once again emphasizes 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. The Committee reminds the Government that it can have recourse to the Office’s technical assistance if it is envisaging the amendment of the legislation referred to in its report. The Committee requests the Government to provide information in its next report on any measure adopted in this connection.

Article 4. The Committee takes due 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 between 2000 and 2004: 37 in 2000; 25 in 2001; 47 in 2002; 23 in 2003; and 11 in the first half of 2004. It also notes the Government’s indications that the following numbers of agreements have been concluded in export processing zones: two in 2000; seven in 2001; and one in 2002. The Committee notes that, from the data communicated by the Government, it may be inferred that some of the collective agreements concluded in export processing zones in 2001 are still not in force and that it appears that new collective agreements have not been concluded in this sector in 2003 and 2004. The Committee requests the Government to take measures to encourage the negotiation of collective agreements in export processing zones and to provide information in its next report on any measures adopted in this respect.

Finally, the Committee takes note of the comments made by the Confederation of Trade Union Unification (CUS) in a communication of 9 September 2004 and requests the Government to provide its observations thereon.

Niger

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (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 3 and 10 of the Convention. Legislative provisions respecting the requisitioning of labour. In its previous observation, the Committee requested the Government to amend rapidly section 9 of Ordinance No. 96-009 of 21 March 1996 so as to restrict its scope 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, and to provide a copy of the official text applicable.

The Committee notes that the Government has issued two Orders (No. 0825/MFP/T of 2 June 2003 and No. 1011/MFP/T of 1 July 2003) which, respectively, establish a national tripartite committee and appoint the members of the committee, which is responsible for conducting the process of amending the legal texts on the right to strike and the representative nature of occupational organizations. Recalling that the Government received technical assistance from the ILO in September 2002, among other matters on issues relating to strikes, the Committee requests the Government to take all the necessary measures to accelerate the work of the above committee and to provide the text of Ordinance No. 96-009, as amended to bring the legislation into conformity with the Convention, with its next report due in 2004.

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: 1962)***

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

In its last observation, the Committee had noted the comments on the application of the Convention submitted by the International Confederation of Free Trade Unions (ICFTU). In those comments, the ICFTU indicates that, despite the fact that freedom of association is recognized by law in Niger, there are legal restrictions to this freedom in the private and public sectors. The ICFTU also indicates that 95 per cent of the workers are employed in the rural or the urban informal economies and are not unionized and refers to threats of dismissals against workers for trade union activities.

The Committee recalls that *Article 4 of the Convention* provides that measures appropriate to the national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' organizations and workers' organizations. It also recalls 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 on freedom of association and collective bargaining, 1994, paragraph 202). In this respect, the Committee requests the Government to send its observation on the comments made by the ICFTU and hopes that the Government will make every effort to submit its report in the very near future.

Nigeria

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

The Committee takes note of the information in the report submitted by the Government and the comments made by the Organisation of African Trade Union Unity (OATUU). The Committee also takes note of the Trade Unions (Amendment) Bill, 2004, passed by the Senate and pending before the House of Representatives, which appears to address a number of the comments made by the OATUU.

The Committee notes the Government's statement that, with ILO technical assistance and the involvement of social partners through the National Labour Advisory Council, the review of the labour laws of the country is still ongoing. The Committee trusts that this review will take into account all of the outstanding comments so as to ensure the full application of the Convention and requests the Government to keep the Committee updated as to the Bill's progress and to transmit a copy of all relevant legislative texts as soon as they have been adopted.

Article 2 of the Convention. (a) Legislatively imposed trade union monopoly. The Committee takes note of the Government's statement that the restrictions imposed by Decree No. 4 of 1996 have been amended by Decree No. 1 of 1999 which provides for the registration of other unions with no limitations. The Committee recalls that, in its previous comments, it had drawn attention to the contradiction between section 3(2) of the Trade Unions (Amendment) Decree No. 1 of 1999 which restricts the possibility of other trade unions being registered to represent workers in a place where a trade union already exists and the annexed list of industrial unions that allows for the registration of other unions. The Committee had therefore requested the Government to take the necessary measures to rectify this contradiction by amending section 3(2) in order to ensure that workers have the right to form and join the organization of their own choosing even if another organization already exists. The Committee asks the Government once again to keep it informed of the measures taken in this respect.

The Committee recalls that, in its previous comments, it had indicated the need to amend section 33(2) of the Trade Unions Act which deems all registered trade unions to be affiliated to the central labour organization named in section 33(1), in order to ensure that workers have the right to form and join the union of their choosing at all levels outside the trade union specifically mentioned in the law if they so wish. The Committee notes with interest that the Trade Unions (Amendment) Bill, 2004, proposes the deletion of section 33 of the principal Act and thus allows for the establishment of other central labour organizations.

The Committee also notes that the OATUU has drawn attention to a proposed amendment under a previous draft bill to amend the Trade Unions Act which provided that the Registrar should remove from the register the Nigeria Labour Congress (NLC) as the only central labour organization in Nigeria. The OATUU emphasizes that the right of Nigerian workers to belong through their industrial unions to the NLC should be respected and guaranteed and that the deregistration of the NLC by virtue of the said amendment would have amounted to a violation of the Convention. Noting

that the most recent available version of the Trade Unions (Amendment) Bill does not refer to the removal of NLC from the register, the Committee trusts that the deletion of section 33 shall in no way affect its registration. It requests the Government to indicate the implications of these changes on the existence and functioning of the NLC.

(b) *Organizing in export processing zones.* The Committee takes note of the Government's statement that the legally imposed restriction on union activities in export processing zones (EPZs) lapsed in 2003 and that the Federal Ministry of Labour and Productivity is in discussion with EPZ employers on the issues of unionization and entry for inspection. The Committee 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.

(c) *Organizing in various government departments and services.* The Committee recalls that, in its previous comments, it had requested the Government to amend section 11 of the Trade Unions Act which denies the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company, the Central Bank of Nigeria and Nigerian External Telecommunications. The Committee notes the Government's reference in this regard to the labour law review and requests the Government to indicate in its next report the measures taken or envisaged to ensure that the aforesaid categories of workers are granted the right to organize.

(d) *Minimum membership requirement.* The Committee recalls that, in its previous comments, it had expressed the view that the requirement under section 3(1) of the Trade Unions Act of 50 workers to form a trade union is too high and could, in practice, restrict the right of workers to form organizations of their own choosing. Noting the Government's reference to the labour law review in this respect, the Committee requests the Government to indicate the measures taken or envisaged to reduce the minimum membership requirement 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. (a) *Export processing zones.* The Committee recalls that, in its previous comments, it had expressed the view that section 18(5) of the Export Processing Zones Act, which forbids strikes for a period of ten years following the commencement of operations within a zone, is incompatible with *Article 3* of the Convention. Noting that the Federal Ministry of Labour and Productivity is still in discussion regarding EPZs and unionization, the Committee requests the Government to indicate in its next report 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.

(b) *Conditional check-off facilities.* In its previous comments, the Committee had expressed the view that section 5(b) of the Trade Unions (Amendment) Decree No. 1 of 1999 that conditioned check-off facilities on the inclusion of "no-strike" clauses in relevant collective bargaining agreements amounted to undue influence by the authorities in the right of workers' organizations to formulate their programmes and organize their activities without interference by the Government. The Committee notes that the OATUU has drawn attention to the proposed amendment to section 16A of a draft Bill to amend the Trade Unions Act which maintained the conditional check-off facilities set out in section 5(b). The Committee notes with interest, however, that the new section 16A under the most recent version of the Trade Unions (Amendment) Bill as passed by the Senate does not subject check-off facilities for workers to any such conditionality and requests the Government to keep it informed of the progress made towards the adoption of this Bill.

(c) *Compulsory arbitration.* The Committee recalls that it has pointed out that restriction on strike action through the imposition of a compulsory arbitration procedure leading to a final award 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. Moreover, sanctions for strike action should be possible only where the prohibition in question is in conformity with the Convention. 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. It further requests the Government to indicate the measures taken or envisaged to ensure that any sanctions for strike action are only possible where the prohibition is in conformity with the Convention and, even in such cases, that the sanctions are not disproportionate.

The Committee further notes that the Trade Unions (Amendment) Bill would amend section 30 of the Principal Act by inserting subsection (7) specifying that the provisions for arbitration in the Trade Disputes Act shall apply in all disputes affecting the provision of essential services and that the determination of the National Industrial Court in all such disputes shall be final. However, one of the conditions for a valid strike more generally stipulated by the newly inserted subsection (6) of section 30 is that the provisions for arbitration in the Trade Disputes Act have been complied with. The Committee therefore requests the Government to take necessary measures in respect of the Trade Unions Amendment Bill to ensure that compulsory arbitration be restricted to disputes related to essential services in the strict sense of the term.

(d) *Further obstacles.* The Committee recalls that, in its previous comments, it had indicated the need for the amendment of sections 39 and 40 of the Trade Unions 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 is limited to the obligation of submitting periodic financial reports, or in order to investigate a complaint. Noting that this matter appears not to be addressed in the Trade Unions Bill pending before the House of Representatives but that the Government refers to the ongoing process of the labour law review, the Committee requests the Government to indicate in its next report, the measures taken or envisaged to limit the broad powers of the Registrar in this respect.

Article 4. Dissolution by administrative authority. The Committee recalls that, in its previous comments, it had referred to the need to amend section 7(9) of the Trade Unions 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 the provision involved a serious risk of interference by the public authority in the very existence of organizations. Noting that this matter appears not to be addressed in the Trade Unions Bill pending before the House of Representatives but that the Government refers to the ongoing process of the labour law review, the Committee requests the Government to indicate in its next report, the measures taken or envisaged in this respect.

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 workers' and employers' organizations. Affiliation of trade unions with international workers' organizations. The Committee recalls that, in its previous comments, it had emphasized that the requirement under the Trade Unions (International Affiliation) (Amendment) Decree No. 2 of 1999, of ministerial approval for international affiliation on the basis of a detailed application, infringes on the right of workers' organizations to affiliate with international workers' organizations freely. Noting that this matter appears not to be addressed in the Trade Unions Bill pending before the House of Representatives but that the Government refers to the ongoing process of the labour law review, the Committee requests the Government to indicate the measures taken or envisaged to amend Decree No. 2 of 1999 so as to ensure full conformity with *Articles 5 and 6* of the Convention.

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.

Norway

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

The Committee takes note of the information contained in the Government's report and the comments of the Norwegian Federation of Oil Workers' Unions (OFS) transmitted by the Government.

Articles 3 and 10 of the Convention. The Committee takes note of the Government's observations that governmental intervention in strikes can only be by the adoption of law by the Norwegian Parliament (Stortinget) and that during the reporting period, separate acts imposing compulsory arbitration had been adopted by the Storting on three occasions in respect of conflicts in the health sector on the basis of reports from the Norwegian Board of Health that the situation had become so serious that life and health could be endangered.

The Committee also takes note of the comments of the OFS that the State can, by passing an Act on compulsory arbitration, intervene and ban a lawful strike and that an employee participating in a strike that is otherwise lawful but so referred for compulsory arbitration would not be entitled to return to his or her job and risks being dismissed by the employer. The OFS also points out that where employees breach an order pursuant to such intervention to resume work immediately, they will be deemed to be taking part in an unlawful strike and would in such a case risk being dismissed.

The Committee considers that the possibility of reference of any collective labour disputes to compulsory arbitration at the discretion of the public authorities 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 formulate their programmes, and is therefore not compatible with *Article 3* of the Convention. The Committee recalls that it had therefore, in its previous comments, drawn attention to the need to limit the possibility of imposing legislative intervention in respect of industrial action and the use of compulsory arbitration to essential services in the strict sense of the term, that is, those the interruption of which would endanger the life, personal safety or health of the whole or part of the population or to public servants exercising authority in the name of the State. The Committee notes with interest in this respect that the only recent use of this authority appears to have been in respect of conflicts in the health sector, which the Committee has recognized as an essential service.

As regards the concerns raised by the OFS, however, the Committee recalls that requisition of striking workers is to be avoided except where in particularly serious circumstances, essential services have to be maintained (see General Survey on freedom of association and collective bargaining, 1994, paragraph 163). The Committee also recalls that sanctions for strike action should be possible only when the prohibition in question is in conformity with the principles of the freedom of association and that such sanctions should not be disproportionate to the seriousness of the violation (see General Survey, op. cit., paragraphs 177 and 178).

The Committee recalls that over the years, it has referred to the need to limit the possibility of imposing legislative intervention in respect of industrial action and the use of compulsory arbitration to the abovementioned cases and requests the Government to keep it informed in future reports of the measures taken or envisaged to ensure that compulsory arbitration will be limited to essential services or to public servants exercising authority in the name of the state. It further requests the Government to continue to furnish information on any use by Parliament of its power to impose compulsory arbitration.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1955)

The Committee takes note of the Government's report.

In its previous observations, the Committee had considered that a proposal to amend the Labour Disputes Act, whereby a mediator could order a vote among workers' and employers' organizations and additionally join the ballots of the trades concerned, might lead organizations to be bound by a majority decision over a settlement proposal against their will, and would thereby substantially impair the voluntary nature of collective bargaining which in accordance with *Article 4 of the Convention* should take place between the workers' and employers' organizations concerned. The Committee notes with interest the information provided in the Government's report that it has not enacted the proposal that the state mediator should be granted powers to order a vote among workers' and employers' organizations and, further, that amendments that came into force on 1 January 2003 mean that the mediator may only link ballots if the parties concerned give their consent.

With regard to the questions raised in its previous observation concerning compulsory arbitration, the Committee refers to its comments under Convention No. 87.

Pakistan

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. It must therefore repeat its previous observation which read as follows:

The Committee notes the adoption of the Industrial Relations Ordinance (IRO) of 2002, which has repealed the Industrial Relations Ordinance of 1969.

Article 2 of the Convention. Right of workers and employers to establish and join organizations of their own choosing.

1. *Managerial and supervisory staff.* The Committee notes with interest that the definition of "worker" has been amended by repealing the exclusion of persons employed in a supervisory capacity whose wages exceed 800 rupees per month. The Committee notes however that the definition of "worker" provided for in section 2(xxx) of the IRO continues to exclude "persons who are employed mainly in a managerial or administrative capacity" and that section 63(2) provides that a person promoted or appointed to a managerial position ceases to be a member of a trade union. The Committee recalls in this respect that restrictions may be placed on the right to organize of managerial staff, provided that such workers have the right to form their own organizations to defend their interests and that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers by depriving them of a substantial proportion of their actual or potential membership (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 86-88). The Committee requests the Government to amend its legislation so as to ensure that managerial staff may form and join organizations to defend their own social and occupational interests.

2. *Other exclusions.* The Committee further notes with regret that, according to section 1(4) of the IRO, workers employed in the following establishments or industries are excluded from its scope: installations or services exclusively connected with the armed forces of Pakistan including 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; establishment or institution maintained for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on a commercial basis; institution 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 on the production, transmission or distribution of natural gas or liquefied petroleum products or of a seaport or an airport.

The Committee also understands from a previous comment made by the All Pakistan Federation of Trade Unions (APFTU) that the Government has not lifted the ban on trade union activities at the Karachi Electric Supply Company. The Committee notes in this respect the Government's statement to the effect that the KESC management is taking all possible measures to improve the working environment along with the welfare of workers. The Committee would like to point out that the issue in question is the right of the KESC workers to establish their organizations freely.

Furthermore, the Committee notes from the conclusions of the Committee on Freedom of Association in Case No. 2242 that the Chief Executive's Order No. 6 has abolished the trade union rights of the workers in Pakistan International Airlines.

The Committee recalls that, with the exception of the members of police and the armed forces, the right to organize should be fully guaranteed to all workers. It further considers that civilians working in military installations or in the service of the army or police should enjoy the rights provided for in the Convention. The Committee therefore requests the Government to amend its legislation so as to ensure the right to organize of all workers, with the only possible exception being the members of the police and armed forces.

The Committee further notes with regret that the new IRO does not address the previous concerns of the Committee concerning the right to organize for agricultural workers. In its report, the Government states that the IRO 2002 does not cover

agriculture and that “the rights and welfare of agricultural workers has remained without any legal support”. It further states that the necessary legislation would be developed within the next five years to ensure the rights and welfare of agricultural workers. The Committee trusts that the necessary measures will be taken in order to ensure the right to organize for agricultural workers in the very near future.

Finally, the Committee once again requests the Government to indicate in its next report the progress made in framing labour legislation to ensure the rights under the Convention to export processing zones workers and to transmit a copy of any relevant draft texts or adopted legislation.

Article 3. (a). Right to elect representatives freely. In its previous comments, the Committee requested the Government to amend 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. The Committee notes the Government’s statement to the effect that this section does not restrict the right of workers to elect their representative among members of the union. The Committee once again recalls that provisions requiring officers of trade unions to be chosen from among union members infringes the right of workers’ organizations 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 among their own ranks. Noting further the seriousness of the penalty for violation of this provision, the Committee urges the Government to amend its legislation in order to bring it into conformity with the Convention, 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.

(b) Right of workers’ organizations to organize their administration and to formulate their programmes. The Committee notes that the federal or provincial Government may 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 (section 32 of the IRO). A strike carried out in contravention of an order made under this section is deemed illegal by virtue of section 38(1)(c). The Committee notes that Schedule I setting out the list of public utility services includes services which cannot be considered essential in the strict sense of the term – oil production, postal services, railways, airways and ports. The schedule also mentions watch and ward staff and security services maintained in any establishment.

The Committee further notes the Government’s statement that the federal or provincial Government is empowered to call off a strike before or after its commencement in establishments to which the Essential Services Act of 1952 is applicable. The Government adds that this Act is applied to the establishments where stoppage of work is prejudicial to the national interests or causing serious hardship to the community. In this respect, the Committee recalls that it has been requesting the Government for some time now to amend the Essential Services Act, which included services beyond those which can be considered essential in the strict sense of the term. The Committee considers 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). The Committee therefore requests the Government to amend the legislation 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. Recalling again the heavy penal sanctions linked to violation of the Essential Services Act, it further requests 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 the Government to specify the categories of workers employed in the “watch and ward staff and security services maintained in any establishment”.

Rather than imposing a prohibition on strikes, which should be limited to essential services in the strict sense of the term, 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, namely the users or consumers which suffer the economic effects of collective disputes, the authorities could however establish a system of minimum services of public utilities. A minimum service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service 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 by the strike action. 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 160 and 161).

The Committee further notes that section 39(7) provides the following sanctions for contravening a labour court’s order to call off the 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. The Committee recalls in this respect 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. Consequently, the Committee urges the Government to amend section 39(7) of the IRO so as to ensure that sanctions for strike action may only be imposed where the prohibition of the strike is in conformity with the Convention and that, even in those cases, the sanctions imposed are not disproportionate to the seriousness of the violation.

The Committee requests the Government to indicate in its next report the measures taken or envisaged to bring its legislation into conformity with the Convention in respect of all of the abovementioned points. Furthermore, the Committee once again requests the Government to indicate whether Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act by penalizing the creation of civil commotion, including illegal strikes or go-slows, with up to seven years’ imprisonment, is still in force.

A request on certain other points is 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.

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

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 the Industrial Relations Ordinance (IRO) of 2002, which came to replace the Industrial Relations Ordinance of 1969. The Committee also notes the discussions in the Conference Committee on the Application of Standards in June 2003. It further notes the comments made by the All Pakistan Federation of Trade Unions (APFTU) in a communication dated 9 July 2003 concerning the application of the Convention. In addition, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos. 2229 (March 2003) and 2242 (November 2003).

With respect to its previous comments, the Committee notes the following:

- *Denial of the rights guaranteed by the Convention in export processing zones (EPZ).* The Committee notes the Government's statement at the Conference Committee of the Application of Standards to the effect that this question was under the jurisdiction of the Ministry of Industries, which had exempted the EPZ from the application of labour laws. However, according to the Government, the Ministry of Labour had taken up the matter with the Ministry of Industries with a view to withdrawing the exemption and an extensive dialogue was under way. The Committee once again requests the Government to ensure that EPZ workers are very soon provided with all the rights and guarantees enshrined in the Convention.
- *Denial of the rights guaranteed by the Convention to other categories of workers.* The Committee had previously noted that other categories of workers were also deprived of the rights provided for in the Convention (public servants of grade 16 or above, public servants in forestry, railways, hospital workers, postal service employees and civil aviation employees). The Committee notes that the new IRO excludes from its scope workers employed in the following establishments or industries: installations or services exclusively connected with the armed forces of Pakistan, including Ministry of Defence railway lines; 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; 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 (section 1(4)) and persons who are employed mainly in a managerial or administrative capacity (section 2(xxx)), as well as workers of charitable organizations (section 2(xvii)). The Committee further notes the APFTU's statement to the effect that the Government has also imposed restrictions on rights of workers employed in Karachi Electric Supply Company and in the agricultural sector. Moreover, the Committee understands that Chief Executive's Order No. 6 abolished trade union rights of the workers in Pakistan International Airlines and suspended all the existing collective agreements. The Committee recalls 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 also recalls that civilians working in military installations or in the service of the army or police should enjoy the rights provided for in the Convention. The Committee once again requests the Government to take measures in order to bring the legislation in conformity with the Convention.
- *Sanctions for trade union activities.* As concerns section 27-B of the Banking Companies Ordinance of 1962, according to which imprisonment and/or fines are imposed in case of the use of bank facilities (telephone, etc.) or of carrying on trade union activities during office hours, the Committee notes the Government's statement at the Conference Committee on the Application of Standards to the effect that a review of this provision was under way. The Committee expresses the firm hope that the Government will repeal this section in the near future.
- *Lack of sufficient legislative protection for workers dismissed for their trade union membership or activities* (section 25-A of the IRO of 1969). The Committee notes that the new IRO provides for a possibility of reinstatement or compensation in the case of the termination of services of a workman which is held to be wrongful and that during an industrial dispute, the National Industrial Relations Commission can grant interim relief to workers who have been dismissed, discharged, removed from employment, transferred or injured in respect of his or her employment due to trade union activities. The Committee notes the APFTU's statement, according to which the newly imposed section 2-A of the Service Tribunals Act has debarred workers engaged in autonomous bodies and corporations such as WAPDA, railway, telecommunication, gas, banks, PASSCO, etc. from seeking redress for their grievances from the Labour Courts, Labour Appellate Tribunals and National Industrial Relations Commission in the case of unfair labour practices committed by the employer. The Committee notes from the Government's statement at the Conference Committee on the Application of Standards that, in light of the tripartite agreement on the new labour policy, the issues related to provision 2-A were being addressed and that a proposal had been made by the Ministry to delete or amend it in order to enable public sector workers to seek remedy under labour legislation. The Government further stated that it was committed to finding a solution reflecting the demands of all stakeholders and the Committee's concerns. The Committee requests the Government to keep it informed of the measures taken in order to ensure that appropriate means of redress are available to these workers.
- *Denial of free collective bargaining in the public banking and financial sectors, previously contained in sections 38-A to 38-I of the IRO.* The Committee notes that those sections are not reproduced in the new IRO.

As concerns the IRO of 2002, the Committee would like to point out the following discrepancies with *Article 4 of the Convention*:

- The Committee notes that it results from section 20 that if the trade union, which is the only trade union at the enterprise, does not have at least one-third of employees as its members, no collective bargaining is possible at a given establishment. The Committee recalls in this respect 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 the existing unions, at least on behalf of their own members. The Committee therefore requests the Government to amend its legislation so as to bring it into conformity with *Article 4* of the Convention.

- The Committee also notes that according to section 20(11), no application for determination of the collective bargaining agent at the same establishment may be made for a period of three years once a registered trade union has been certified as collective bargaining agent. In this respect, the Committee recalls that where the most representative union which, enjoying exclusive bargaining rights, seems to have lost its majority, it should be possible to another union to make appropriate representations to the competent authority and to the employer regarding the recognition of this union for collective bargaining purposes. The Committee therefore requests the Government to take the necessary measures so as to amend the IRO accordingly and keep it informed in this respect.
- The Committee further notes that according to section 54, the National Industrial Commission may determine or modify a collective bargaining unit on an application made by a workers' organization or reference made by the Federal Government. The Committee recalls in this respect that the choice of collective bargaining unit should normally be made by the partners themselves, since they are in the best position to decide the most appropriate bargaining level, and requests the Government to amend its legislation accordingly.

A request on certain other points is 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.

Panama

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)

The Committee notes the Government's report, the discussion in the Conference Committee in June 2003, the comments on the application of the Convention made by the National Council of Private Enterprise of Panama (CONEP) and the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1931 (see 318th Report, paragraphs 493 to 507).

1. The Committee recalls that its previous comments related to the following provisions:

- the power of the Regional or General Labour Directorate to submit labour disputes to compulsory arbitration in order to stop a strike in a public service enterprise, including those which cannot be considered essential services in the strict sense of the term, such as transportation (sections 486 and 452(3) of the Labour Code);
- sections 174 and 178, final paragraph, of Act No. 9 ("establishing and regulating administrative careers"), of 1994, which lay down respectively that there shall not be more than one association in an institution, and that associations may have provincial or regional chapters, but not more than one chapter per province;
- section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code), which requires an excessively high number of members to establish an employers' organization (ten) and an even higher number to establish a workers' organization (40) at the enterprise level;
- article 64 of the Constitution, which requires Panamanian nationality to serve on the executive board of a trade union;
- the obligation to provide minimum services with 50 per cent of the personnel in establishments which provide essential public services, 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 respecting minimum services in the event of a strike (sections 185 and 152(14) of Act No. 9 of 1994); and
- legislation interfering in 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 of the parties).

2. The Committee also referred in its previous observation to the comments made by the National Council of Organized Workers (CONATO) on the application of the Convention.

- (a) *Requirement of 50 public servants to establish an organization of public servants under the Act respecting administrative careers.* In its previous report, the Government acknowledged that this is a high number, but pointed out that section 176 of Act No. 9 allows public servants to organize by class (category) or sector of activity. The Committee requests the Government to take measures to amend the legislation with a view to reducing the minimum number of public servants required to establish organizations.
- (b) *Denial of the right to strike of workers engaged at sea and on inland waterways (Act No. 8 of 1998), and in export processing zones (Act No. 25).* The Government stated that both sectors may conclude collective agreements, but did not refer specifically to the right to strike. The Committee had requested the Government to indicate whether this right may be exercised in both sectors, and on what legal basis.
- (c) *Prohibition of federations and confederations from calling strikes (the prohibition of strikes protesting against problems relating to economic and social policy and the unlawful nature of strikes not related to a collective agreement in an enterprise).* The Government stated that it is the trade unions which maintain relations with the workers (whether or not they are unionized) at the enterprise level, and that if federations and confederations could call strikes, this would lead to trade union cannibalism and infighting between organizations. With regard to strikes protesting against the Government's economic and social policies, it states that it is unjustified to submit enterprises

to the effects of a strike of this type, since such policies are outside the control of the employer. The Committee emphasizes that federations and confederations should enjoy the right to strike. The Committee pointed out that organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their positions to seek 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 on freedom of association and collective bargaining, 1994, paragraph 165). The Committee requests the Government to take measures to amend the legislation with a view to bringing it into line with the above principles.

- (d) *Disaffiliation of the FENASEP from the Trade Union Convergence Confederation by decision of the authorities.* The Government indicated previously that public servants are governed by the Act respecting administrative careers and considered that they must join homologous organizations of public servants. The Committee points out that, although first-level organizations of public servants may be restricted to this category of workers, such organizations should, however, be free to join federations and confederations of their own choosing, including those which also group together organizations from the private sector (see General Survey, op. cit., paragraph 193). The Committee requests the Government to take measures to amend the legislation with a view to bringing it into line with the above principles. The Committee requests the Government not to prevent the affiliation of FENASEP with the Trade Union Convergence Confederation.

3. In its recent comments, the National Council of Private Enterprise of Panama (CONEP) indicates that the Government has not carried out the reforms requested by the Committee of Experts and the Conference Committee since 2000. CONEP adds that a number of these reforms were also requested by the Committee on Freedom of Association. CONEP emphasizes the need to amend: (1) sections 493(1) and 497 of the Labour Code, the provisions of which respecting strike action jeopardize the basic needs of the enterprise, especially with regard to the maintenance of equipment, the prevention of accidents and the right of employers and managerial staff to enter the premises of the enterprise and carry on their activities; and (2) section 452(2), which allows the imposition of compulsory arbitration at the request of only one of the parties to the collective dispute.

The Committee notes the Government's statements in its report, according to which: (1) it requested the technical advice of the ILO Subregional Office to improve the application of the Convention within a framework of dialogue and concerted action with the social partners and to achieve general agreement on all the points raised with regard to the requested reforms of the Labour Code; (2) as it was a pre-electoral period, it was not possible to seek this technical advice and the decision to postpone it was taken by the new Government, which took office on 1 September 2004; (3) section 49-A(B)(15) of Act No. 25 of 1992 grants the right to strike to workers in export processing zones; (4) with regard to the right to strike of workers engaged at sea, governed by Decree No. 8 of 1998, a petition to find the provision unconstitutional is currently before the Supreme Court of Justice; and (5) with regard to the amendments to the legislation requested in relation to public servants, despite the efforts made by the Government to give effect to the comments of the Committee, it has not been possible to achieve consensus on this subject.

The Committee hopes that the ILO technical assistance requested by the Government will be provided in the very near future and that it will make it possible to overcome all the problems raised. The Committee requests the Government to provide information in this regard.

Finally, the Committee requests the Government to provide a copy of the Bill to guarantee the rights set out in the Convention in export processing zones, to which the Government representative referred in the Conference Committee in 2003, to inform it of the decision of the Supreme Court of Justice on whether Decree No. 8 of 1998 is unconstitutional and to provide a copy of Act No. 25 respecting export processing zones.

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

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

The Committee notes the Government's report and the comments submitted by the National Council of Organized Workers (CONATO) and the National Council of Private Enterprise (CONEP). The Committee recalls that in 2000 the Conference Committee examined the application of the Convention in Panama.

1. The Committee noted in previous comments the 310th and 318th Reports of the Committee on Freedom of Association (June 1998 and November 1999), in which the latter examined Case No. 1931, brought by two employers' organizations. The Committee shared the view of the Committee on Freedom of Association and emphasized the need to amend: (1) section 427(3) of the Labour Code, which restricts the composition of the representatives of the parties (delegates and advisors) to the collective bargaining process, so that the parties themselves may determine this issue; (2) section 510(2) of the Code, which imposes disproportionate penalties for withdrawal from the conciliation procedures and failure to reply to statements of claims; and (3) limited possibilities for the collective negotiation of payment of wages in the event of a strike (section 514 of the Code).

2. In its previous observation the Committee noted that CONATO's comments on the application of the Convention addressed in particular: the restrictions on the right to collective bargaining in the public sector, the maritime sector,

enterprises in export processing zones and enterprises that have been established for less than two years; collective bargaining with groups of non-unionized workers in the private sector, even where a trade union exists, in the context of acts of interference by the employer; the rejection by the employer of statements of claims in certain cases, such as where trade unions threaten collective action or where agreements concluded by representatives of non-unionized workers already exist; and certain specific acts of anti-union discrimination. The Committee noted the Government's comments on these matters in which it denied CONATO's allegations either outright or in part on the basis of the legislation. The Committee suggested that the Government should promote tripartite discussion of these issues with a view to resolving them. The Committee notes the Government's statements in its report that: (1) it has requested technical assistance from the ILO sub-regional office with a view to better application of the Convention through dialogue and cooperation with the social partners and to reaching a general agreement on the issues pertaining to the requested reforms of the Labour Code; (2) the technical assistance could not be implemented in the run-up period to the elections and it was therefore decided to postpone it and to leave the matter up to the new Government that takes office on 1 September 2004.

The Committee notes that in its recent comments CONEP states that the Government has not carried out the reforms requested by the Committee of Experts and the Conference Committee since 2000; that in dealing with Case No. 1931, the Committee on Freedom of Association observed that the legislation in Panama lacks clarity in some respects, particularly in relation to the excessively detailed regulation of labour relations which allows wholesale interference, and that some of its provisions are inconsistent with the principles of freedom of association and collective bargaining. CONEP adds that for this reason, the Committee on Freedom of Association accordingly asked the Government to take the necessary steps, without delay and in consultation with the social partners, to amend the provisions referred to in point 1 of this observation, and to amend the legislation in such a way that the payment of wages in respect of strike days is not statutory but a matter to be negotiated collectively by the parties. CONEP adds that the abovementioned Committee likewise recommended that in developing existing standards and procedures concerning conflicts of rights or interpretation, the Government should establish a clear, expeditious procedure, which would involve workers' and employers' organizations, for verifying non-compliance with legal provisions and clauses of collective agreements, making it possible to avoid collective disputes on the grounds under consideration.

The Committee stresses the need to amend the legal provisions in question. It hopes that the ILO technical assistance requested by the Government will take place very shortly and enable all these problems to be resolved. The Committee requests the Government to keep it informed on these matters.

Papua New Guinea

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

The Committee notes the information contained in the Government's report. In particular, it notes that a major legislative review is now being undertaken in relation to all labour legislation.

In its previous comments, the Committee had asked the Government to inform it of any progress made regarding the adoption of amendments repealing section 42 of the Industrial Relations Act and section 52 of the Public Service Conciliation and Arbitration Act which give the authorities a discretionary power to cancel arbitration awards or declare wage agreements void when they are contrary to government policy or national interest.

The Committee notes that the Government's report indicates that those sections are intended to be amended by article 32 of the Draft Industrial Relations Bill, 2003, which states: "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."

Noting that article 32 of the Draft Industrial Relations Bill, 2003, is a certain improvement in regard to the issues raised above, the Committee observes that it confers a broad power to the Minister of Labour to assess collective agreements on grounds of public interest. Recalling that 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 (see General Survey on freedom of association and collective bargaining, 1994, paragraph 251), the Committee requests the Government to take measures to ensure that article 32 of the Draft Industrial Relations Bill, 2003, is in conformity with this principle. The Committee hopes that the ILO technical assistance currently in progress will contribute to the resolution of this problem.

Finally, the Committee notes that the Draft Industrial Relations Bill seems to institute a system of compulsory arbitration when conciliation between parties fails. The Committee recalls that, in general, compulsory arbitration should only be possible in the framework of essential services in the strict sense of the term.

Paraguay

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

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

The Committee recalls that for many years it has been commenting on the following points:

- the requirement of an excessively high number of workers (300) to establish a branch trade union (section 292 of the Labour Code);
- the imposition of excessive requirements to be able to hold office in the executive body of a trade union (sections 298(a) and 293(d) of the Labour Code);
- the submission of collective disputes to compulsory arbitration (sections 284 to 320 of the Code of Labour Procedure);
- the prohibition on workers from joining more than one union, even if they have more than one part-time employment contract, whether at the enterprise, industry, occupation or trade, or institution level (section 293(c) of the Labour Code);
- 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 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), and the obligation to ensure a minimum service in the event of a strike in public services which are essential to the community, without consulting the workers' and employers' organizations concerned on the definition of the minimum service (section 362 of the Labour Code).

The Committee observes that in its report the Government provides no specific information on these matters but merely enumerates and transcribes the articles of the Constitution and Labour Code that apply.

The Committee accordingly notes with regret that, despite the technical assistance provided by the Office, no progress has been made on the matters it has raised. It reminds the Government of the importance of taking measures to ensure that full effect is given to the Convention. It expresses the firm hope that such measures will be adopted in the near future and requests the Government to provide information on them in its next report.

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: 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 for many years its comments have been referring to:

- the absence of legislative provisions affording workers who are not trade union leaders adequate protection 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 sanctions against non-observance of the provisions relating to the employment stability of trade unionists and acts of interference by workers' and employers' organizations in each other's organizations (the Committee had noted that the sanctions envisaged in the Labour Code for non-observance of the legal provisions concerning this point (sections 385 and 393) were not sufficiently dissuasive and noted with interest the new Act No. 1416, which amends section 385 of the Labour Code and provides for adequate sanctions; however, the constitutionality of the Act has been challenged and the Act has been suspended).

The Committee notes that the Government does not provide firm information on these subjects and confines itself to indicating that: (1) with regard to *Article 1 of the Convention*, article 88 of the National Constitution provides that no discrimination shall be admitted between workers on grounds of trade union preference; (2) with regard to *Article 2* of the Convention, the Labour Code provides in section 286 that workers' and employers' occupational organizations shall enjoy adequate protection against any interference in each other's activities.

Under these conditions, the Committee regrets that, despite the technical assistance provided by the ILO, progress has not been made on the issues raised and it reminds the Government of the importance of adopting measures to ensure that full effect is given to *Articles 1 and 2* of the Convention. The Committee hopes that the above measures will be adopted in the near future and requests the Government to provide information on this matter in its next report.

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

Finally, with respect to the observations, concerning Law No. 1626 on the civil service, submitted by the General Confederation of Workers (CGT), the Confederation of Trade Unions of Workers of the State of Paraguay (CE SITEP) as well as by the Single Confederation of Workers (CUT), the Committee requests the Government to transmit a copy of the special law that governs the collective bargaining of contracts of employment referred to in section 51. Further the Committee requests the Government to identify the provisions that afford a protection to public servants and public employees, who are not trade union leaders, against any act of anti-union discrimination.

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

Peru

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 information in relation to the comments made by the Peruvian Workers' Confederation (CTP).

The Committee recalls that for several years it has been referring in its comments to a number of provisions of the Industrial Relations Act of 1992 and its regulations, which are not in conformity with the provisions of the Convention. The Committee notes with satisfaction the adoption of Act No. 27912, published on 8 January 2003, amending several of the sections commented upon by the Committee. More precisely, the following provisions have been amended: (1) the denial of the right to trade union membership of workers during their probationary period has been eliminated (former section 12(c) of the Act); (2) the requirement of a high number of workers to establish trade unions by branch of activity or occupation in a number of professions has been reduced from 100 to 50 (section 14 of the Act); (3) the requirement that workers must be active members of the trade union (section 24(b)) and must have been in the service of the enterprise for a minimum of one year (section 24(c)) to be eligible for trade union office have been changed so that workers are currently only required to be employed in the enterprise to be a member of the executive board at this level, and the other requirements have been eliminated; (4) the prohibition upon the political activities of trade unions has been amended (section 11(a) of the Act), with it now being provided that trade union organizations may not devote themselves as institutions exclusively to party political matters, without prejudice to the freedoms set forth in the Political Constitution and the international Conventions of the ILO ratified by Peru; (5) with regard to the right to strike, section 67 has been repealed (it had been criticized by the Committee for providing that in the case of essential public services, if no agreement was reached through direct negotiation or conciliation, the dispute would be submitted to compulsory arbitration by a tripartite tribunal composed of an arbitrator designated by each party and a president appointed by the labour authorities); (6) section 10(f) of the Act, establishing the obligation for trade unions to compile reports which may be requested by the labour authority, has been repealed; and (7) the power of the labour authority to cancel the registration of a trade union (section 20 of the Act) and the requirement that the trade union must wait six months after the cause of cancellation has been remedied before reapplying for registration (Regulation 24) has been modified and now, where a trade union no longer fulfils the requirements, its dissolution has to be determined by the judicial authorities.

With regard to section 73(b) of the Industrial Relations Act of 1992, as amended by Act No. 27912, which now provides that the decision to call a strike has to be adopted in the form explicitly set out in the statutes which must in any case represent the majority will of the workers concerned, the Committee recalls that in its General Survey on freedom of association and collective bargaining, 1994, paragraph 170, it emphasized 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, and that the required quorum and majority are fixed at a reasonable level. The Committee accordingly requests the Government to take measures to amend section 73(b) so that, to be able to call a strike, the decision only has to be adopted by the majority of those voting.

With regard to 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 of the Industrial Relations Act of 1992), the Committee notes that Act No. 27912 has not amended this provision. In this regard, the Committee hopes that the Government will examine the possibility of adopting measures so that, in the event of failure to agree on the number of workers to make up a minimum service and the occupations in which such a service has to be maintained, the disagreement will be resolved by an independent body and not by the administrative authority. The Committee requests the Government to provide information in its next report on any measure that it intends to take in this respect.

With regard to the prohibition upon federations and confederations of public servants to join organizations which represent other categories of workers (section 19 of Presidential Decree No. 003-82-PCM), the Committee notes the Government's indication that: (1) the Office of the Legal Adviser of the Ministry of Labour and Employment Promotion indicated in an opinion that the provision to be applied should be the one that errs *pro libertatis*, or in other words which best guarantees fundamental rights, in this case freedom of association; (2) in the case of trade union organizations whose members include workers in the public and private sectors, the provisions of the labour law covering the private sector should be applied for the purposes of their registration; and (3) the Ministry of Labour and Employment Promotion registers trade union organizations whose members include workers covered by various labour systems. In these conditions, the Committee requests the Government, in accordance with the practice adopted by the administrative authorities, to take measures to amend this provision to bring it into line with the practice that is followed.

In its previous observation, the Committee also requested the Government to place the Union of Workers of Petrotech Peruana S.A. back on the register and not to cancel the registration of the Union of Ticket Sellers and Ushers in Cinematographic Enterprises on the grounds that it only has 57 members instead of the 100 required by the law (the Act in question has now been amended). The Committee notes that the Government has not provided information on this subject. The Committee asks the Government to keep it informed of any developments relating to the registration of the two trade unions referred to above.

With regard to the comments made by the CTP concerning the imposition of administrative standards in the maritime, river and lake transport sector setting out new registration and membership requirements for trade unions in the sector which they cannot fulfil, resulting in the cancellation of 50 branch unions and 35 workers' organizations, the Committee notes the Government's indication in its report on Convention No. 98 that the Ministry of Labour and Employment Promotion has registered 22 workers' organizations in the port sector at the national level and that many of these organizations have been registered in recent years.

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

The Committee notes the Government's report and its comments on the observations made by the Peruvian Workers' Confederation (CTP).

Articles 1 and 2 of the Convention. The Committee recalls that for several years it has been referring to: (1) the lack of sanctions against acts of interference by employers in trade union organizations; and (2) the slowness of the judicial procedures for dealing with complaints of anti-union discrimination or interference. The Committee regrets that the Government has not referred to these matters in its report. In this respect, the Committee recalls that it is necessary for the legislation to make express provision for rapid appeal procedures and effective and dissuasive sanctions against acts of interference by employers against workers' organizations and that cases concerning issues of anti-union discrimination and interference should be examined promptly so that the necessary remedial measures can be really effective. In these conditions, the Committee requests the Government to take measures to bring the legislation into full conformity with the requirements of the Convention and to provide information in its next report on any measure adopted in this respect.

Article 4. The Committee recalls that in previous observations it considered that the dual requirement of a majority of the number of workers and the number of enterprises to be able to conclude a collective agreement covering a branch of activity or an occupation, as envisaged in the Industrial Relations Act, was excessive and difficult to meet. The Committee also requested the Government to confirm that the present legislation does not prevent the parties from negotiating, even when the union cannot satisfy the dual requirement, if the collective agreement does not have an *erga omnes* effect and, if that is not the case, to take steps to ensure that the legislation clearly establishes the right to collective bargaining of sufficiently representative organizations with representation of under 50 per cent. On this subject, the Committee notes with satisfaction the adoption of Act No. 27912 amending the above Act and providing in section 46 that the dual majority is only required if the outcome of collective bargaining in a branch of activity or occupation is to achieve general coverage of all the workers concerned, and that in cases where the requirements as to the majority are not fulfilled, the outcome of the collective bargaining has effects that are limited to the workers who are members of the corresponding trade union organization or organizations. The Committee also notes with satisfaction that second and third level workers' organizations have the right to engage in collective bargaining.

On the other hand, the Committee requested the Government to take measures to repeal section 9 of the unified text of Legislative Decree No. 728 (Labour Productivity and Competitiveness Act) under which employers may introduce changes unilaterally in the content of previously concluded collective agreements or require them to be renegotiated. The Committee regrets that the Government has not referred to this matter in its comments and recalls once again that section 9 as it now stands raises problems of consistency with the Convention. The Committee requests the Government to take measures to amend this provision and to provide information in its next report on any measure adopted in this respect.

The Committee also requested the Government to repeal or amend Emergency Decree No. 011-99 and Ministerial Resolution No. 075-99-EF/15 establishing the overall productivity increment for the public sector. The Committee regrets that the Government has not provided information on this subject. Consequently, the Committee once again requests the Government to repeal or amend the above Decree and Resolution so as to ensure that it is up to the parties themselves to decide whether they wish to include in their collective bargaining the use of productivity criteria in the determination of wages.

With regard to the comments made by the CTP concerning the violation of the Convention in approximately 20 ports in Peru, to the prejudice of workers in the maritime, river and lake transport sectors who are covered by Legislative Decree No. 645 of 6 July 1991 (according to the CTP, following the notification of the dismissal of many workers, the possibility of collective bargaining was abolished and, as a result, collective bargaining has been prevented for ten years), the Committee notes the Government's indication that: (1) until 1991, dock work was under the direction of the Maritime Labour Supervisory Commission, a public body with participation by trade union organizations, which regulated dock work and supplied workers for labour in ports; (2) following the dissolution of the above Commission, dock work was subject to free agreements between workers and port operators, which does not affect the right to freedom of association and the exercise of collective bargaining; and (3) the Ministry of Labour and Employment Promotion has registered 22 workers' trade unions in the port sector. In this respect, the Committee requests the Government to provide information in its next report on the number of collective agreements concluded in the sector during the period covered by the report.

Finally, the Committee observes that the Medical Social Security Association of Peru (AMSSOP) has provided comments on the application of the Convention. The Committee requests the Government to provide its observations on these comments.

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1980)

The Committee takes note of the Government's report.

The Committee recalls that in its previous direct request it criticized Supreme Decree No. 044-97-PCM of 18 September 1997, by which the right of public servants to request deduction at source of their union dues is subject to presentation by the worker of a simple letter of intent to the offices designated for this purpose by the corresponding public sector body, such authorization being renewable annually. The Committee notes with satisfaction the Government's statement that the abovementioned Decree has been repealed by Supreme Decree No. 114-2002-PCM, published on 25 October 2002, that the new regulation provides that check-off of trade union dues by the employer requires the worker's express authorization which will be deemed permanent unless there is an express statement otherwise by the worker concerned, and that such authorization requires a clear statement of consent, submitted to the employer either directly by the worker or by the trade union.

The Committee further observes that the Social Security Medical Association of Peru (AMSSOP) has sent comments on the application of the Convention in a communication of 22 June 2004. The Committee will consider these comments in its examination of Peru's application of Convention No. 98.

Philippines

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)

The Committee notes the information contained in the Government's report.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations of their own choosing. 1. In its previous comments, the Committee had requested the Government to take the necessary measures to amend the requirement in section 234(c) of the Labor Code that at least 20 per cent of workers in a bargaining unit are members of a union. The Committee notes the Government's comment that this point had been tackled during long exhaustive dialogues among representatives from labour, employer and government sectors and, following serious review and analysis within the framework of the Tripartite Industrial Peace Council, it was nonetheless decided that the requirements be retained. The Committee recalls, once again, that the requirement of a high minimum proportion of workers before a union may be formed is contrary to the right of workers to form organizations of their own choosing (see General Survey on freedom of association and collective bargaining, 1994, paragraph 81). It therefore once again requests the Government to reconsider amending section 234(c) so as to lower the minimum membership requirement for forming a union and to indicate, in its next report, the measures taken or envisaged in this respect.

2. The Committee had also requested the Government to amend sections 269 and 272(b) of the Labor Code and section 2 of Rule II of Department Order No. 40-03, which prohibit aliens (other than those with valid permits if the same rights are guaranteed to Filipino workers in the country of the alien workers) from engaging in any trade union activity under penalty of deportation. It notes that the Government has not provided any further information in this regard. Recalling that the right of workers, without distinction whatsoever, to establish and join organizations implies that anyone legally residing in the territory of a given State benefits from the trade union rights provided by the Convention, without any distinction based on nationality (see General Survey, op. cit., paragraph 63), the Committee once again asks the Government to take the necessary steps to amend these sections and to keep it informed in this regard.

Article 3. Right of workers' organizations to organize their administration and activities and to formulate programmes without government interference. Compulsory arbitration. In its previous report, the Committee had expressed the firm hope that a proposal to amend section 263(g) of the Labor Code to limit to the essential services governmental intervention resulting in compulsory arbitration would effectively guarantee to workers their right to strike without interference by the Government, and trusted that in the meantime the Government would limit the exercise of this power in practice. The Committee notes that the Government referred in this regard to its comments produced in response to Case No. 2195 before the Committee on Freedom of Association, in which it confirmed that the Philippine Department of Labor and Employment has submitted its recommendation to amend section 263 to the labour committees in the Philippine Senate and the House of Representatives, including the exercise of jurisdiction powers only in disputes involving establishments engaged in "essential services". The Committee once again expresses the firm hope that this initiative will result in the amendment of section 263(g) of the Labor Code in the very near future so as to effectively guarantee the right of workers' organizations to organize their activities free from government interference. It requests the Government to indicate, in its next report, the progress made in this regard.

Sanctions for strike action. 1. In its previous comments, the Committee had noted 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, and noted the Government's indication that Senate Bill No. 2576 sought to amend the law on strikes which would alter the context of these penal provisions. The Committee had expressed its firm hope that the Government would take the necessary measures to amend sections 264(a) and 272(a) of the Labor Code to ensure that workers are not sanctioned in a disproportionate manner for having participated in an illegal strike and requested to be

kept informed of the measures taken or envisaged in this respect, in particular within the context of the drafting of the new Labor Code (see General Survey, op. cit., paragraph 177). The Committee once again requests the Government to indicate in its next report the progress made in amending the law on strikes, as well as any measures taken or envisaged to amend these sections of the Labor Code.

2. In relation to its previous comments concerning section 146 of the Penal Code, the Committee notes with interest the Government's indication that the penalties should be understood in the context of illegal assemblies such as "a meeting attended by armed persons for the purpose of committing a crime" or "a meeting where the audience is incited to the commission of treason, rebellion, sedition or assault" and apply only in such limited circumstances, and not to the exercise of the right to strike where the applicable sanctions are those provided for in the Labor Code.

Article 5. Right of workers' organizations to establish and join federations and confederations and their right to affiliate with international organizations. 1. The Committee had, in its previous comments, requested the Government to provide information on the measures taken or envisaged in respect of the excessively high requirement of ten union members for a federation or national union contained in section 237(a) of the Code. The Committee notes the information provided by the Government that this requirement had been tackled during long exhaustive dialogues among representatives from labour, employer and government sectors and, following serious review and analysis within the framework of the Tripartite Industrial Peace Council, it was, nonetheless, decided that the requirements be retained. The Committee recalls, once again, that such a requirement is excessive and is incompatible with *Article 5* of the Convention (see General Survey, op. cit., paragraph 191), and requests the Government to take the necessary steps promptly to ensure compliance with the Convention on this point.

2. In its previous comments, the Committee had expressed the hope that Senate Bill No. 2576, referred to in the Government's previous report, would amend section 270 of the Labor Code in relation to the regulation of the receipt of foreign assistance by trade unions and had requested to be kept informed in this regard. The Committee once again notes the indication in the Government's latest report that this provision is no longer being enforced in practice and that the Department of Labor and Employment has indicated to Congress that it should be expressly repealed. The Committee requests the Government to indicate in its next report the progress made in this regard.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ***(ratification: 1953)***

The Committee notes the Government's report and, in particular, the information that it has taken note of the Committee's previous comments concerning the need to encourage and promote collective bargaining in the public sector. The Committee recalls that article 276 of the Labor 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 further recalls that section 3 of the Administrative Code is of a similar effect.

The Committee notes, however, that the Government has not provided further information in relation to the Committee's hope that the draft Civil Service Code, which was adjourned without being passed by the 12th Congress, and which the Civil Service Commission had intended to refile before the 13th Congress, would be adopted in the near future.

The Committee once again recalls the importance of the development of collective bargaining in the public sector and the fact that the draft Civil Service Code was first filed before Congress over ten years ago. The Committee repeats its firm hope that the Code will 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 provide a copy of the Civil Service Code as soon as it is adopted.

Poland

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

The Committee takes note of the information provided by the Government in its report.

1. *Article 3 of the Convention.* The Committee recalls that its previous comments concerned various prohibitions imposed upon civil service employees and civil servants by the Law on Civil Service, namely: section 69(2), prohibition on manifesting publicly political beliefs; section 69(3), prohibition on participating in strikes or actions of protest; and section 69(4), prohibition on performing functions within trade unions.

(a) The Committee takes due note of the Government's statement responding to its previous request concerning section 69(2) that the restriction of the right to manifest in public one's political opinions is no impediment for a member of the civil service fulfilling a trade union function to express in public within the framework of this function, his or her opinion on issues connected with politics and governmental policies in the economic and social sphere. The Government further explains that the provision is rather to be interpreted in such a manner that a member of the civil service may not express any preference for the programmes and activities of specific political formations and states that this provision is

necessary to avoid situations where the opinion of a government administration employee could be mistaken as the official position of the concerned public authority.

(b) The Committee takes due note of the Government's statement that section 69(3) of the Law on Civil Service does not deprive the members of the civil service corps of the right to strike, but prohibits their participation in such strikes or protest actions that would disturb the normal functioning of the office. The Committee recalls however that when legislation deprives public servants who exercise authority in the name of the state or workers in essential services of the right to strike, such workers lose an essential means of defending their interests and thus should be afforded appropriate guarantees to compensate for this restriction, 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 workers be able to participate in determining and implementing the procedure, which should furthermore provide sufficient guarantees of impartiality and rapidity; arbitration awards should be binding on both parties and once issued, should be implemented rapidly and completely (see General Survey on freedom of association and collective bargaining, 1994, paragraph 164). The Committee therefore once again requests the Government to provide in its next report information on the compensatory guarantees available to the civil service corps employees whose right to strike under the Convention may be restricted.

(c) The Committee notes that a draft amendment of the Law of 18 December 1998 on the civil service prepared in 2003 which proposed abrogation of section 69(4) has not been approved by the Standing Committee of the Council of Ministers. The Committee notes that for this reason, in the beginning of 2004, a working group was created with the task of drafting a new text of this Law and that the work is yet to be completed. Recalling that the autonomy of organizations can only be effectively guaranteed if their members have the right to elect their representatives in full freedom, the Committee hopes that in the very near future, a new text of the Law will be drafted taking into account its previous comments and approved. The Committee requests the Government to keep it informed about developments in this regard and to provide it with the amended text as soon as it is adopted.

2. *Trade union assets.* The Committee takes note of the proceedings before the Social Revendication Commission and the administrative courts. The Committee expresses the hope that these issues will be resolved in the very near future and requests the Government to keep it informed of further developments in this regard.

3. The Committee notes with interest the Government's statement that the Law of 26 July 2002 amending the Labour Code and some other laws has modified the Law on Trade Unions, in particular, through the addition of section 25 which permits persons performing work on the basis of a homework contract and officials of the police, frontier guards and prison guards to establish trade unions.

Portugal

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1977)

The Committee notes the Government's report and the comments from the General Union of Workers (UGT), the General Confederation of Portuguese Workers (CGTP) and the Confederation of Portuguese Industry (CIP) concerning the application of the Convention.

The Committee recalls that its previous comments referred to:

- section 8(2) and (3) of Legislative Decree No. 215/B/75, which requires 10 per cent or 2,000 of the workers concerned, in order to establish a trade union and one-third of the trade unions in a region or category in order to establish a federation; and
- section 7(2) and (3) of Legislative Decree No. 215/C/75, which requires one-quarter of the employers concerned and up to 20 individuals in order to establish an employers' organization, and a minimum of 30 per cent of employers' associations, in order to establish a group or federation.

The Committee notes with satisfaction the Government's information on the adoption of Act No. 99/2003, which approves the new Labour Code, repeals the abovementioned Decrees and no longer requires a minimum number of workers or employers for the formation of trade unions or employers' organizations.

The Committee notes that the CGTP refers in its comments to the (recently approved but not yet published) regulations of the new Code, which contain provisions, in the part concerning the election of workers' representatives, relating to safety and health in the workplace which would entail intolerable interference in the electoral process both from the employers and from the State and which would be contrary to the right to organize freely. The Government indicates that it will submit its comments in this regard once the regulations have been published. The Committee requests the Government to transmit a copy of the text of the regulations with its next report.

The Committee also observes that, according to the Confederation of Portuguese Industry, the deduction of trade union dues from wages by the employer, maintained in the new Labour Code, is not compatible with the principle of autonomy and independence of organizations. The Committee recalls that it noted with interest the adoption of Act

No. 81/2001 which provides for the deduction at source of trade union dues. The Committee emphasizes that such a system may favour the development of harmonious labour relations and is not contrary to the Convention.

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

The Committee notes the Government's report and the comments of the General Confederation of Portuguese Workers (CGTP) and of the Confederation of Portuguese Industry (CIP) on the application of the Convention.

Article 4 of the Convention. The Committee has been referring for a number of years in its observations to section 35 of Decree No. 209/92, under which any of the parties to collective bargaining or the administrative authority or (in the case of public enterprises) the Economic and Social Council can submit disputes arising from the negotiation of a collective agreement to compulsory arbitration, particularly when no agreement is reached within two months. In this regard, the Committee observes that the Government reports the adoption of a new Labour Code, which amends the compulsory arbitration system. Currently section 567 of the new Code states that, in disputes arising from the conclusion or revision of a collective labour agreement, recourse to arbitration may be compulsory when, 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 Government emphasizes that the need for protracted and fruitless negotiations to have occurred is specifically covered in the abovementioned provision by three elements, namely, prior conciliation and mediation (which are free of charge for the parties); and the elapse of a period of two months after the end of mediation. The Government emphasizes that, as the Committee had requested, section 567 contains the possibility for negotiations to be resumed by stating that compulsory arbitration may be suspended, only once, at any time, subject to a joint request by the parties. The Government also indicates that the Labour Code regulations, which have been approved but have not yet been published, include a valuable element in favour of compulsory arbitration since the costs of voluntary arbitration are not covered by the State, while for compulsory arbitration 80 per cent of costs are borne by the State and only 20 per cent by the parties. Finally, the Government indicates that the abovementioned regulations provide for a final possibility of agreement before compulsory arbitration is initiated, since the first step which has to be taken by the arbitration board is to invite the parties to attempt to reach an agreement on the subject of the arbitration.

The CGTP maintains in its comments that the situation with respect to compulsory arbitration has not improved with the adoption of the new Code. On the contrary, it is of the opinion that the possibility of having recourse to compulsory arbitration is increasing given that section 570 provides for machinery for drawing up lists of arbitrators if these are not designated by the social partners, a situation which until now had prevented arbitration boards from being formed in practice. The CIP, for its part, agrees that the situation has not changed much with the new Code and emphasizes that the application of the provisions concerning compulsory arbitration should be restricted to exceptional situations in which the interests at stake and the social repercussions assume a high degree of importance.

The Committee notes the amendments to the Labour Code, which represent some improvement towards the full application of the Convention. Nevertheless, the Committee is bound to point out that under the Convention the promotion of collective bargaining must be given absolute priority and recourse to compulsory arbitration must be restricted to exceptional situations, particularly those involving essential services in the strict sense of the term (the interruption of which can endanger the life, health or safety of all or part of the population). The Committee requests the Government to provide information on the application of the new provisions in practice, indicating in particular in its next report the number of cases in which there has been recourse to compulsory arbitration, and to contemplate the adoption of measures needed to bring the legislation into full conformity with the Convention.

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

Romania

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

The Committee notes the information contained in the Government's report. It notes in particular the adoption of Act No. 429/2003 amending the Constitution, Act No. 53/2003 on the new Labour Code and the new Act No. 54/2003 on trade unions. The Committee notes that Act No. 188/1999 on civil servants has been amended by Act No. 251/2004 which the Committee will examine once it has received its translation. The Committee notes the Government's comments on the observations submitted by the National Trade Union Bloc (BSN).

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes. The Committee recalls that its previous comments related to sections 55 and 56, as well as to section 62 of Act No. 168/1999, on the settlement of labour disputes. The Committee recalls that under section 55, 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 under the terms of section 56. As regards section 62, the management of a production unit may submit a dispute to an arbitration commission in the event a strike has lasted for 20 days without any agreement being reached and its continuation would

affect humanitarian interests. The Committee invited the Government to provide details and actual examples of the application of these provisions, including any court decisions handed down.

The Committee notes that the Government indicates that, under section 55, the decision of suspending a strike is taken by the competent court if the latter considers that the strike endangers the life or health of individuals. The Government states that the individuals concerned can be participants in the strike, members of the local community or any other beneficiaries of the service affected by the strike; their life or health could be endangered, for example, if the strike is taking place in a pharmaceutical company, in the thermal and energy sector, in transportations, communications, industry and medical services. With respect to section 62(1), the Committee notes that the Government merely reiterates the contents of the provision, underlining that a company may avail itself of the possibility provided for in section 62(1).

With respect to the comments submitted by BSN, the Committee notes that they relate to the right to strike as well. According to BSN, the social partners failed to reach an agreement on amendments to Act No. 168/1999. BSN submits that under the current legislation, many strikes are declared illegal and refers to the conditions imposed under the Act, on the exercise of the right to strike underlining that a small error of procedure can lead to a strike being declared illegal by a tribunal. BSN states that, in practice, tribunals are often requested to intervene in such situations. The Committee notes that, in its response to BSN, the Government describes the contents of section 58 of Act No. 168/1999, under which the management of a production unit can ask the competent tribunal to order the cessation of the strike, if the strike has been called without observing all the legal requirements or is taking place in an illegal manner. Under section 60, the tribunal's decisions are final.

With respect to the suspension of a strike under sections 55 and 56 and its cessation under sections 58-60, the Committee considers that, while the terms of these provisions do not raise in themselves particular problems of compatibility with the Convention, it must be able to assess their practical impact on the exercise of the right to strike by workers' organizations so as to ensure that their application does not make the exercise of the right to strike impossible or very difficult in practice. The Committee therefore asks the Government to supply in its next report detailed information on the practical application of these provisions and, in particular, whether they are frequently invoked by the management of a production unit, and to provide copies of decisions handed down under these provisions.

With respect to section 62, the Committee notes that, the arbitration committee which is called on to settle the dispute of interests, may, under sections 32 and 38, take irrevocable decisions, thus bringing a dispute to an end. The Committee would like to recall that restrictions on the right to strike by the imposition of compulsory arbitration can only be justified in respect of workers working in essential services and public servants engaged in the administration of the State. The circumstances set out in section 62(1) and under which the management of a production unit may unilaterally submit a dispute to the arbitration committee exceeds the restrictions to the right to strike that are compatible with the Convention. The Committee further notes that Act No. 168/1999 contains a number of safeguards to avoid damages which would be irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties. The Committee refers in this respect to the suspension of the strike under sections 55 and 56 mentioned above and to the minimum service that must be established in case of a strike in essential or public utility services, under section 66. The Committee therefore requests that the Government repeal section 62 so as to fully guarantee the right of workers' organizations to engage in industrial action to defend and further the occupational interests of their members.

The Committee is raising a number of other points with respect to the new Act on trade unions in a request addressed directly to the Government.

Russian Federation

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

The Committee notes the Government's report. In addition, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2216 (see 332nd and 334th Reports, November 2003 and June 2004, respectively) and Case No. 2251 (333rd Report, March 2004). The Committee further notes with interest the new Law on Associations of Employers, 2002.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations of their own choosing. In its previous observation, the Committee noted that according to section 11 of the Labour Code, restrictions provided for by federal law may apply to managers of organizations, personnel combining jobs, women, persons bearing family responsibilities, youth, state employees and others. It further noted that members of directors' councils of the organizations (with the exception of members who concluded a labour contract with the organization) and persons whose relationship with an employer is regulated by the civil law contract were excluded from the scope of the Labour Code. On that occasion the Committee requested the Government to indicate whether any restrictions have been imposed on the right to organize of these workers and to provide clarification in respect of those persons considered to be regulated by a civil law contract, who are excluded from the scope of the Code. The Committee notes the Government's indication that the Labour Code does not limit the right of workers to establish and join trade

unions. Referring to section 11 of the Code, the Government points out that the labour legislation applies to all workers in a contractual relationship with employers.

Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities. In its previous comments, the Committee requested the Government to amend section 410 of the Labour Code, which provided that a minimum of two-thirds of the total number of workers should be present at the meeting and the decision to take a strike should be taken by at least half of the number of delegates present, so as to lower the quorum required for a strike ballot. The Committee regrets that no information was provided by the Government in this respect. It therefore once again requests the Government to indicate the measures taken to lower the quorum for a strike ballot, which it considers too high and likely to impede recourse to industrial action, particularly in large enterprises.

The Committee further notes the Government's indication that section 410 of the Labour Code, which requires workers' organizations to indicate the duration of a strike, does not, however, prescribe a maximum duration of the strike. The Committee recalls that the mere fact of specifying the duration of the strike, even if it is not binding, impedes the right of workers' organizations to organize their activities free from government interference. The Committee notes that the Committee on Freedom of Association in Case No. 2251 had also requested the Government to amend section 410 in this respect. The Committee therefore once again requests the Government to take the necessary measures in order to bring its legislation into conformity with the Convention and to keep it informed of the measures taken or envisaged in this respect.

In its previous comments, in the light of the Government's statement that during a strike, the minimum services are to be ensured in every sector of activity, the Committee asked the Government to indicate whether the establishment of minimum services is a requirement applicable to all categories of workers. The Committee notes the Government's indication that section 412 of the Code provides for an exhaustive list of organizations and enterprises where the minimum services must be ensured during a strike. These include organizations responsible for safety, health and life of the people and vital interests of the society. As regards the provision in section 412, that any disagreement concerning the establishment of minimum services should be settled by the authorities, the Committee notes the Government's statement that any such disagreement is settled following the procedure of collective labour dispute settlement. The Committee notes however that section 412 provides that any disagreement concerning "the establishment of minimum services should be settled by an executive body of the subject of Russian Federation". The Committee therefore once again requests the Government to amend its legislation so as to ensure that any disagreement concerning minimum services is settled by an independent body having the confidence of all the parties to the dispute and not the executive body and to keep it informed of measures taken or envisaged in this regard.

The Committee notes that in Case No. 2251 the Committee on Freedom of Association requested the Government to indicate the enterprises and services it qualifies as "directly servicing highly hazardous kinds of production or equipment" where the right to strike is prohibited under section 413(1)(b) of the Labour Code. Furthermore, the Committee on Freedom of Association noted that section 17 of the Law on the Federal Railway Transport prohibits the right to strike for railroad employees and section 11 of the Law on Fundamentals of State Employment would appear to prohibit strikes in the public service not only for those who are engaged in the administration of the State, but for many other employees. The Committee, like the Committee on Freedom of Association, requests the Government to amend its legislation so as to ensure that railroad employees, as well as those engaged in the public service, who are not exercising authority in the name of the state, enjoy the right to strike. It requests the Government to keep it informed of the measures taken or envisaged in this respect.

As concerns section 413 according to which the decision on collective disputes during the period of emergency and in essential services, as well as when restrictions are provided for by the federal law, are made by the Government of the Russian Federation, the Committee notes the Government's statement that in addition to efforts to resolve a dispute with the help of conciliation procedures, the parties could address the Government of the Russian Federation, which would make a decision within ten days. In this respect, the Committee notes that section 413 clearly states that in cases where a strike is prohibited, "the decision on a collective industrial dispute shall be issued by the Government of the Russian Federation". The Committee therefore once again recalls 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 which should provide sufficient guarantees of impartiality and rapidity (see General Survey on freedom of association and collective bargaining, 1994, paragraph 164). The Committee therefore requests the Government to review its legislation so as to ensure that in those cases any disagreement concerning a collective dispute is settled by an independent body and not by the Government and to keep it informed of measures taken or envisaged in this regard. Furthermore, recalling that restrictions on the right to strike can only be imposed in essential services and in the case of public servants exercising authority in the name of the State, the Committee once again requests the Government to transmit copies of any federal laws providing for restrictions on strike action.

Rwanda

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1988)

The Committee notes the Government's report and the entry into force of the Constitution of 4 June 2003. It also notes the comments of the Workers' Trade Union Confederation of Rwanda (CESTRAR), dated 31 August 2004, the Association of Christian Trade Unions (ASC/UMURIMO), dated 4 September 2004, the Labour Congress and Brotherhood of Rwanda (COTRAF), dated 6 September 2004, and the National Council of Free Trade Union Organizations of Rwanda (COSYLI), dated 6 September 2004, as well as the Government's observations on the matters raised.

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing. In its previous comments the Committee had requested the Government to indicate whether in practice public servants benefit from the right to organize. The Committee notes that, according to the Government, articles 11, 33, 35, 36, 38 and 39 of the Constitution of 4 June 2003 guarantee state public officials, in the same way as any other citizen, the right to freedom of expression and association. Furthermore, the Committee notes the Government's indication that, although Act No. 22/2002 of 9 July 2002, issuing the general conditions of service of the public service in Rwanda, is silent on the right to organize and collective bargaining of public servants, section 73 of this Act, which provides that public servants and the staff of public enterprises enjoy rights and freedoms on the same basis as other citizens, allows it to be deduced that public servants benefit from the right to establish occupational organizations in the same way as private sector employees. However, the Committee notes the comments of CESTRAR, ASC/UMURIMO and COSYLI to the effect that, although trade unions of public servants exist in Rwanda, there is currently a legal void concerning the right to organize of public servants which is likely to raise problems in practice. Noting the Government's indication that procedures for the implementation of section 73 of Act No. 22/2002 remain to be formulated and that the application of the provisions of Title VIII of the Labour Code respecting occupational organizations should be extended to cover state officials, the Committee requests the Government to make the necessary amendments to the legislation so that the exercise of the right to organize by public servants can be clarified and facilitated. It requests the Government to keep it informed of any progress achieved in this respect.

Article 3. Right to strike. In its previous comments, the Committee had requested the Government to provide a copy of the order of the Minister of Labour issuing rules under section 191 of the Labour Code, which provides that the right to strike of workers in jobs that are indispensable for the security of persons and property, and in jobs the cessation of which would jeopardize human safety and life, shall be exercised subject to specific procedures. The Committee notes the Government's indication that the procedures for the implementation of this provision have not yet been issued and that the Committee will be informed as soon as the relevant text is adopted. Noting that the comments of the CESTRAR indicate that this legal void makes the exercise of trade union rights by public servants difficult, the Committee hopes that the order of the Minister of Labour will be adopted in the near future and requests the Government to keep it informed of this matter.

A request on certain other matters is also being addressed directly to the Government.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1988)

The Committee notes the Government's report and the entry into force of Act No. 22/2002 of 9 July 2002 establishing the conditions of service of public servants in Rwanda. The Committee also notes the comments made by the Workers' Trade Union Confederation of Rwanda (CESTRAR), dated 31 August 2004, the Association of Christian Trade Unions (ASC/UMURIMO), dated 4 September 2004, the Congress of Labour and Fraternity in Rwanda (COTRAF), dated 6 September 2004, and the National Council of Free Trade Unions in Rwanda (COSYLI), dated 6 September 2004.

Articles 1 and 3 of the Convention. The Committee notes that the comments made by ASC/UMURIMO and CESTRAR indicate that, although the exercise of the right to organize in general is protected by section 159 of the Labour Code, no provision lays down penalties for violations of this section. The Committee notes that, contrary to the former draft Labour Code, the final articles of the new Labour Code do not impose penalties for acts of anti-union discrimination. The Committee requests the Government to reply to these comments in its next report.

Article 2. The Committee notes the observation made by COTRAF-RWANDA that there are still no appropriate protection measures against any acts of interference by employers with regard to workers' organizations, especially with regard to the functioning and the establishment of the latter in enterprises and establishments. Recalling that the legislation should make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference (see General Survey on freedom of association and collective bargaining, 1994, paragraph 232), and that the current Labour Code does not lay down provisions to this end, the Committee requests the Government to adopt the necessary measures for prohibiting any acts of interference by workers' and employers' organizations towards each other and to adopt dissuasive sanctions to this end.

Article 4. 1. In its previous comments, the Committee invited the Government to adopt measures to encourage and promote the widest possible use of voluntary negotiation procedures and of collective agreements in the country. In this regard, the Committee notes the comment by CESTRAR that no collective agreement has been concluded so far for want of measures to encourage and promote collective bargaining. Noting the Government's observation that the process for the adoption of a draft presidential order establishing the National Labour Council, a tripartite body, is at an advanced stage, and that seminars providing training in negotiation techniques for the social partners, labour inspectors and labour administration officials have taken place, the Committee requests the Government to continue its efforts to adopt measures to encourage and promote the conclusion of collective agreements and to keep it informed in this regard.

2. With regard to the explanations that it requested concerning section 183 of the Labour Code, the Committee notes the Government's observation to the effect that a collective labour dispute in the context of collective bargaining may be submitted to the competent legal authority, whose decisions are enforceable, by both parties or by either of them. Recalling that it considers that, apart from the public servants engaged in the administration of the State and essential services in the strict meaning of the term, 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 by the Convention and thus the autonomy of the bargaining partners (see General Survey, *op. cit.*, paragraph 257), the Committee requests the Government to amend section 183 of the Labour Code so that a collective labour dispute in the context of collective bargaining may be submitted to the competent legal authority only with the agreement of the two parties.

Article 6. In its previous comments, the Committee requested the Government to indicate which public workers were covered by the exception laid down in section 114(4) of the Labour Code, stating that collective agreements may be concluded where staff of public enterprises and establishments are not submitted to a particular legal or regulatory status. The Committee notes the Government's reply to the effect that the distinction laid down in section 114 of the Labour Code no longer applies since all public officials are now governed by Act No. 22/2002 of 9 July 2002 establishing the conditions of service of public servants in Rwanda. The Committee notes, however, that Act No. 22/2002 does not contain any provision concerning the right to collective bargaining.

The Committee recalls that a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants employed in government ministries and other comparable bodies, as well as auxiliary staff) who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention (see General Survey, *op. cit.*, paragraph 200). The Committee therefore requests the Government to amend section 114 of the Labour Code so that the exclusion from the scope of the Labour Code concerning the conclusion of collective agreements does not cover categories of public servants who are not engaged in the administration of the State.

Sao Tome and Principe

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (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 3 and 10 of the Convention. The Committee notes that, in its latest report, the Government states that the Ministry of Labour has set up a drafting group to draw up the General Labour Act. The Committee trusts that the group will take full account of its earlier observations concerning the following points:

- 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 should be settled by an independent body and not by the employer (paragraph 4 of section 10 of Act No. 4/92);
- the hiring of workers to perform essential services in order 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 deemed essential (postal, banking and loans services) (section 11 of Act No. 4/92).

The Committee further notes the Government's statement that the Ministry of Labour planned to refer the matter of the exercise of the right to strike to the National Committee for Social Cooperation. The Committee hopes that this will be a step towards the amendment of the legislation in order to bring it into conformity with the Convention, and requests the Government to keep it informed of developments in this area.

Article 2. The Committee again asks the Government to state whether public employees have the right to organize and to indicate the applicable legislation.

Article 6. The Committee again asks the Government to state whether federations and confederations are able to exercise the right to strike.

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 notes the information contained in the Government's report and recalls that its previous comments related to the following points.

Article 2 of the Convention. Trade union rights of minors. For several years, the Committee has been emphasizing that section L.11 of the Labour Code (as amended in 1977) provides that minors over 16 years of age may join trade unions unless their membership is opposed by their father, mother or guardian.

The Government reiterates the indications provided in its previous reports that freedom to join a trade union remains the rule, and that opposition by the parents of the young person merely responds to a duty to protect her or his interests against a premature decision which could subsequently prove to be prejudicial.

The Committee recalls in this respect that the Convention does not authorize any distinction based on such reasons (see General Survey on freedom of association and collective bargaining, 1994, paragraph 64) and it requests the Government to amend the legislation accordingly and to inform it of any measures adopted in this respect.

Articles 2, 5 and 6. Right of workers to establish organizations of their own choosing without previous authorization. The Committee for several years has pointed out the need to repeal Act No. 76-28 of 6 April 1976, which confers discretionary powers on the Minister of the Interior with regard to issuing a receipt recognizing the existence of a trade union. Furthermore, the Committee has already emphasized on several occasions that section L.8 of the Labour Code (as amended in 1997) reproduces the substance of the Act of 1976 by requiring previous authorization from the Minister of the Interior for the establishment of trade unions, federations and confederations.

In its report, the Government reaffirms that the receipt issued by the Minister of the Interior does not constitute the authorization or refusal of the existence of a trade union which, in the same way as any association, is only subject to the procedure of the declaration of its existence, which provides the reason for issuing the receipt.

Noting that section L.8(6) provides that "in the light of the reports prepared by the labour inspector and the Attorney-General of the Republic, and following the opinion of the Minister of Labour, the Minister of the Interior shall issue or not issue the receipt, in accordance with section 812 of the Code of Civil and Commercial Obligations", the Committee once again emphasizes the importance that it attaches to compliance with *Articles 2, 5 and 6* of the Convention, which guarantee workers and workers' organizations the right to establish organizations of their own choosing without previous authorization. It once again asks the Government to repeal as soon as possible the requirement for previous authorization contained in section L.8 of the Labour Code so as to bring the legislation into line with the practice that it describes, and to provide information on any measures adopted in this respect.

Article 3. Requisitioning. The Committee has been emphasizing for several years that section L.276 grants the administrative authorities broad powers to requisition workers in private enterprises and 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.

The Government indicates in its report that it has taken note of the Committee's observations, without however indicating the measures that it intends to take.

The Committee once again requests the Government to provide a copy of the Decree issued under section L.276 setting forth the list of essential services so that it can ensure that it is compatible with the provisions of the Convention. It once again recalls that the requisitioning of workers as a means of settling labour disputes can result in abuses. Such action is therefore to be exclusively confined to the maintenance of essential services in particularly serious circumstances. In the view of the Committee, requisitioning can be justified only in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crises.

The Committee further recalls that section L.276 *in fine* provides that workplaces or the immediate surroundings thereof may not be occupied during a strike, under penalty of the sanctions provided for in sections L.275 and L.279. The Committee has already indicated to the Government that restrictions on workplace occupations should be limited to cases where the strike action ceases to be peaceful (see General Survey, *op. cit.*, paragraph 174).

Article 4. Dissolution by administrative authority. For several years, the Committee has been recalling the need to amend the national legislation with a view to protecting 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 provisions respecting administrative dissolution contained in the 1965 legislation.

The Government indicates in its report that it has duly noted the Committee's observations, without however indicating the measures that it intends to take.

The Committee once again reminds the Government that it would be preferable to include in a law or regulations a provision explicitly stating that the measures respecting administrative dissolution contained in Act No. 65-40 on associations do not apply to trade union organizations.

Recalling that it has already noted in particular (see the 2002 observation, 73rd Session) the Government's statement that all the points raised in its previous comments would be taken into account during the work of the committees responsible for the formulation of texts to be issued under the Labour Code, but that the work of these committees had been suspended, the Committee once again expresses the firm hope that the necessary measures will be taken in the very near future to give full effect to the provisions of the Convention.

The Committee also observes that the Government has not made the comments requested on the observations provided by the International Confederation of Free Trade Unions (ICFTU) in its communication of 23 September of 2003, reporting interventions by the police during demonstrations by workers. The Committee asks the Government to investigate this matter promptly and to provide its observations thereon.

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

The Committee notes the Government's report. It notes the Government's statement concerning the signature on 22 November 2002 by the Government and almost all employers' and workers' federations of the National Charter on Social Dialogue, aimed at strengthening social dialogue by focusing on actions to prevent labour disputes through more regular consultations between the State and the social partners. The Committee also notes that the Government states that it will send its observations regarding the comments on the application of the Convention submitted by the International Confederation of Free Trade Unions (ICFTU) on 23 September 2003. The Committee will consider these comments in the context of its examination of the implementation of Convention No. 87.

Serbia and Montenegro

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

The Committee takes note of the Government's report as well as the written and oral information provided by the Government representative during the discussion that took place at the Conference Committee in June 2004. The Committee also takes note of the comments of the International Confederation of Free Trade Unions (ICFTU), as well as the Government's observations thereon.

Article 2 of the Convention. Right of employers to establish organizations of their own choosing. In its previous comments the Committee had noted that the Yugoslav Chamber of Commerce and Industry, which benefited from compulsory membership and financing by employers and enjoyed the power to sign collective agreements, had been dissolved by the law on the termination of the law of the Yugoslav Chamber of Commerce and Industry; however, the repealing law provided that its rights, obligations, financial resources and activities would be taken over by the Chamber of Commerce and Industry of Serbia and the Chamber of Commerce and Industry of Montenegro. The Committee therefore requested the Government to ensure that membership in and financing of the Chambers of Commerce and Industry of Serbia and Montenegro are not compulsory.

The Committee takes note of the written and oral information provided by the Government, according to which: (1) under the Law on Chambers of Commerce and Industry (No. 65/2001), the Chambers of Commerce and Industry of Serbia and Montenegro have no right to participate in collective agreements nor is this right taken over from the Yugoslav Chamber of Commerce and Industry under the Law on the Termination of the Law on the Yugoslav Chamber of Commerce and Industry; (2) the Labour Law (Nos. 70/2001 and 73/2001) explicitly provides (sections 5 and 139) that voluntarily established representative employers' associations, participate in the conclusion of collective agreements at all levels (republic, autonomous province, local self-government) and rules out the participation of Chambers in collective bargaining; and (3) no collective agreement has been concluded by the Chamber of Commerce and Industry of Serbia or by the Yugoslav Chamber of Commerce and Industry since the entry into force of the Labour Law on 21 December 2001. The Committee takes note of this information with interest.

With regard to Montenegro, the Committee notes that according to the written and oral information provided by the Government, the transfer of the competences of the Yugoslav Chamber of Commerce and Industry to the Chamber of Commerce and Industry of Montenegro made it possible for the latter to figure in labour laws as an employers' representative and placed a legal obligation on companies to become members and finance this Chamber. The adoption of the Law Amending the Labour Law which is a basic Government priority for 2004 will regulate, inter alia, the question of representativeness of employers' representatives in accordance with ILO standards and rules. The Government adds that it requested ILO technical assistance in this framework and a seminar was held in May 2004. A tripartite working group has been working very actively on drafting the law which is nearing completion and will be submitted to the Assembly at its next session. The Committee takes note of this information with interest and trusts that the Government will make every effort to bring its legislation into conformity with the Convention without any delay and ensure in particular that employers are able to choose freely the organizations they wish to represent their interests in the collective bargaining

process. It requests the Government to keep it informed of steps taken in this respect and to communicate the text of the Law Amending the Labour Law once adopted.

The Committee also takes note of the observations made by the ICFTU on issues concerning trade union registration and dissolution and the right to strike. The Committee examines these issues in a request addressed directly to the Government.

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

The Committee notes with regret that the Government's first report has still not been received.

With regard to its previous comments concerning the power of the Yugoslav Chamber of Commerce and Industry to sign collective agreements previously negotiated between employers' and workers' organizations, the Committee takes note of the written and oral information provided by the Government representative during the discussion that took place at the Conference Committee in June 2004. The relevant issues, which concern both Conventions Nos. 87 and 98, are treated under Convention No. 87 (see observation on Convention No. 87).

The Committee takes note of the comments communicated by the International Confederation of Free Trade Unions (ICFTU) dated 18 September 2002 and 19 July 2004 respectively, which concern acts of anti-union discrimination, including dismissals, against members and officials of the Nezavisnost national trade union centre. The Committee requests the Government to indicate in its next report its observations in this respect, and in particular, any measures taken to investigate these allegations and the outcome of the investigations.

The Committee notes that articles 139 and 142 of the Labour Law of 21 December 2001 of the Republic of Serbia limit the right to collective bargaining to employers' associations representing at least 10 per cent of the employers in the branch of activity concerned, or of the total number of employers in a territorial unit. The Committee considers that this percentage requirement is excessively high and obstructs collective bargaining in violation of *Article 4 of the Convention*. The Committee requests the Government to indicate in its next report the measures taken or contemplated so as to lift this requirement.

Seychelles

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (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 recalls that its previous comments concerned the following:

Articles 2 and 3 of the Convention. Legislative restrictions on the right of workers to establish organizations of their own choosing without previous authorization, and on the right of workers' organizations to formulate their programme of action to further and defend the professional interests of their members without interference by the public authorities. The Committee had noted that the conditions set out in section 9(1)(b) of the Industrial Relations Act of 1993, for the compulsory registration of trade unions, confer on the Registrar a discretionary power to refuse registration. The Committee further notes that the Registrar may refuse to register a trade union under section 9(1)(f) of the Act if its constitution does not contain adequate provision, or it is not organized to provide adequately, for the protection and promotion of the interests of its members in every trade which it purports to represent. The Committee recalls that workers' organizations have the right to draw up their constitutions and their rules and that public authorities should refrain from any interference which would restrict this right, and thus requests once again the Government to keep it informed in its next reports of any instance where the Registrar has refused registration under sections 9(1)(b) or 9(1)(f).

Articles 3 and 10. The right to strike. The Committee recalls that it has been commenting for several years on the following points:

- section 52(1)(a)(iv) stipulates 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) allows the Minister to declare a strike to be unlawful if he is of the opinion that its continuance would endanger, amongst others, "public order or the national economy";
- section 52(1)(b) provides for a cooling-off period of 60 days before a strike may commence; and
- certain prohibitions of, or restrictions on, the right to strike, which may or may not be in conformity with the principles of freedom of association, sometimes provide for civil or penal sanctions against strikers and trade unions who have violated these provisions.

The Committee once again requests the Government to keep it informed of the measures taken or envisaged to amend sections 52(1)(a)(iv), 52(1)(b), 52(4) and 56(1)(a) and (b) in order to bring its legislation into conformity 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.

Sierra Leone

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

The Committee notes the Government's report. It observes nonetheless that it does not reply to its previous comments.

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. The Committee notes that the Government does not provide any new information on the matter in its report. 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 keep it informed in this regard.

Article 4. The Committee requested the Government in its previous observation to provide information on any collective agreements covering teachers that had been concluded. The Committee notes the Government's indication that the Sierra Leone Teachers' Union has been conducting free and voluntary negotiation with employers under the trade group negotiation councils established by law to fix better terms and conditions of employment for the workers. The Committee requests the Government to provide detailed information on the collective agreements in force in this sector.

Singapore

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)

The Committee notes the Government's report.

In its previous comments, the Committee had referred to section 25 of the Industrial Relations Act (IRA) which provided that in certain new undertakings employers and trade unions must seek approval from the Minister for Manpower if annual leave and sick leave benefits stipulated in their collective agreement were to be more favourable than those stated in the Employment Act. The Committee had requested the Government to take appropriate steps to repeal section 25 of the IRA so as to ensure that the right to bargain collectively was fully recognized in newly established enterprises.

The Committee notes with satisfaction the Government's statement that section 25 of the IRA has been repealed with effect from 1 January 2004.

Spain

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1977)

The Committee notes the Government's report.

The Committee recalls that in its previous observation it referred to the Act respecting foreign nationals (Organic Act No. 8/200 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. It further recalls that it requested the Government to provide information in its next report on any measures taken to amend this Act with the view to securing the right of all foreign workers to join organizations to further their interests as workers.

The Committee notes the Government's indication that various aspects of the Act in question have been amended by Act No. 14/2003 of 20 November, but that section 11, which covers freedom of association and the right to strike, has not been amended and continues to provide that: "Foreign nationals shall have the right to organize freely or to join an occupational organization, under the same conditions as Spanish workers, which they may exercise when they obtain the authorization to stay or reside in Spain".

In this connection, the Committee recalls once again that, under *Article 2 of the Convention*, workers must be accorded the right, without distinction whatsoever, to join organizations of their own choosing, with the sole exception of members of the armed forces and the police. Therefore, the Committee requests the Government to take measures to amend the Act respecting foreign nationals as indicated above and to provide information in its next report on any measures adopted in this respect.

Sri Lanka

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

The Committee takes note of the Government's report. It also notes the comments of the International Confederation of Free Trade Unions (ICFTU) dated 20 February 2004.

Article 1 of the Convention. The Committee notes that the ICFTU refers to several cases of anti-union discrimination aimed to prevent the establishment or recognition of trade unions. According to the ICFTU, these cases have been reported to the authorities since the adoption of the Industrial Disputes Act of December 1999 (which affords protection to workers against acts of anti-union discrimination in taking up employment and in the course of employment), without an appropriate response. The ICFTU adds that adequate protection is not provided in practice, as there are no time limits required of labour authorities within which complaints should be made to the Magistrate's Court (after a complaint has been brought to the Department of Labour) and maximum penalties for unfair labour practices are too low to provide sufficient deterrence.

The Committee notes from the Government's report that the Department of Labour has not yet taken any legal action in order to penalize employers on the ground of anti-union discrimination or interference. The matter has been brought before the National Labour Advisory Council (NLAC) by one trade union for discussion and the Commissioner General of Labour advised the union to bring the individual cases before him with a view to taking legal action.

The Committee notes that section 4(2) of the Industrial Disputes (Amendment) Act of December 1999 provides that any contravention of the provisions concerning anti-union discrimination shall be punished by a fine not exceeding 20,000 rupees. The Committee requests the Government to provide information in its next report 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 also notes that trade unions should be able to have direct access to the courts in order to have their complaints examined by the judicial authorities if they so wish. It therefore requests the Government to indicate whether trade unions have the capacity to bring their grievances concerning anti-union discrimination before the courts in addition to the labour authorities.

Article 4. In its previous comments the Committee had requested the Government to provide detailed and concrete information concerning collective bargaining in free trade zones. The Committee notes that the ICFTU refers to several cases of refusal to recognize a representative trade union by employers both inside and outside the free trade zones, without any effective enforcement action being taken. The ICFTU adds that the 40 per cent threshold established in the law for the compulsory recognition of trade unions constitutes in practice the threshold required for a trade union to be established at the workplace with employers engaging in various tactics in order to avoid such recognition (in particular, changing the lists of employees, as the vote carried out to determine the representativeness is based on a list furnished by the employer).

The Committee notes from the Government's report that under the Future Directions Programme of the Ministry of Labour Relations and Employment, a Social Dialogue and Collective Bargaining Unit (SD&CBU) has been set up in order to promote and facilitate an environment conducive to collective bargaining, especially at the enterprise level. The SD&CBU has decided to conduct a research of existing systems of workplace cooperation with a view to promoting collective bargaining and collective agreements at enterprise level. In the future, this unit will be responsible for creating appropriate national conditions to encourage and promote voluntary negotiations. With regard to collective bargaining in EPZs in particular, the Committee notes that according to the information provided by the Government, sections 9 and 15 of the Labour Standards and Employment Relations Manual of the Board of Investment (BOI), which is the overseeing authority of the EPZs, contain provisions to facilitate the conclusion of collective agreements. Two collective agreements were registered in the Biyagama and Koggala EPZs in 2004 (another two were already in force), while negotiations are in progress in three enterprises. In addition to this, two Memoranda of Understanding on dispute settlement procedure have been signed in the Katunayake EPZ. The Government adds that there is a trend towards unionization in EPZs with nine trade unions covering approximately 10 per cent of the EPZ workforce.

The Committee requests the Government to indicate in its next report the measures taken or contemplated so as to ensure that the compulsory recognition provisions are effectively implemented in practice and to keep it informed of steps taken by the Social Dialogue and Collective Bargaining Unit for the further promotion of collective bargaining.

The Committee notes that according to section 32A(g) of the Industrial Disputes (Amendment) Act No. 56 of 1999 no employer shall refuse to bargain with a trade union, which has in its membership not less than forty per cent of the workmen on whose behalf such trade union seeks to bargain. The Committee considers 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 so that they may negotiate at least on behalf of their own members. The Committee requests the Government to indicate in its next report the measures taken or contemplated so as to promote collective bargaining in accordance with the above observation.

Sudan

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

The Committee notes the information contained in the Government's report and the adoption of the Trade Unions Act of 2001. It notes with satisfaction that this new Trade Unions Act includes provisions – transmitted by the Government – that protect against acts of anti-union discrimination or interference including dissuasive sanctions and requests the Government to send a copy of this Act. The Committee also notes the comments made by the International Confederation of Free Trade Unions (ICFTU), dated 18 September 2002.

Articles 1 and 3 of the Convention. In its last 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 last comments of the ICFTU indicate that trade unionists have been the subject of harassment, intimidation, arbitrary arrest, detention and torture. The Committee deplores that 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. Considering the gravity of these allegations, the Committee urges the Government to take the necessary measures to ensure the respect of rights enshrined by the Convention and to answer to the comments made by the ICFTU.

Article 4. 1. 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 new 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. Noting that the Government's report does not contain any information on this issue, the Committee, once again, requests the Government to take measures to amend the legislation in this sense so as to bring it into conformity with the provisions of the Convention.

2. The Committee notes that the comments made by the ICFTU indicate that collective bargaining is nearly non-existent in Sudan and that salaries are set by a government-appointed and controlled body. The Committee requests the Government to answer to these comments 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 concerned.

Swaziland

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

The Committee takes note of the Government's report, as well as observations made by the Swaziland Federation of Trade Unions (SFTU) and the International Confederation of Free Trade Unions (ICFTU), on which the Committee requests the Government to comment.

Article 2 of the Convention. The Committee notes the Government's statement that it is considering the question of including prison staff within the scope of the application of the Industrial Relations Act (IRA) and recalls that under *Article 2 of the Convention*, workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The Committee once again requests the Government to amend its legislation or enact separate legislation to ensure that prison staff are granted the right to organize in defence of their economic and social interests and to keep it informed in this regard.

Article 3. The Committee notes the Government's comment that it is considering the question of reducing the length of the compulsory dispute settlement procedure required before strike action could be taken legally. The Committee repeats its earlier request to the Government to amend its legislation in order to decrease the length of the compulsory disputes procedure provided for in sections 85 and 86, read with sections 70-82, of the IRA and asks to be kept informed of progress in that regard.

The Committee further notes the Government's indication that the issue of charges under section 40(13) of the IRA has not arisen and requests the Government to continue to keep it informed of any practical application of section 40 and, in particular, any charges brought by virtue of section 40(13). The Committee further notes that the Government has not provided any information in its report on the Internal Security Bill and once again asks it to indicate whether the Bill has been adopted and, if so, to transmit a copy of the adopted text.

In its previous comments, the Committee had expressed concern that the 1963 Public Order Act and the Decree of 1973, which suppressed trade union rights and, in particular, section 12, appeared still to be in force and invoked by the Government. The Committee stated its hope that the process to draft the national Constitution in conformity with international standards would ensure that trade union rights would be respected and that the Decree would finally be repealed. The Committee asked the Government to keep it informed in its next report on all progress made in this regard.

While the Committee notes that the Government has not provided any information on the drafting of the new Constitution, it observes that the SFTU has raised serious concerns in its comments about both the drafting process and the content of the Constitution, which has apparently been approved by Parliament. The Committee requests the Government to provide detailed information in its next report on the matters raised by the SFTU and urges it to take all necessary measures to ensure that the Constitution does not contravene the provisions of the Convention and so that its adoption will result in the effective repeal of the 1973 Decree. The Committee further requests the Government to furnish a copy of the draft Constitution with its next report.

Finally, the Committee notes the comments of the ICFTU indicating that a three-day protest by Swazi labour federations in August 2003 was violently broken up by police using tear gas and rubber bullets, during which one trade unionist was killed. The Committee recalls that freedom of assembly constitutes a fundamental aspect of trade union rights and that the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order (see General Survey on freedom of association and collective bargaining, 1994, paragraph 35). Further, the Committee has stressed 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. 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, *op. cit.*, paragraph 29). The Committee requests the Government to indicate, in its next report, the outcome of inquiries held in respect of the trade unionist killed during the protest.

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: 1978)***

The Committee notes the Government's report. It further notes the observations received from the International Confederation of Free Trade Unions (ICFTU).

1. *Article 2 of the Convention.* In its previous comments, the Committee referred to the need to adopt a specific provision accompanied by sufficiently effective and dissuasive sanctions for the protection of workers' organizations against acts of interference by employers or their organizations as required pursuant to *Article 2* of the Convention. The Committee notes, however, that the Government considers that sections 39, 42, 98, 99, 100 and 101 of the Industrial Relations Act of 2000 (the Act) and sections 35 and 36 of the Employment Act of 1980 provide for sufficient protection. The Committee notes that the provisions mentioned by the Government do not expressly provide for the prohibition of all acts of interference, as required by *Article 2* of the Convention. The Committee once again stresses that, to ensure the application in practice of *Article 2*, the legislation should contain an express provision in this respect, coupled with effective and dissuasive sanctions against acts of interference. The Committee therefore reiterates its request.

2. In its previous observation, referring to section 52 of the Act, the Committee requested the Government to take measures to ensure that there was sufficient protection against employers' interference in the creation and functioning of works councils as well as against collective bargaining with non-unionized workers where there was a sufficiently representative trade union. The Committee notes with interest that section 52 of the Act was amended so as to ensure that the establishment of a works council in an undertaking no longer depends on the free will of an employer, as new section 52(1) requires an employer to establish one if his enterprise employs 25 or more employees. Furthermore, according to section 52, as amended, once a trade union has obtained its recognition, the enterprise works council loses its right to negotiate a collective agreement.

3. *Article 6.* The Committee previously noted that, according to section 42 of the Act, where the union has less than 50 per cent of employees, recognition of the union as employees' representative is at the discretion of the employer. While noting the Government's statement that, although the Act provides for recognition of workers' organizations on attainment of 50 per cent or more, in practice employers are encouraged to accord voluntary recognition in the bargaining unit concerned, the Committee nevertheless requests the Government to take the necessary measures in order to adopt a specific legislative provision so as to ensure that if no union covers more than 50 per cent of the workers, collective bargaining rights are granted to the unions in the unit, at least on behalf of their own members.

The Committee hopes that the legislation will be brought into full conformity with the requirements of the Convention in the near future.

Switzerland

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

The Committee notes that the Government's report has been received during its session. The Committee will examine at its next meeting both the Government's report and the comments made by the Union of Swiss Trade Unions and by the Union of Swiss Employers.

Syrian Arab Republic

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

The Committee takes note of the information provided in the Government's report.

Article 3 of the Convention. Trade union monopoly. In its previous comments, the Committee urged the Government to repeal or amend a number of legislative provisions which established trade union monopoly, authorized the Minister to set the conditions and procedures for the use of trade union funds, and determined the composition of the General Federation of Trade Unions (GFTU) Congress and its presiding officers. In its report, the Government submits once again that both employers and workers reject the principle of multiple trade unions because it reinforces divisions and is contrary to their interests. The Government indicates that this position has been reasserted in decisions taken by trade union central congresses.

The Committee must once again recall that 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. In this respect, there is a fundamental difference between, on the one hand, a trade union monopoly established or maintained by law and, on the other hand, voluntary groupings of workers or unions which occur (without pressure from the public authorities, or due to the law) because they wish, for instance, to strengthen their bargaining position, coordinate their efforts to tackle ad hoc difficulties which affect all their organizations, etc. It is generally to the advantage of workers and employers to avoid proliferation of competing organizations, but trade union unity directly or indirectly imposed by law runs counter to the standards expressly laid down in the Convention (see General Survey on freedom of association and collective bargaining, 1994, paragraph 91). Therefore, the Committee once again urges the Government to take all necessary steps with a view to repealing or amending 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 to 31 of Act No. 21 of 1974);
- authorize the Minister to set the conditions and procedures for the use of trade union funds (section 18(a) of Legislative Decree No. 84 as amended by section 4(5) of Legislative Decree No. 30 of 1982); and
- 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).

Nationality requirement. In its previous comments, the Committee urged the Government to take all necessary measures with a view to amending section 44(3)(b) of Legislative Decree No. 84 so as to allow a certain percentage of trade union officers to be foreigners, at least after a reasonable period of residence in the country. In its report, the Government reiterates that, by virtue of section 25 of Legislative Decree No. 84 of 1968 and amendments made thereto, workers of a nationality other than Arab can join a trade union of skilled workers.

The Committee must once again draw the Government's attention to the issue at stake, namely the eligibility of foreigners for trade union office and not their right to join trade unions. In this respect, the Committee recalls that since provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, it considers that legislation should allow foreign workers not only the right to elect trade union officers but also the right to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey, op. cit., paragraph 118). The Committee once again urges the Government to take all necessary measures with a view to amending section 44(3)(b) of Legislative Decree No. 84 so as to allow at least a certain percentage of trade union officers to be foreigners, at least after a reasonable period of residence in the country.

Penal sanctions for strike action. In its previous comments, the Committee requested the Government to provide information on any measures taken or envisaged to amend the legislative provisions which restrict the right to strike by imposing heavy sanctions including imprisonment and forced labour on anyone causing prejudice to the general production plan decreed by the authorities. In its report, the Government reiterates that the imposition of a penalty on strikes has been repealed by virtue of Act No. 34 of 2000. The Committee once again recalls that while having taken due note of Act No. 34 of 2000 in its previous comments, it also continued to express the need to amend the legislative provisions which imposed heavy prison sanctions for strike action and, furthermore, imposed forced labour for actions which caused prejudice to the general production plan and which were not affected by Act No. 34. Recalling that in its

2001 observation the Committee had noted with interest the establishment by the Ministry of Justice of a committee to consider amendments to the Syrian Penal Code, the Committee once again requests the Government to provide information on any developments in this respect and in particular any measures taken or envisaged to amend the 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); and
- 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 economic Penal Code).

The Committee urges the Government to take all necessary measures at the earliest possible date to bring the national legislation concerning trade union monopoly, restrictions on union office for non-Arabs, and penal sanctions for exercising strike action into full conformity with *Articles 2, 3 and 5 of the Convention*.

Finally, the Committee notes that, according to the Government, section 2 of Legislative Decree No. 84 of 1996 (as amended) grants all workers, including those working in export processing zones, the right to join a trade union of their own choosing. The Government underlines that this general provision applies in all cases unless there is another text restricting the right to organize which applies. While taking due note of this information, the Committee observes that the Government has still not provided any information on public servants' right to organize. The Committee urges the Government to indicate in its next report whether the right to organize of public servants is governed by section 2 of Legislative Decree No. 84 of 1996 as amended or by other legislative provisions and, if so, to provide copies of the relevant legislation.

Tajikistan

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

Article 3 of the Convention. Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities. 1. Concerning section 4(1) of the Law on Trade Unions which provides that trade unions shall be independent in their activities and that any interference by state authorities shall not be permitted except in cases specified by law, the Committee requests the Government to specify in its next report in which cases the state authorities are allowed to interfere with trade union activities.

Concerning section 211 of the Labour Code which provides that restrictions of the right to strike shall be subject to the provisions of legislation in force in Tajikistan, the Committee requests the Government to provide the text of the provisions relating to such restrictions. Furthermore, the Committee requests the Government to state whether the former provisions of the Penal Code which were at the time applicable in the USSR, and particularly section 190(3), which contained significant restrictions on the exercise of the right to strike in the transport sector, enforceable by severe sanctions, including sentences of imprisonment for up to three years, have been repealed by a specific text.

The Committee also requests the Government to supply in its next report a copy of the Law of 29 June 1991 regulating the organization and holding of meetings, gatherings, street processions and demonstrations. In addition, the Committee requests the Government to indicate what are the legal provisions on the right to organize of employers.

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

United Republic of Tanzania

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

The Committee takes note of the Government's report. It also notes with satisfaction the text of the Employment and Labour Relations Act and the Labour Institutions Act which replaced upon adoption the Trade Unions Act, 1998, and the Industrial Court of Tanzania Act, 1967, thus terminating the trade union monopoly, the excessive requirements for the registration of trade union federations and the considerable restrictions on the right to strike previously established by the repealed Acts.

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: 1962)

The Committee takes note of the Government's report.

The Committee takes note with satisfaction of the recent adoption of the Employment and Labour Relations Act, 2004 and the Labour Institutions Act, 2004 which put an end to the Industrial Court's power to refuse the registration of a

collective agreement if it is not in conformity with the Government's economic policy by repealing Act No. 41 of 1967 (section 103 and Second Schedule of the Employment and Labour Relations Act to which section 66(1) of the Labour Institutions Act also refers).

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

Collective Bargaining Convention, 1981 (No. 154) (ratification: 1998)

The Committee takes note of the Government's report.

With regard to its previous comments concerning the Industrial Court Act No. 41 of 1976 which empowered the Industrial Court to refuse to register a collective agreement on the ground that it was not in conformity with the Government's economic policy, the Committee refers to the observation made under Convention No. 98.

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

The former Yugoslav Republic of Macedonia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1991)

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 takes note of the Labour Relations Act (*Official Gazette of the Republic of Macedonia*, No. 80/93-2007) and requests the Government to send with its next report any amendments to the Act relevant to the application of this Convention.

The Committee recalls that its previous comments, pursuant to the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2133 (329th Report approved by the Governing Body at its 285th Session in November 2002), concerned the absence of legislation for the registration and legal recognition of employers' organizations. It further recalls the conclusions of the Committee on Freedom of Association that the state of law and practice in the area of registration constituted such an obstacle to the establishment of employers' organizations that it deprived employers of their fundamental right to establish occupational organizations of their own choosing (see 329th Report, paragraph 545). The Committee indeed notes that, although section 76 of the Labour Relations Act proclaims the right of employers to establish and join organizations of their own choice without previous approval, it does not refer to any procedure for the registration of employers' organizations, while provision is made in section 81 for a special registry of employees' organizations.

Recalling that the Convention covers employers as well as workers (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 67), the Committee again urges the Government to indicate the measures taken or envisaged to ensure the registration and recognition of employers' organizations in a status corresponding to their objectives. It further requests the Government to indicate the steps taken to finalize the registration of the Union of Employers of Macedonia.

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: 1991)

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 takes note of the Labour Relations Act (*Official Gazette*, No. 80/93) and requests the Government to transmit in its next report any other laws related to the application of the Convention. The Committee also takes note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2133 (see 329th Report, approved by the Governing Body at its 285th Session, paragraphs 535-548) in which it noted that the Economic Chamber, which is based on compulsory membership of all enterprises, cannot be considered as an employers' organization for collective bargaining purposes.

The Committee notes that section 88 of the Labour Relations Act provides with regard to collective bargaining at the national level that "the leading trade union organization concludes a general collective agreement pertaining to employees and employers of the economy of the Republic". However, the Committee notes from the conclusions of the Committee on Freedom of Association in Case No. 2133 that employers' organizations (in particular, the complainant Union of Employers of Macedonia (UEM)) are unable to engage in collective bargaining at the national level, as they cannot be registered (and therefore recognized) due to the absence of legislation on this issue.

Moreover, the Committee notes that, although section 89 of the Act makes reference to branch collective agreements, it is likely that the problem described in the previous paragraph also prevails in practice with regard to negotiations at the branch level, given the abovementioned legislative gaps.

The Committee considers that the legislative gaps which exist in the area of registration and recognition of employers' organizations constitute obstacles to employers' participation in collective bargaining, contrary to *Article 4 of the Convention*, which establishes an obligation to adopt measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations. The Committee requests the Government to take all necessary measures so as to fill the existing legislative gaps and promote the full participation of employers' organizations, along with workers' organizations, in voluntary negotiations with a view to the conclusion of collective agreements.

In addition, a request regarding certain points is 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.

Togo

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

The Committee notes the Government's report.

Article 2 of the Convention. In its previous observation, noting that the agreement of 1996 was vague and afforded no safeguards for the rights of workers in export processing zones, the Committee had requested the Government to confirm that the provisions of the Labour Code of 1974 on freedom of association do indeed have force of law in these zones. In this respect, the Committee takes due note of the indication in the Government's report that no provision of Act No. 89-14 of 18 September 1989 establishing the status of export processing zones and its implementing Decree No. 90/40 of 4 April 1990 excludes the application of the provisions of the Labour Code in respect of freedom of association in enterprises located in export processing zones.

The Committee had also requested the Government to provide all available information on the representation of workers in export processing zones (for example, representation by unions, the number of members, etc.). The Committee notes the Government's indication that it does not currently have any statistics concerning unionization in Togo and that no study or survey has been carried out on this subject. Noting that section 5 of the Act respecting the contracts of associations, of 1 July 2001, provides that any association that wishes to obtain legal capacity shall first submit a statement to the *préfecture* or *sous-préfecture* in the area in which the association will have its official headquarters, the Committee requests the Government to provide information in future on any trade union organization which requests the legal capacity to defend workers in export processing zones.

Article 3. In its previous comments, the Committee had noted the draft amendment prepared by the Government to bring section 6 of the Labour Code concerning the right of foreign workers to hold trade union office into conformity with the Convention. The Committee notes the Government's indication that the draft text of the new Labour Code, which is in the final stages of adoption, takes this concern into account and contains provisions that are compatible with the Convention. The Government adds that a copy of the text will be sent to the ILO once it has been adopted. The Committee takes due note of this information and requests the Government to keep it informed on this matter.

Trinidad and Tobago

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (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 recalls that its previous comments referred to the need to amend sections 59(4)(a), 61, 65 and 67 of the Industrial Relations Act, 1972, as amended, which can be applied to prohibit a strike which has not been declared by a majority union, or at the request of one party, or in services which are not essential in the strict sense of the term (in particular, the public school bus service), or when the Minister considers that the national interest is threatened, under penalty of six months' imprisonment.

The Committee further noted that section 69 prohibited the teaching service and employees of the Central Bank from taking industrial action, under penalty of 18 months' imprisonment, and requested the Government to indicate whether these restrictions were still in force and, if so, to take the necessary measures to repeal them so that teachers and bank employees were not prohibited from undertaking industrial action.

The Committee had suggested that the Government might give consideration to establishing a system of minimum service in services which are of public utility rather than imposing an outright ban on strikes.

Recalling that the right to strike is an intrinsic corollary to the right of association protected by the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 179), the Committee hopes that the Government will make every effort to take the necessary action in the very near future in respect of the abovementioned points, and requests the Government to indicate the progress made in its next report.

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: 1963)

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. *Absence of objective and pre-established criteria for determining the most representative association.* The Committee had previously noted that, giving effect to its comments, section 26 of the Prison Service Act had been amended and it had requested a copy of the corresponding text. The Committee repeats this request. Furthermore, on the same question of the absence

of criteria, the Committee had requested the amendment of section 24(3) of the Civil Service Act and the Government had indicated that the corresponding amendment was being prepared. The Committee notes that the Government reiterates its previous statements and requests it to provide copies of the amended texts as soon as they have been adopted.

2. *Need to amend section 34 of the Industrial Relations Act, Chapter 88:01, in order to allow a union whose members constitute the largest number of workers in a bargaining unit, even if it is unable to reach a membership of 50 per cent of the workers in that bargaining unit, to negotiate collectively employment conditions.* The Committee notes the Government's statement to the effect that the tripartite committee established to amend the Industrial Relations Act considered that this provision should not be amended based on the belief that multiple bargaining agents would create industrial conflict in view of the culture of the country. No recommendation has therefore been made to change the existing law in this regard. In this respect, the Committee emphasizes that, where there is a single trade union in a bargaining unit with less than the absolute majority, this type of conflict cannot arise, and where various minority unions exist, their joint participation in the bargaining process could be arranged in an equitable manner or it could be envisaged that collective agreements apply only to the members of the respective trade union. The Committee recalls once again that the requirement that a union obtain the support of an absolute majority of the workers in the bargaining unit to be granted bargaining rights means that there is a risk in practice in many cases that workers will be deprived of the benefits of collective bargaining. The Committee therefore requests the Government to take the necessary measures to ensure that this provision is amended so that, where no union represents an absolute majority of workers, the union which represents a relative majority of workers in the bargaining unit can carry out negotiations to conclude a collective agreement, at least on behalf of its own members. The Committee requests the Government to keep it informed of developments in this respect.

3. *Collective bargaining in the Central Bank.* The Committee had noted previously that in May 2000 the General Workers' Trade Union was granted recognition as a bargaining agent and it had requested the Government to provide information concerning the negotiations held and any collective agreement concluded. The Government indicates that this category of workers has the right to engage in collective bargaining. The Committee requests the Government to inform it of any collective agreement that has been concluded.

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

Tunisia

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

The Committee notes the Government's report.

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities. 1. The Committee emphasizes that the incompatibility between the Convention and the obligation of first-level trade union organizations to obtain the approval of the central workers' confederation before declaring a strike, as required by section 376bis(2) of the Labour Code, has constantly been brought to the Government's attention since 1977. The Committee notes the Government's indication in its report that the need to obtain the approval of the central workers' confederation cannot be considered a limitation on the rights of trade union organizations since such approval comes from the trade union organization and not from an external administrative body. The Government adds that Circular No. 7 of the Tunisian General Labour Union (UGTT) contains a list of the members of the trade union confederation empowered to sign an authorization to call a strike, which includes all the secretaries general of the regional unions, who are in direct and permanent contact with the first-level unions in enterprises. Finally, the Government indicates that it has not received any complaint from first-level trade unions to the effect that prior approval for strikes by the central union confederation limits their right to organize their activities.

The Committee points out once again that making the exercise of the right to strike conditional upon the approval of the central workers' union by its very nature limits the right of first-level trade union organizations to organize their activities and defend the interests of their members in full freedom. As the Committee has emphasized on many occasions, the imposition by law of the requirement of prior approval constitutes a restriction on the free choice of the organizations concerned as it prevents them, in relation to the exercise of the right to strike, from acting independently of the higher-level organization, namely the central workers' union. It recalls that such a restriction is possible only where it is incorporated voluntarily in the statutes of the trade unions concerned and not imposed by the law. The Committee therefore once again urges the Government to repeal section 376bis(2) of the Labour Code so as to guarantee workers' organizations, irrespective of their level, the possibility to 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.

2. The Committee notes the Government's indication in its report that the imposition of the penalties set forth in section 388 of the Labour Code, under which any person who has participated in an illegal strike is liable to a sentence of imprisonment of between three and eight months and a fine of between 100 and 500 dinars, depends on the appreciation by the court of the degree of gravity of the violations concerned. The Government adds that section 53 of the Penal Code allows the courts to impose a penalty that is lower than the minimum set forth in section 388 and even to convert a sentence of imprisonment into a fine.

The Committee notes that the Government's report does not reply to its previous comments concerning the incompatibility with the Convention of section 387 of the Labour Code, under which a strike is deemed to be illegal where it is not called in compliance with the provisions relating to conciliation and mediation, the period of notice and the

requirement of approval by the central workers' confederation. The Committee draws the Government's attention to the fact that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the Convention, which is not the case of the compulsory prior approval by the central workers' confederation as set out in section 387 of the Labour Code. Furthermore, with regard to the disproportionate nature of the sanctions set out in section 388 of the Labour Code, the Committee does not believe that the latitude of the courts' discretion and the existence of section 53 of the Penal Code are sufficient to render them proportionate. In this respect, the Committee points out that failure to comply, in particular, with provisions relating to the conciliation of the dispute and the notice period for strike action is not so serious as to justify the imposition of a sentence of imprisonment. The Committee therefore requests the Government to review sections 387 and 388 of the Labour Code so as to bring them into conformity with *Article 3* of the Convention.

Furthermore, a request on certain other points is being addressed directly to the Government.

Turkey

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1993)

The Committee takes note of the information provided in the report communicated by the Government, as well as the observations attached to the report, made by the following workers' organizations: the Confederation of Progressive Trade Unions of Turkey (DISK), the Turkish Confederation of Public Workers' Associations (TÜRKIYE KAMU-SEN) and the Confederation of Turkish Trade Unions (TURK-I). The Committee also notes the responses of the Government to the observations made by the Independent Public Sector Communication Employees' Union (BAGIMSIZ HABER-SEN), by DISK, by the Confederation of Public Servants Trade Unions (KESK), by the Turkish Union of Public Employees in the Education, Training and Science Services (TÜRK EGITIM-SEN) and by the International Confederation of Free Trade Unions (ICFTU). The Committee requests the Government to transmit its comments on the observations sent by the ICFTU in a communication dated 15 December 2003.

In its previous comments, the Committee examined the conformity with the Convention of the following laws: Act No. 4688 on public employees' trade unions, the Trade Unions Act No. 2821, the Collective Labour Agreements, Strike and Lockout Act No. 2822 and Act No. 3218 imposing, under provisional section 1, compulsory arbitration in export processing zones.

The Committee notes that since it last examined the Government's report, certain sections of Act No. 4688 have been amended by Act No. 5198 and a draft comprising further modifications to Act No. 4688 is under preparation. With respect to Acts Nos. 2821 and 2822, the Committee notes that two draft bills have been prepared and that consultations thereon are under way. The Committee requests the Government to transmit the second text amending Act No. 4688 with its next report as well as an updated version of the texts amending Acts Nos. 2821 and 2822. Finally, the Committee takes note of the entry into force of the new Labour Act No. 4857.

At the outset, the Committee notes with satisfaction Act No. 4771, which has repealed provisional section 1 of Act No. 3218 under which compulsory arbitration was imposed for a ten-year period in export processing zones for the settlement of collective labour disputes. Further, the Committee notes with interest that the draft bills amending Acts Nos. 2821 and 2822 contain improvements in the application of the Convention and thereby address some of the questions raised by the Committee:

- the removal of two conditions of eligibility for the election of trade union officers: the condition of nationality and the condition of at least ten years of employment (Act No. 2821, section 14, paragraph 14);
- the abrogation of the provision under which trade union officers' mandates are suspended in case of candidacy in local or general elections and terminated in case of election (Act No. 2821, section 37, paragraph 3);
- the abrogation of the provision under which the Governor is entitled to appoint an observer at the General Congress of a trade union (Act No. 2821, section 14, paragraph 1);
- the removal from the list of activities where strikes are prohibited of the following activities: the production of lignite coal for thermal plants; banking and public notaries; sea and land transport or railway, and other rail transport (Act No. 2822, section 29);
- the removal of the prohibition of unions' television and radio stations which results from Act No. 3984;
- the exclusion of unions from the scope of section 43 of Associations Act No. 2908, which provide that associations are allowed to invite any foreigner to Turkey or send one of their members abroad, provided due notification is given in advance to the Governor.

A reading of the draft bills reveals that a number of concerns raised by the Committee remain valid:

- the exclusion from the right to organize of a number of public employees (sections 3(a) and 15 of Act No. 4688);

- the criteria under which the Ministry of Labour determines the branch of activity covering a worksite (unions must be constituted on a branch activity basis) and the implications of such determination on the workers' right to form and join organizations of their own choosing (sections 3 and 4 of Act No. 2821);
- the detailed provisions of Acts Nos. 4688, 2821 and 2822 in respect of the internal functioning of unions and their activities;
- 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 right to strike: (a) the public service (section 35 of Act No. 4688); (b) under Act No. 2822.

Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations of their own choosing. 1. The Committee recalls that, under section 3(a), the definition of “public employee” refers only to those who are permanently employed and have finished their trial periods. Section 15 lists a number of public employees who are prohibited from joining trade unions. The Committee notes that, according to the ICFTU, over 400,000 public employees are excluded from the right to organize and that, according to KESK, public employees are increasingly employed under fixed-term contracts and thereby excluded from the scope of Act No. 4688. According to the Government, the draft bill amending Act No. 4688 will remove the reference to the “trial period” and that the definition of “public employees” will be revised so as to include in particular, special security personnel, although it seems that public employees holding positions of trust will remain outside the scope of Act No. 4688.

The Committee underlines that *Article 2* of the Convention provides that workers without distinction whatsoever should have the right to form and join organizations of their own choosing and that the only admissible exception under the Convention concerns the armed forces and the police. It follows, in particular, that the right to organize of public employees cannot hinge on the duration of their contract of employment. As regards public employees “in position of trust”, the Committee recalls once again that it is not compatible with the Convention to exclude totally these public officials from the right to organize. On the other hand, to bar such officials from the right to join trade unions representing other workers is not necessarily incompatible with the Convention provided that two conditions are met: first, that the officials concerned have the right to form their own organizations to defend their own interests; and second, that the category of the employees concerned is not so broadly defined as to weaken the organizations of other public employees by depriving them of a substantial proportion of their actual or potential membership (see the General Survey on freedom of association and collective bargaining, 1994, paragraphs 87 and 88). The Committee trusts that the draft bill will amend sections 3(a) and 15 so that all public employees, with the exception of the armed forces and the police, will have the right to organize in accordance with *Article 2*, and requests the Government to keep it informed in this respect.

2. The Committee recalls that its previous comments referred to the conclusions of the Committee on Freedom of Association in Case No. 2126, and to sections 3 and 4 of Act No. 2821, under which trade unions are constituted on a branch activity basis and the branch of activity covering a worksite is determined by the Ministry of Labour. The Committee requested the Government to indicate the criteria on which the Ministry of Labour makes the determination under section 4 and to provide any text governing this determination. The Committee notes that the Government's report does not address this issue. At the same time, the Committee notes that the draft bill amending Act No. 2821 modifies the list of branches of activity. Thus, some branches currently listed in section 60 of Act No. 2821, will disappear or be merged with other branches of activity. The Committee notes that under provisional section 2 of the draft bill, unions currently established in branches of activity that will be abolished or merged with others, must hold an extraordinary congress in order to draw up their new rules and modalities of operation.

The Committee recalls that it considers that the setting up of broad bands of classification relating to branches of activity for the purpose of clarifying the nature and scope of industrial level unions is not in itself incompatible with the Convention. On the other hand, the Committee considers that this classification, and its modification, should be determined according to specific, objective and pre-established criteria relating in particular to the nature of the functions carried out by the workers at the worksite concerned so as to avoid any arbitrary determination and thus to guarantee fully the right of workers to form and join organizations of their own choosing. The Committee once again requests the Government to specify the criteria on which a particular worksite is classified in a given branch of activity. Further, 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*. In this connection, as regards workers who, by reason of a decision taken under section 4 have lost their right to be represented by the trade union Dok Gemi-Is (see Case No. 2126) which they had freely chosen, the Committee once again requests the Government to indicate the measures taken so as to restore to these workers their right to establish and join the organization of their own choosing. The Committee requests the Government to keep it informed on all the measures taken and of the practical implications for unions of the entry into force of the modified list of branches of activity.

Article 3. 1. Right of workers' organizations to draw up their constitutions and rules. In its previous comments, the Committee underlined that several provisions of Acts Nos. 2821, 2822 and 4688, unduly regulate trade union internal matters and that this could give rise to undue interference by public authorities in the functioning and the activities of trade unions. The Committee notes that according to the Government, the provisions in question of Act No. 4688 do not aim at

limiting organizations' independence. They were introduced with the sole objective of ensuring a democratic functioning of trade unions and transparency in their activities, as well as of protecting the rights of their members.

The Committee recalls first that its comments concern not only Act No. 4688 but also Acts Nos. 2821 and 2822. It notes in this respect that Act No. 5198 and the draft bills amending Acts Nos. 2821 and 2822 do not lessen the level of detail of the framework within which unions are to operate. The Committee recalls that legislative provisions, which go beyond formal requirements may hinder the establishment and development of organizations and constitute interference contrary to *Article 3(2)* of the Convention (see General Survey, op. cit., 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. The Committee expresses the firm hope that its comments will be taken into account in the draft bills that are to amend Acts Nos. 4688, 2821 and 2822 and requests the Government to keep it informed in this respect. Finally, with respect to section 10 of Act No. 4688 under which a union executive committee can be withdrawn in case of non-compliance with requirements which should be left to the free determination of the occupational organizations, the Committee refers to its comments made above and requests the Government to take the necessary measures to amend section 10 of the Act so as to ensure that workers' organizations may organize their administration and activities without any interference by public authorities on grounds which are incompatible with *Article 3*.

2. *Right of workers' organizations to elect their representatives freely.* The Committee recalls that under section 18 of Act No. 4688 the mandate of a union officer is suspended if the latter is a candidate in local or general elections. The Committee notes that, according to the Government, this provision is designed to ensure that candidates are on an equal footing and to prevent a union's resources being used for political purposes. The Committee notes with interest that the corresponding provision of Act No. 2821, section 37, paragraph 3, has been removed by virtue of the draft amending bill, whereas the amendment made by Act No. 5198 to section 18 of Act No. 4688 maintains this restriction and appears to further exclude union officers from union office in the event that their candidacy in local and general elections fails. The Committee considers that while the issue of public employees' participation in local or general elections may be relevant to the general status of public servants, it should not result in a restriction on the choice of union officers made by union members. The Committee therefore requests the Government, in the event that there is no prohibition or restriction on public servants' candidacy for local and general elections, to take the necessary measures to amend section 18 of Act No. 4688 further, so as to enable public employees' organizations to determine freely whether union officers may remain in their posts during their candidacy or election for local or general elections and to permit unions' by-laws to determine whether such officers shall remain in their posts in the event that their candidacy in local and general elections fails.

3. *Right of workers' and employers' organizations to organize their activities and formulate their programmes free from government interference. Public employees' trade unions.* 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. The Committee notes that, in its report, the Government links this particular issue with the studies which are under way and which aim at revising the definition of "public employee". The Committee underlines that restrictions to the right to strike in the public service hinge solely on the functions carried out by the public employees concerned. Thus, 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 (see General Survey, op. cit., paragraphs 158-159). Where the right to strike is prohibited or limited in a manner compatible with the Convention, 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., paragraph 164). The Committee trusts that the Government will take the necessary measures in the near future to amend Act No. 4688 in a manner compatible with *Article 3* along the lines set out above and requests the Government to keep it informed of the progress made in this regard.

Other trade unions. The Committee recalls that it has commented on several occasions on certain provisions of Act No. 2822 concerning the right to strike and which are incompatible with the Convention. The Committee notes in this respect the comments made by the ICFTU on the specific restrictions placed on the right to strike, both in law and practice, and the severe penalties applicable to the participation in an illegal strike. The Committee recalls that its previous comments concerned the following provisions:

- section 25 prohibiting strikes for political purposes, general strikes and sympathy strikes; article 54 of the Constitution contains similar prohibitions and prohibits as well occupation of work premises, go-slow strikes, and other forms of obstruction;
- section 48 placing severe limitation on picketing;
- sections 29 and 30 prohibiting strikes in many services which cannot be considered to be essential in the strict sense of the term and section 32 under which compulsory arbitration at the request of any party may be imposed in the services where strikes are prohibited. In light of the services remaining in the draft bill amending section 29, the Committee underlines that activities concerning the production, the refining and the distribution of natural gas, town gas, and petroleum, cannot be considered as 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;

- sections 27 (referring to section 23) and 35 providing for an excessively long waiting period before a strike can be called. In this respect, the Committee notes that the Government agrees that the period running from the beginning of the negotiations until the strike actually begins is considerably long and that sections 22 and 23 are amended in the draft bill; the Committee requests the Government to clarify the extent to which the waiting period has been reduced under sections 22 and 23 as amended and to communicate an updated version of the amended texts;
- sections 70-73, 77 and 79 providing for heavy sanctions, including imprisonment, for participating in “unlawful strikes” the prohibition of which, however, is contrary to the principles of freedom of association. 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 and, furthermore, if measures of imprisonment are at all to be imposed they should be justified by the seriousness of the offences committed.

Noting that the draft bill amending Act No. 2822 does not address most of the concerns previously raised by the Committee, the Committee urges the Government to take the necessary measures to amend the abovementioned provisions so as to bring them into conformity with *Article 3*.

Finally, the Committee notes that the ICFTU has referred, in its observations, to restrictions on freedom of association which are particularly acute in the four provinces in the south-east of the country and to the detention of many trade unionists under section 312 of the Penal Code which provides for imprisonment for “inciting hatred”. The Committee notes that, according to the Government, the state of emergency was lifted throughout Turkey and that section 159 of the Penal Code was amended so that freedom of expression of non-violent thoughts is no longer considered as an offence. The Committee notes that the Government has not addressed the particular issue of the application of section 312 of the Penal Code to trade unionists in the legitimate exercise of their activities. The Committee therefore requests the Government to provide its reply in this respect and to indicate the measures taken so as to ensure that section 312 is not applied to trade unionists carrying out legitimate trade union activities.

With respect to the lawsuit brought against DISK, the Committee notes that the Government confirms that a lawsuit was brought against the Confederation under section 54 of Act No. 2821 and that the case is under way. The Committee notes that although the Government submits that the required documents concerning the union officers elected during the 2000 General Congress of DISK were incomplete, the Government seems to confirm that one of the reasons for the lawsuit related to the ten-year service requirement that has been repealed from the Constitution. The Committee notes that the existence of an organization, which has duly acquired legal personality and which is currently functioning, is being threatened by a lawsuit initiated more than two years ago and which is based on a condition of eligibility which has been repeatedly criticized by the Committee as a violation of *Article 3*. The Committee considers that such a lawsuit brought to dissolve an organization not only interferes with the right of workers’ organizations to elect freely their representatives but also more basically infringes the workers’ right to establish and join organizations of their own choosing. The Committee trusts therefore that the Government will take the necessary measures to withdraw the lawsuit, all the more so as the condition of eligibility will be repealed from Act No. 2821. The Committee requests the Government to keep it informed in this respect.

The Committee expresses the hope that, in the forthcoming legislative reforms concerning the right to organize, the comments made above will be taken into account. The Committee once again recalls that ILO technical assistance is available in this regard should the Government so desire.

The Committee is raising a number of other points in a request addressed directly to the Government.

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

The Committee takes note of the information provided in the report communicated by the Government as well as the observations, attached to the report, made by the following organizations: the Confederation of Progressive Trade Unions of Turkey (DISK), the Turkish Confederation of Public Workers’ Associations (TURKIYE KAMU-SEN), the Confederation of Turkish Trade Unions (TURK-IS), and the Turkish Confederation of Employers’ Associations (TISK). The Committee also notes the responses of the Government to the observations made by DISK, by the International Confederation of Free Trade Unions (ICFTU) and by the Confederation of Public Servants Trade Unions (KESK). The Committee requests the Government to transmit its comments on the observations sent by the ICFTU and TURKIYE KAMU-SEN on the collective bargaining process both in the public and the private sectors, in their communications dated 15 December 2003 and 11 November 2004, respectively.

In its previous comments, the Committee examined the conformity with the Convention of the following laws: Act No. 4688 on public employees’ trade unions, the Unions Act No. 2821, the collective labour agreements, strike and lockout Act No. 2822 and Act No. 3218 imposing, under provisional section 1, compulsory arbitration in export processing zones. The Committee notes that certain sections of Act No. 4688 have been amended by Act No. 5198 and a draft comprising further modifications to Act No. 4688 is under preparation. With respect to Acts Nos. 2821 and 2822, the Committee notes that two draft bills have been prepared. Regarding Act No. 3218, the Committee notes with satisfaction that Act No. 4771 has repealed provisional section 1. Finally, the Committee takes note of the entry into force of the New Labour Act No. 4857. The Committee requests the Government to transmit the second text amending Act No. 4688 with its next report as well as an updated version of the texts amending Acts Nos. 2821 and 2822.

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. The Committee recalls that its previous comments related to section 18 of Act No. 4688; while this provision generally provides for a prohibition of acts of anti-union discrimination, this guarantee is not accompanied by sufficiently effective and dissuasive sanctions. The Committee notes that in its most recent observations, the ICFTU points out to a number of instances in which public employees, as trade union members or officers, suffered various acts of anti-union discrimination. The Committee also notes that the Committee on Freedom of Association has recently examined, in Case No. 2200, allegations of anti-union discrimination in the public service (see 330th Report, paragraphs 1077-1105, and 334th Report, paragraphs 722-762). In its report, the Government indicates that, it is currently considering the introduction of sanctions to ensure effective prohibition of anti-union discrimination. Recalling that legal standards are inadequate if they are not coupled, notably, with sufficiently dissuasive sanctions to ensure their application, the Committee requests the Government to submit with its next report the text of any amendment introducing sufficiently dissuasive sanctions to ensure the effectiveness of the prohibition set out in section 18.

Article 4. Free and voluntary collective bargaining. 1. With respect to the dual criteria to determine the representative status of a union for the purpose of collective bargaining set out in section 12 of Act No. 2822, in its previous comments (see the 2002 observation), the Committee expressed the firm hope that the Government would take the necessary measures to ensure the conformity of the draft Bill amending Act No. 2822 with the requirements of the Convention. The Committee notes that in its report, the Government points out that the draft bill reduces one of the criteria: the requirement that a union represents at least 10 per cent of the employees engaged in a given branch of activity will now be lessened to 5 per cent. The Committee takes due note of this amendment but notes at the same time that the other requirement – that the union should represent over half of the workers employed in the workplace – is maintained, as is the combination of the two criteria. The Committee must therefore once again point out that the numerical requirements in section 12 of Act No. 2822, even as amended, are not in accordance with the principle of voluntary collective bargaining. Thus, unions representing the majority of workers in a workplace but not having membership strength of more than 50 per cent of the workers cannot enter into collective bargaining with the employer. The Committee considers that at the enterprise level, if no single union covers more than 50 per cent of the workers, collective bargaining rights should be granted to the existing unions, at least on behalf of their own members. Similarly, the Committee notes that a trade union meeting the 50 per cent criterion cannot bargain if it does not represent at least 5 per cent under the draft bill (10 per cent under the current legislation) of employees engaged in a given branch of activity. The Committee expresses the hope that the Government will take the necessary measures to remove the two numerical requirements from the national legislation in order to encourage and promote the full development and utilization of machinery for voluntary collective bargaining, in accordance with *Article 4*. In addition, the Committee notes that according to comments submitted directly by DISK, the Ministry of Labour and Social Security did not mention this organization in its statistics published on 17 July 2003, although it had reached the 10 per cent requirement in its branch of activity, and thus prevented the organization from participating in the collective bargaining process. In its comments attached to the Government's report, DISK makes similar representations concerning some of its affiliates. The Committee notes that in its reply the Government refers only to the statistics published in respect of one of DISK's affiliates (Sosyal-I), and which were eventually rectified by the Ministry of Labour and Social Security as a result of an objection raised by the union concerned before the courts. The Committee requests the Government to transmit information in respect of DISK and the other cases raised in its comments attached to the report, so as to enable the Committee to draw its conclusions on the matter.

2. With respect to collective bargaining in the public service, in its previous comments (see 2002 observation), the Committee had requested the Government to provide details on the role and functions of the Supreme Administrative Committee, the Institution Administrative Committees and the Public Employers' Committee during collective bargaining. The Committee had pointed out also that the scope of conditions of employment to be negotiated should not be restricted to the economic conditions mentioned in section 28 of the Act but should also cover all questions concerning conditions of work. The Committee notes that the Government has not addressed the issue of the scope of the negotiations. The Committee notes that the Government has given some explanations about the role and function of the Supreme Administrative Committee and the Institution Administrative Committees but not about the Public Employers' Committee. Thus, the first two committees have been established with a view to enable, both within a particular institution or at the inter-institutional level, public employees to voice their opinion on their conditions of work and the application of the relevant laws and regulations. The Supreme Administrative Committee submits proposals to the Public Employers' Committee in relation to conditions of work, and rights and duties of public employees, which form the basis of collective negotiation. The Supreme Administrative Committee monitors the application of the agreed text, which will result from the negotiations. The Government underlines that meetings were held with social partners notably on the functioning of the committees. Both the representatives of the confederations and the public employers suggested that the Supreme Administrative Committee should be abolished, as it has no real function.

The Committee takes note of the explanation provided by the Government regarding both the Supreme Administrative Committee and the Institution Administrative Committees. It notes that the parties to the negotiation are, on the one hand, the Public Employers' Committee, and on the other, unions and the confederations to which they are affiliated. The Committee notes that the Public Employers' Committee is composed of representatives of the Prime Minister, the Ministry of Finances and of the Treasury, as well as of the public employers' organization. The Committee recalls that 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 (see the General Survey on freedom of association and collective bargaining, 1994, paragraph 263). The Committee therefore once again requests the Government to explain the role and function of the Public Employers' Committee and, in particular, to explain the manner in which the direct employer participates in the negotiations alongside the financial authorities.

Further, the Committee recalls that measures taken unilaterally by the authorities to restrict the scope of the negotiable issues are often incompatible with the Convention; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method to resolve these difficulties (see General Survey, *op. cit.*, paragraph 250). While noting the Government's indications that discussions at the level of the Supreme Administrative Committee and the Institutions Administrative Committees relate to conditions of work and the rights and duties of public employees, the Committee underlines that section 28 quite clearly limits the scope of the negotiations to financial issues. It therefore requests the Government to take the necessary measures to amend section 28 in a manner compatible with *Article 4*.

Article 6. Public servants engaged in the administration of the State. In its previous comments, the Committee noted that sections 3(a) and 15 of the Public Employees' Trade Unions Act No. 4688 deny several categories of public servants the right to organize, and consequently the right to collective bargaining. The definition of a public employee in section 3(a) refers only to those who are permanently employed and have finished their trial periods. Section 15 lists a number of public employees (such as lawyers, civilian civil servants at the Ministry of National Defence and the Turkish armed forces, employees at penal institutions, etc.) who are prohibited from joining trade unions. The Committee requested the Government to take the necessary measures to amend sections 3(a) and 15 so that public servants, other than those engaged in the administration of the State, are fully ensured the right to collective bargaining in accordance with the Convention. The Committee notes with interest that the Government indicates that the draft bill amending Act No. 4688 will remove the reference to the "trial period" and that the definition of "public employees" will be revised so as to include in particular, special security personnel. Nevertheless, it seems that public employees holding positions of trust will remain outside the scope of Act No. 4688. The Committee recalls that a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants employed in government ministries and other comparable bodies, as well as ancillary staff) who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention (see General Survey, *op. cit.*, paragraph 200). The Committee expresses the firm hope that the revision of sections 3(a) and 15 of Act No. 4688 will take into account the comments made above and requests the Government to submit with its next report the text of the relevant amendments.

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 takes note of the Government's report.

1. *Article 4 of the Convention. Promotion of collective bargaining.* In its previous comments the Committee had noted that the dual requirement established in sections 8(3) and 19(1)(e) of Trade Union Decree No. 20 of 1976, that is to say, a minimum of 1,000 members to form a trade union and a representation of 51 per cent of the employees concerned in order to be granted exclusive bargaining rights, did not promote collective bargaining and might deprive workers in smaller bargaining units, or those who are dispersed over wide geographical areas, of their collective bargaining rights. The Committee had requested the Government to keep it informed of progress made in the adoption of a draft Bill to amend sections 8(3) and 19(1)(e) of the Trade Unions Decree.

In its latest report the Government indicates that the labour laws reform exercise, which has been ongoing for over ten years now, will hopefully soon lead to the enactment of four Bills to revise, *inter alia*, the Trade Union Decree (now the Trade Union Act Cap. 2000) by removing the minimum membership requirement of 1,000 members to form a trade union. According to the Government, consensus has been achieved on most areas and a meeting was scheduled to take place shortly after June 2004 with the social partners and other stakeholders in order to harmonize the few remaining areas of contention.

Noting that the Government refers to plans to revise the minimum membership requirement but not the absolute majority requirement in order for a trade union to be granted exclusive bargaining rights, the Committee recalls that if no union covers more than 50 per cent of the workers (in a system where 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) collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members (see General Survey on freedom of association and collective bargaining, 1994, paragraph 241). The Committee requests the Government to keep

it informed of progress made in the process of legislative reform with a view to revising sections 8(3) and 19(1)(e) of the Trade Unions Decree.

2. *Exclusion of the prison services from the application of the Trade Union Decree.* In its previous comments, the Committee had noted that prison staff was excluded from trade union membership by section 3 and Annex 2 of the Trade Unions Decree as amended by the Trade Union (Miscellaneous Amendments) Act of 1993. In its report the Government indicates that the prisons services are still exempted from the Trade Union Decree (now the Trade Union Act Cap. 2000) but that they are allowed to form associations for the purpose of promoting their welfare. The Committee notes that *Article 5* does not exclude prison staff from the scope of the Convention and that therefore occupational organizations representing this category of workers should enjoy the right to engage in negotiations with a view to the regulation of terms and conditions of employment by means of collective agreements in accordance with *Article 4* of the Convention. The Committee requests the Government to indicate in its next report any measures taken or contemplated in the framework of the current process of legislative reform so as to bring the legislation into full conformity with the Convention on this point.

Ukraine

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

The Committee takes note of the information contained in the Government's reports.

The Committee notes the comments made by the Confederation of Free Trade Unions of Ukraine (KSPU) and by the Federation of Trade Unions of Ukraine (FPU) on the application of the Convention. The Committee requests that the Government transmit its observations thereon.

1. *Law on employers' organizations.* The Committee notes the comments made by the Ukrainian Union of Leaseholders and Entrepreneurs (SOPU) on the conformity of the Law on Employers' Organizations with the Convention.

The Committee recalls that in its previous comments on the Law it requested the Government to indicate whether section X(3) of the Law, which provided that the Confederation of the Employers of Ukraine shall represent the employers at the state level pending the establishment and registration of employers' organizations and their associations, was still applicable. It notes with interest that this section is no longer in force. It further notes the Government's indication that four All-Ukrainian employers' organizations are currently registered.

In its previous comments, the Committee also asked the Government to repeal section 31 of the Law, which provided that the bodies of the state authority shall exercise control over economic activities of employers' organizations and their associations. The Committee notes the Government's statement that the draft amendments to the Law are being prepared. The Committee hopes that the Committee's comments will be taken into account and that organizations of employers will be consulted during the preparation of legislation which affects their interests, and requests the Government to keep it informed of any development in this respect. The Committee further once again asks the Government to indicate the manner in which employers' organizations are representing employers at national level.

2. *Trade union registration.* The Committee notes that section 16 of the Trade Unions Act was amended in June 2003. It notes that according to newly amended section 16 of the Act, "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. The Committee notes however that according to section 3 of the Act of Ukraine on the state registration of legal persons and physical persons-entrepreneurs of 15 May 2003, "the associations of citizens (including trade unions), for which special conditions for state registration have been established under the Act, shall obtain the status of legal person only after their state registration, to be conducted in accordance with the order established by the present Act", and, according to section 87 of the Civil Code of 16 January 2003, an organization acquires its rights of legal personality from the moment of its registration. The Committee notes the contradiction between these pieces of legislation and the Trade Unions Act. As concerns the Act of Ukraine on the state registration of legal persons and physical persons-entrepreneurs, the Committee notes the Government's indication that a draft amendment to section 3 of the Act, which would exclude trade union organizations from the scope of the Act, was prepared and transmitted on 18 November 2003 to the Parliament. The Government does not provide its comments on section 87 of the Civil Code. In view of the apparent contradiction in the legislation, the Committee asks the Government to amend its legislation so as to ensure that it guarantees the right of workers to establish their organizations without previous authorization. The Committee requests the Government to keep it informed of any developments in this respect.

3. *Right of workers' organizations to organize their activities freely.* The Committee had previously noted that section 19 of the Act on the procedure for the settlement of collective labour disputes 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 notes the Government's statement that there were no legislative changes in this respect and that three drafts to amend the Act were registered in the Parliament. The Committee once again asks the Government to indicate in its next report the measures taken or envisaged to amend section 19 of the Act so as to ensure that account is taken only of the votes cast and that the required majority and quorum is fixed at a reasonable level.

The Committee further notes the adoption in 2001 of the new Penal Code. It requests the Government to provide information on practical application of article 293 of the 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 up to six months, and in particular in respect of an industrial action.

United Kingdom

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

The Committee notes the information contained in the Government's report, including the recent enactment of the Employment Relations Act, 2004, which was the result of the review of the Employment Relations Act, 1999.

1. *Unjustified discipline (sections 64-67 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA))*. In its previous comments, the Committee had requested the Government to keep it informed of developments in respect of sections 64-67 of the TULRA, which prevent trade unions from disciplining members who refuse to participate in lawful strikes and other industrial action or who seek to persuade members to refuse to participate in such action. The Committee notes the information provided by the Government that the review of the Employment Relations Act, 1999 resulted in the Employment Relations Act, 2004, that amends section 67 by transferring responsibility from the Employment Appeal Tribunal to an employment tribunal for making certain compensatory awards and that in the current reporting period 17 tribunal complaints have been brought under section 66.

The Committee further recalls that it had requested the Government to keep it informed of any developments in respect of section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA), which severely restricted the situations in which trade unions may exclude or expel individuals from membership. The Committee notes with interest that, by virtue of section 33 of the Employment Relations Act, 2004, section 174 of the TULRA has been amended to allow unions lawfully to exclude and expel individuals wholly or partly on the basis of conduct which consists of activities undertaken by an individual as a member of a political party.

Recalling once again that unions should have the right to draw up their rules without interference from public authorities and should be able to determine whether or not it should be possible to discipline members who refuse to comply with democratic decisions to take industrial action, the Committee requests the Government to continue to keep it informed in its future reports of any further developments concerning sections 64-67 of the TULRA so as to more fully ensure the rights of unions to draw up their rules and formulate their programmes without government interference.

2. *Immunities in respect of civil liability for strikes and other industrial action (sections 223 and 224 of the TULRA)*. In its previous comments, the Committee had requested the Government to keep it informed in its future reports of developments in respect of 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 notes that the Government reports that there are no developments in respect of the treatment of sympathy strikes under United Kingdom law and that principles of fairness and partnership at work have resulted in more harmonious relationships and the avoidance of conflict. The Committee further notes the Government's indication that it believes that the restrictions on secondary and solidarity strikes reflect the United Kingdom's experiences and needs and that its strike law gives sufficient scope for unions to protect the interests of their members. The Committee once again recalls 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 matters which affect them even though the direct employer may not be a party to the dispute, and requests the Government to continue to keep it informed in its future reports of developments in this respect.

The Committee is raising a number of points in a request addressed directly to the Government.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1950)

The Committee takes note of the Government's report.

Articles 1 and 4 of the Convention. In its previous comments, the Committee had raised concerns with respect to insufficient protection for workers against anti-union discrimination, with such lack of protection having harmful implications for the promotion of collective bargaining, and had requested the Government to indicate any steps taken to review and amend section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA), which did not include protection for making use of the essential services of the union (e.g. collective bargaining), and section 13 of the Trade Union Reform and Employment Rights Act 1993 (which had amended section 148 of the TULRA), which allowed an employer to wilfully discriminate on anti-union grounds, so long as another purpose was to further a change in the relationship with all or any class of employees.

The Committee notes with satisfaction some legislative amendments, which are developed below.

The Committee notes the information provided by the Government that section 31 of the Employment Relations Act 2004 amends section 146 of the TULRA, so that it is unlawful to subject a worker to detriment short of dismissal for making use of trade union services at an appropriate time and that the phrase “trade union services” is defined to mean services made available to an employee by an independent trade union by virtue of his membership of the union, including an employee consenting to the raising of a matter on his behalf by an independent trade union of which he or she is a member.

The Committee also notes the Government’s indication that section 31(5) of the Employment Relations Act repeals subsections (3)-(5) of section 148 of the TULRA so that detriment to employees by employers is prohibited even if the employer’s purpose was to further a change in the relationship with all or any class of his or her employees.

Uruguay

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ***(ratification: 1954)***

The Committee notes the Government’s report.

The Committee recalls that in its previous observation it noted the comments made by the PIT-CNT referring to the lack of rapid and effective machinery against acts of anti-union discrimination and the impossibility of carrying out collective bargaining in the major sectors, particularly in the services and commercial sectors. On that occasion, the Committee requested the Government to: (1) provide further particulars on the average time which elapses between the initiation of investigations of complaints of anti-union discrimination and the imposition of sanctions, or the closure of the case, with an indication of the total number of complaints of acts of anti-union discrimination lodged over the past two years; and (2) to provide information on the number of collective agreements concluded by enterprise and by economic branch, including the public sector and the public administration, with an indication of the sectors and number of workers covered and, if possible, with a full list of the collective agreements concluded in the country.

Article 1 of the Convention. With regard to matters relating to acts of anti-union discrimination, the Committee notes with interest Decree No. 186/004, which provides in section 6 that acts of anti-union discrimination are considered to be very grave offences, for which substantial penalties are envisaged in sections 13 to 16, which may even, in the event of repeated offences, result in the temporary closure of the enterprise. The Committee also notes the Government’s information that: (1) there is no specific procedure for cases of trade union repression, and complaints are consequently dealt with in accordance with Decree No. 500/91, which covers any type of administrative procedure (the Government adds that in view of the variety of forms of evidence which may be produced it is difficult to assess the average duration of procedures); and (2) ten complaints were dealt with by the General Labour Inspectorate in 2002, nine in 2003 and four during the first half of 2004 (according to the Government, the ten complaints lodged in 2002 have been resolved, five of the complaints submitted in 2003 are still being dealt with and four have been resolved and, of those lodged in 2004, three are still being dealt with and one has been resolved). In this regard, the Committee notes that administrative procedures may last more than 12 months. The Committee considers that cases of violations of trade union rights should be examined rapidly so that the necessary corrective measures can be really effective. In these conditions, the Committee requests the Government to take measures to ensure that complaints of violations of trade union rights are examined as rapidly as possible. The Committee requests the Government to provide information in its next report on any measure adopted in this connection.

Article 4. The Committee notes the Government’s indication that: (1) between 1 January 2003 and 21 July 2004, some 155 agreements were concluded covering various enterprises and branches of activity (for metalworkers and transport workers); and (2) there is no information available concerning the total number of workers covered by each of these agreements. In this respect, the Committee requests the Government to provide information in its next report on the number of collective agreements or other accords concluded in the public sector, with an indication of the institutions concerned.

Labour Relations (Public Service) Convention, 1978 (No. 151) ***(ratification: 1989)***

The Committee notes the Government’s report.

The Committee recalls that in its previous observation it noted that the trade union confederation PIT-CNT referred to the absence of machinery for collective bargaining in the public administration, the judicial authorities and education, and invited the Government to examine this matter with the social partners. The Committee notes the Government’s statement to the effect that, in this regard, no changes have occurred with respect to the information that was previously provided and that collective agreements have been concluded between the State and public servants, especially in public enterprises. In this respect, the Committee invites the Government to examine with the most representative organizations the possible machinery for the promotion of collective bargaining in the public administration and requests it to provide information in its next report on any developments in this respect.

Venezuela

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1982)

The Committee notes the Government's report and the discussion in the Conference Committee on the Application of Standards in June 2004. The Committee further notes the report of the direct contacts mission which visited Venezuela from 13 to 15 October 2004, and the comments on the application of the Convention made by the International Confederation of Free Trade Unions (ICFTU), dated 19 July 2004, and the International Organization of Employers (IOE), dated 30 July 2004.

Reforms of the Basic Labour Act requested by the Committee

The Committee notes that, according to the report of the direct contacts mission, a Bill to amend the Basic Labour Act will soon be submitted to the plenary session of the National Assembly and that the Supreme Court, in a decision of 15 June 2004, has set a deadline of 15 December 2004 for the adoption of the Bill by the Assembly. The Committee notes with interest that the Bill gives effect to the requests for amendment that it had made: (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 can hold office in an executive body of a trade union organization; (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 employers' organizations; (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 only be provided where so requested by trade union organizations in accordance with the provisions of their statutes, and that elections held without the participation of the Electoral Council and which comply with the provisions of the respective trade union statutes shall have full legal effect once the corresponding reports are submitted to the respective labour inspectorate. The Committee notes that the direct contacts mission observed that the authorities of the Ministry and the bodies of the legislative authority support the position set out in this provision of the Bill and that in practice trade union organizations have now held elections without the participation of the National Electoral Council.

The Committee further notes that the Bill provides that "in accordance with the constitutional principal of democratic alternation, 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 (3) years be established". The Committee notes that the Government indicated, in one of its written communications to the mission, that the re-election of trade union leaders does not raise problems in practice and it referred to various examples. The Committee notes the suggestion made by the mission to the legislative authorities that a provision should be introduced explicitly allowing the re-election of trade union officers and it hopes that the future reform will take on board this request.

Furthermore, the Committee notes that according to the report of the direct contacts mission, the Bill on the democratic rights of workers (which raised problems of compatibility with the Convention) was withdrawn from the agenda of the Legislative Assembly several years ago.

Refusal to recognize the executive committee of the Confederation of Workers of Venezuela (CTV)

The Committee recalls that in its previous observation it requested the Government to recognize immediately the executive committee of the CTV, which was elected in October 2001. The Government had indicated that the election process had been impugned in the National Electoral Council and the Committee of Experts endorsed the views of the Committee on Freedom of Association that challenging the results of trade union elections should not have the effect of suspending their validity pending the outcome of the judicial proceedings.

The Committee notes the Government's indication that in recent years the Ministry of Labour, adopting a pragmatic approach and in good faith, has allowed a certain level of recognition of those representing the executive committee of the CTV, including their inclusion in the delegations to the international and regional meetings of the ILO, participation in the Facilitation Forum organized by the United Nations Development Programme, the Organization of American States and the Carter Centre (in which the CTV participated as a member of the so-called *Coordinadora Democrática*) and in consultations on documents in the context of the Andean region, among other consultations, thereby bearing witness to a broad view beyond what would normally be allowed in practice and under the law.

The Committee notes the emphasis placed in the report of the direct contacts mission on the fact that for years the executive committee of the CTV has not been recognized in law by the Government and in practice has only been recognized for very limited purposes. The Committee further notes that the report of the direct contacts mission indicates the following:

The mission wishes to point out that the case of the CTV appears to illustrate institutional deficiencies which give rise to concern. Indeed, despite the fact that the election of the executive committee of the CTV was held in October 2001, and new elections are planned for the first quarter of 2005, the National Electoral Council has not yet issued an opinion on the legality of the election process. Under these conditions, the mission draws the attention of the Committee of Experts to this situation, and particularly so that it can comment on whether this delay has placed the executive committee of the CTV in a situation of

defencelessness and denial of justice, and on the statement of the CTV that the current situation has prevented its executive committee from the normal exercise of its rights and has seriously prejudiced it. The mission also draws the attention of the Committee of Experts to the current situation in which the CTV has an executive committee which is the product of an election process, even though it is challenged by the National Electoral Council, and that the executive committee is only recognized in practice by the Government for very limited purposes, while the executive body of the UNT central organization is recognized, despite not having an executive body adopted through an electoral process.

The Committee considers that the above situation, and in particular the excessive delay by the National Electoral Council, has gravely prejudiced the executive committee of the CTV and its member organizations, thereby violating the right of this organization to elect its representatives in full freedom and to organize its activities, as recognized in *Article 3 of the Convention*, as well as the principles of due process. The Committee further considers that the executive committee of the CTV has been discriminated against by the authorities, which have in contrast recognized the executive body of another trade union confederation which has not yet held elections for its executive committee. The Committee once again urges the Government to recognize the executive committee of the CTV for all purposes immediately, particularly taking into account that this trade union confederation achieved 68.73 per cent of the representation in the trade union elections in 2001.

Social dialogue with the social partners

In June 2004, the Conference Committee on the Application of Standards urged the Government to renew dialogue with the social partners. The Committee notes that, according to the report of the direct contacts mission, with the exception of the accord of 28 May 2003 (respecting the referendum to revoke the President), the executive bodies of the CTV and FEDECAMARAS have not participated in social dialogue in the broadest sense of the term, particularly in sectoral dialogue; nor, according to the data available, have the regional federations of FEDECAMARAS participated in dialogue; it was not possible to verify whether the federations of the CTV have participated, as affirmed by the Government; however, certain first-level organizations affiliated to FEDECAMARAS and to the CTV have participated in sectoral dialogue (on at least three occasions). The Committee also notes that, according to the report of the direct contacts mission, in response to the availability for dialogue demonstrated unequivocally by the central and regional executive bodies of FEDECAMARAS (the sole confederation of employers in the country and which is the highest level of representativeness) and the executive committee of the CTV, the Minister of Labour has not given indications of wishing to promote or intensify bipartite or tripartite dialogue on a solid basis with these bodies; in practice, such dialogue has practically not existed for years and only takes place in an episodic manner.

The Committee notes that the information contained in the report of the direct contacts mission shows that representatives of the three minority workers' confederations did participate in social dialogue forums, alongside a workers' confederation which has a provisional executive board, and that on the employer's side three less representative organizations participated which are not members of the employers' confederation FEDECAMARAS. The Committee considers that strict criteria of representativeness were not respected in these sectoral dialogue forums and that the executive boards of the central organizations CTV and FEDECAMARAS were excluded from such forums, and therefore suffered discrimination.

The Committee further notes that, according to the report of the direct contacts mission, effective consultations between the Government and the executive bodies of the CTV and FEDECAMARAS on labour issues have been limited and have been of an exceptional nature.

The Committee wishes to emphasize that when governments place one occupational organization at an advantage or disadvantage in relation to the others, the choice of workers (or employers) regarding the organization to which they intend to belong may be influenced (see General Survey on freedom of association and collective bargaining, 1994, paragraph 104). In this respect, it emphasizes that the freedom of choice of employers and workers is a right which is explicitly set forth in Convention No. 87, *Article 2* of which recognizes their right to establish and join organizations of their own choosing.

The Committee emphasizes the importance of the Government and the most representative organizations of employers and workers engaging in in-depth dialogue on matters of common interest. The Committee requests the Government to keep it informed of any form of social dialogue with the CTV and FEDECAMARAS and their member organizations and to ensure equality of treatment between organizations.

Comments of the ICFTU and the IOE on the application of the Convention

The Committee regrets that the Government has not sent its observations on the comments made by the ICFTU and the IOE on the application of the Convention in practice. The Committee notes that a number of these matters have already been addressed by the Committee on Freedom of Association in the context of Cases Nos. 2249 and 2254 on which it adopted conclusions in June 2004 (see the 334th Report of the Committee on Freedom of Association). The Committee of Experts refers to the conclusions of the Committee on Freedom of Association on these matters in which: (1) with regard to the allegations by the employers, it urged that the judicial proceedings against the President of FEDECAMARAS, Mr. Carlos Fernández, be annulled immediately; that the FEDENGA organization be reinstated in the Agricultural and Livestock Council and that the Government stop favouring CONFAGAN; that it guarantee the application of the new system of exchange controls without discrimination of any sort; that an investigation be carried out

without delay into the acts of vandalism at the premises of employers' organizations and into the illegal invasions of lands; and (2) with regard to the allegations made by the ICFTU, it urged that the detention order against the President of the CTV, Mr. Carlos Ortega, be vacated; that it provide information on the detention orders issued against six trade union leaders or members of UNAPETROL; that the Government initiate contacts with the members of UNAPETROL in order to find a solution to the problem of registering the union. It also requested the Government to initiate negotiations with the most representative workers' confederations to find a solution to the dismissal of 18,000 workers from the PDVSA enterprise and to institute an independent investigation without delay into instances of alleged acts of violence against trade unionists.

Recalling that the guarantees set out in international labour Conventions, in particular those relating to freedom of association, can only be effective if civil liberties are genuinely recognized and protected (see General Survey, op. cit., paragraph 43), the Committee requests the Government to give effect to the recommendations of the Committee on Freedom of Association so as to secure the full application of the Convention in practice.

The Committee asks the Government to provide its observations on the other matters raised by the ICFTU (not referred to previously). The Committee will examine them during the course of its next examination of the application of the Convention.

Finally, the Committee requests the Government to provide information in its next report on the various matters raised in this observation.

[The Government is asked to reply in detail to the present comments in 2005.]

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ***(ratification: 1968)***

The Committee notes the Government's report. The Committee also notes the report of the direct contacts mission which visited Venezuela from 13 to 15 October 2004, and the comments on the application of the Convention made by the International Organisation of Employers (IOE) (30 July 2004). The Committee notes that the comments made by the IOE are addressed in the observation relating to the application of Convention No. 87.

With reference to its previous comments, the Committee notes with interest that, according to the report of the direct contacts mission, the Bill to amend the Basic Labour Act will soon be submitted to the Legislative Assembly and that it contains provisions reinforcing the sanctions in the event of violations of the guarantees protecting freedom of association (acts of anti-union discrimination or interference) with fines of between 250 and 500 tax units, as well as, in situations in which a single trade union exists in an enterprise but does not represent the majority of the workers, allowing the employer to negotiate a collective agreement with this union.

With regard to its previous comments concerning the negotiation of collective agreements with non-representative organizations of workers, the Committee requested the Government to ensure that at the outset of bargaining unions that are able to demonstrate their representativeness are recognized. The Committee requests the Government to provide information on cases which have occurred in recent years in which two unions claimed to be the most representative and on the respective criteria followed in practice by the authorities in determining the most representative trade union.

Yemen

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

The Committee notes the Government's report. It notes in particular that the proposed amendments to the Labour Code have been communicated to the national workers' and employers' organizations for their comments and as soon as it has collected the observations from all of the parties, it will organize workshops aimed at presenting the draft.

The Committee trusts that amendments to the Labour Code will be adopted in the near future and that they will ensure full conformity with the Convention. In this respect, the Committee asks the Government to provide additional clarifications on the following provisions in the draft Labour Code.

Article 2 of the Convention. The Committee notes that section 3(B) of the draft Labour Code excludes the following persons from its application: members of the magistracy and the diplomatic corps and domestic workers and their employers. It observes that the exclusion concerning domestic workers further refers, however, to the issuance by the Minister of a decision on their minimum rights and fundamental rights, including their right to defend their collective rights. The Committee asks the Government to indicate, in its next report, the measures taken or envisaged to ensure that domestic workers may fully benefit from the rights set out in the Convention and to transmit the texts of any legislation or regulations that ensure the right to organize for domestic workers and for the magistracy and the diplomatic corps.

The Committee further notes that section 173(2) of the draft Code stipulates that minors between 16 and 18 years of age can join a trade union unless their tutor opposes. The Committee considers that minors who are legally entitled to work, including apprentices, should also be able to join trade unions freely and without condition. The Committee therefore requests the Government to consider revising this provision of the draft Code to ensure that minors between the ages of 16 and 18 may join trade unions without parental authorization.

Article 3. The Committee notes that, while section 3B(6) excludes foreigners from the application of the draft Code, section 174 provides that foreigners are entitled to join trade unions. It appears, however, that foreigners may not be elected to trade union office. The Committee recalls in this respect 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. It therefore considers that legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country. It therefore requests the Government to consider amending the draft Code in this respect.

The Committee further notes that section 219 of the draft Code empowers the Minister to submit disputes to compulsory arbitration where the suspension of work might affect the life, safety or health of some persons. The Committee requests the Government to indicate, in its next report, whether the Council of Ministers has made a list of such services, as provided in section 219(3) and, if so, to transmit a copy.

Finally, the Committee notes that section 211 provides that strike notice must include an indication as to the duration of a strike. Considering that such a requirement unduly restricts the effectiveness of an essential means for furthering and defending workers' occupational interests, the Committee asks the Government to consider deleting this subsection from the draft Code.

Articles 5 and 6. With reference to its previous comments, the Committee notes from the Government's report that section 20 of the Law on Trade Unions permits unions to form a general federation, as long as the federation is the most representative. The Government adds that there is nothing in the laws that indicates that trade union activity is the monopoly of the General Federation and that it is possible to form several general federations. Moreover, general trade unions form a federation for each occupation. The Committee requests the Government to clarify whether it is possible to form a general federation even if it cannot be considered to be the most representative.

The Committee further notes that section 172 of the draft Labour Code would appear to prohibit the right of workers' organizations to affiliate with international workers' organizations. The Committee asks the Government to consider modifying this section so that workers' organizations may freely affiliate with international workers' organizations, in accordance with *Articles 5 and 6* of the Convention.

The Committee trusts that the Government will take all of the abovementioned points into consideration before adopting the draft Labour Code and requests it to indicate in its next report the progress made in this regard.

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

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 noted that the draft Trade Union Act did not include specific provisions accompanied by effective and sufficiently dissuasive sanctions that guaranteed the protection of workers against acts of anti-union discrimination by employers, and had requested the Government to amend the draft Act to ensure such protection. The Government indicates in its report that the draft Trade Union Act has been referred to Parliament. The Committee also notes the Government's statement that prior to the discussion of the Act in Parliament, it shall be discussed by the Labour Force Committee and social partners, at which moment the Committee's observations shall be brought to their attention. The Committee requests the Government to ensure that the reformulated draft Trade Union Act guarantees the protection of workers against all acts of anti-union discrimination by employers.

Article 2. In its previous comments, the Committee had urged the Government to ensure that the draft Trade Union Act contained provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions to protect workers' organizations against acts of interference by employers. In its report, the Government indicates that section 8 of the draft Trade Union Act prohibits direct and indirect interference in the functioning of trade union organizations, and that no person may be coerced into joining or withdrawing from an organization or from exercising their trade union rights. The Government also indicates that section 136(4) of the Labour Code provides that all cases relating to labour matters shall be considered urgent, and that according to section 136(1) of the Labour Code, litigating parties wishing to appeal an award of the Arbitration Committee may submit a petition for an appeal to the Labour Division of the competent Court of Appeal within one month of the notification of the award. Furthermore, the Government indicates that it will make every effort to include the penalties provided for under *Article 2* of the Convention in the draft Trade Union Act during discussions between the Labour Force Committee and social partners. The Committee notes the Government's statement and recalls the need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers' organizations against acts of interference by employers or their organizations. The Committee requests the Government to ensure that the draft Trade Union Act will contain such provisions.

Article 4. (a) In its previous comments, the Committee had requested the Government to further promote collective bargaining and to provide statistics on the number of workers covered by collective agreements in comparison with the total number of workers in the country. The Government indicates in its report that it will try to gather more statistics and will forward them to the Committee. The Committee expresses the firm hope that the Government will provide it with these statistics in the very near future.

(b) In its previous comments, the Committee had also requested the Government to amend sections 32(6) and 34(2) of the Labour Code so that refusal to register a collective agreement would be possible only due to a procedural flaw or because it did not conform to the minimum standards laid down by the labour legislation. The Government indicates in its report that it will endeavour to reformulate the provisions in order to put them in line with the Convention after consultation with social partners. The Committee notes the Government's statement and requests the Government to ensure that sections 32(6) and 34(2) of the

Labour Code are amended so 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.

The Committee requests the Government to keep it informed of developments regarding all the abovementioned points.

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

Zambia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)

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

The Committee takes note of the observations communicated by the International Confederation of Free Trade Unions (ICFTU) of 2002.

Articles 3 and 10 of the Convention. Right of organizations to organize their activities and to further and defend the interests of their members. With regard to its previous comments and the observation communicated by the ICFTU concerning certain limitations or restrictions of the right to strike which go beyond the limits permitted under the Convention, the Committee notes that the Government's report does not provide any information in this respect.

The Committee takes note of the observations communicated by the ICFTU according to which the definition of essential services is excessively wide. The Committee recalls that in its previous comments it had taken note of the Government's intention to revise the legislation, in particular, by introducing the concept of minimum negotiated services, and had requested the Government to keep it informed of progress made in bringing the following provisions of the Industrial and Labour Relations Act into conformity with the Convention:

- section 78(6) to (8) under which a strike can be discontinued if it is found by the court not to be “in the public interest”;
- section 100 which refers to exposing property to injury;
- section 107 which prohibits strikes in essential services and empowers the Minister to add other services to the list of essential services in consultation with the Tripartite Consultative Labour Council.

The Committee once again recalls that the right to strike can only be limited or restricted in specified circumstances, namely in the case of an acute national crisis or in essential services in the strict sense of the term, namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee requests the Government to keep it informed of the progress made in the legislative revision with respect to these sections of the Industrial and Labour Relations Act.

The Committee takes note of the ICFTU's comments according to which the right to strike is subject to numerous procedural requirements such that it is next to impossible for workers to hold a legal strike. The Committee recalls that its previous comments had related to section 76 of the Industrial and Labour Relations Act, which establishes no time frame in which conciliation should end before a strike can take place. The Committee once again recalls that procedures should not be so slow or complex that a lawful strike becomes impossible in practice or loses its effectiveness. The Committee further notes that its previous comments related to section 78(1) of the Industrial and Labour Relations Act as interpreted by a decision of the Industrial Relations Court according to which, either party may take an industrial dispute to court. The Committee once again recalls that if the right to strike is subject to restrictions or a prohibition, workers should be afforded compensatory guarantees, for example conciliation and mediation procedures leading, in the event of a deadlock, to arbitration machinery seen to be reliable by the parties concerned; recourse to arbitration should be at the request of both parties or in the case of strikes occurring in essential services in the strict sense of the term or in an acute national crisis. The Committee once again urges the Government to amend sections 76 and 78(1) of the Industrial and Labour Relations Act in accordance with the above.

With regard to its previous comments concerning section 107 of the Industrial and Labour Relations Act which empowers a police officer to arrest without a warrant a person who is believed to be striking in an essential service or who is violating section 100 (exposing property to injury), and which imposes a fine and up to six months' imprisonment, the Committee once again emphasizes that sanctions for strikes should not be disproportionate to the seriousness of the violation and requests the Government once again to amend these provisions so as to bring them into full conformity with the Convention, in particular, by ensuring that no worker can be imprisoned for participation in a peaceful strike.

In addition, the Committee is 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.

Zimbabwe

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)

The Committee notes the Government's report. The Committee further notes the discussions in the Conference Committee on the Application of Standards in June 2004. It notes the Government's statement to the effect that the Ministry of Labour commenced a review of the labour legislation and that the Bill to amend the Labour Act is currently due for consideration by the Cabinet Committee on legislation to redress the issues raised by the Committee. The Government further indicates that the new legislation will be promulgated by June 2005.

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) and requests the Government to reply to these comments.

As concerns sections 25(2)(b), 79(2)(b) and 81(1)(b) of the Labour Relations Act containing a requirement for collective agreements to be submitted for ministerial approval in order to ensure that their provisions are equitable to consumers, to members of the public generally or to any other party to the collective bargaining agreement, the Committee notes that in its report, the Government indicates that these sections will be amended. However, the Committee notes that the Government indicates that it has no intention to repeal paragraphs 25(2)(c), 79(2)(c) and 81(1)(c), as it considers them to be consistent with the Convention. The Committee points out that paragraph (c), common to these sections, subjects collective agreements to ministerial approval on the ground that the agreement is or has become unreasonable or unfair, having regard to the respective rights of the parties. The Committee considers that this paragraph infringes the principle of autonomy of the parties. The Committee therefore requests the Government to take the necessary measures in order to amend sections 25(2)(c), 79(2)(c) and 81(1)(c) during the present legislative revision so as to ensure the full application of the Convention.

As concerns section 22 of the Labour Relations Act, concerning the right of the Minister to fix a maximum wage and the maximum amount that may be payable by way of benefits, allowances, bonuses or increments by statutory instrument prevailing over any agreement or arrangement, the Committee notes the Government's indication that steps are being taken to repeal section 22.

In its previous observations, the Committee also requested the Government to amend section 25(1) of the Labour Relations Act, according to which if a workers' committee (committee of representatives elected by workers to represent their interests) concludes a collective agreement with the employer, it must be approved by the trade union and by more than 50 per cent of the employees, as this provision authorized representatives of non-unionized workers to bargain collectively through workers' committees even if a trade union existed at the enterprise. The Committee notes that the Government reiterates its previous indication to the effect that it has amended section 23 of the Act so as to further recognize and promote collective agreements. The Committee notes that this section provides that "if a trade union is registered to represent the interests of not less than 50 per cent of the employees at the workplace where a workers' committee is to be established, every member of the workers' committee shall be a member of the trade union concerned". Furthermore, the Government indicates that section 101, as amended, gives effect to *Article 4 of the Convention*. In this respect, the Committee notes the Government's explanations during discussion in the Conference Committee to the effect that new section 101 prescribes that employment council codes take precedence over works council codes. The Committee points out that section 101 of the Act concerns employment codes of conduct and not collective agreements, which regulate the terms and conditions of employment. The Committee recalls that negotiations, through direct settlement of agreements signed between an employer and the representatives of a group of non-unionized workers, when a union exists in the undertaking, do not promote collective bargaining as set out in *Article 4* of the Convention, which refers to the development of negotiations between employers or their organizations and workers' organizations. The Committee requests the Government to amend the Act so as to ensure that when a union exists in the undertaking, even if it represents less than 50 per cent of the employees at the workplace and even if a workers' committee exists in the undertaking or the related industry, bargaining rights are guaranteed to the union.

Finally, as concerns prison staff, the Committee notes the Government's indication to the effect that the Constitution of Zimbabwe defines prison staff as a disciplinary force and that it is therefore improper and irregular to seek to amend the Constitution by an Act of Parliament. The Government states that a constitutional amendment is a process beyond the control of the Ministry of Labour and the social partners and has to involve the Government at large and the Legislature. The Committee hopes that the Government will be in a position to fully guarantee the application of the Convention and will take appropriate measures in order to ensure that prison workers enjoy the rights afforded to them under the Convention.

The Committee requests the Government to keep it informed of the measures taken or envisaged in respect of the abovementioned points.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 11** (Swaziland); **Convention No. 87** (Bosnia and Herzegovina, Botswana, Burundi, Cambodia, Chile, Czech Republic, Democratic Republic of the Congo, Equatorial Guinea, Eritrea, Fiji, France: French Southern and Antarctic Territories, Georgia, Grenada, Haiti, Kazakhstan, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malawi, Mali, Malta, Mauritania, Republic of Moldova, Mongolia, Netherlands: Aruba, Netherlands: Netherlands Antilles, Pakistan, Panama, Papua New Guinea, Philippines, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Serbia and Montenegro, Sierra Leone, Slovenia, Sri Lanka, Swaziland, Switzerland, United Republic of Tanzania, Tunisia, Turkey, United Kingdom, United Kingdom: Jersey, Venezuela, Zambia); **Convention No. 98** (Albania, Angola, Australia, Barbados, Botswana, Bulgaria, Burundi, Cambodia, Cameroon, Central African Republic, Chile, Congo, Democratic Republic of the Congo, Equatorial Guinea, Eritrea, Fiji, Georgia, Guyana, Indonesia, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Madagascar, Malta, Mauritania, Republic of

Moldova, Mongolia, Morocco, Mozambique, Namibia, Nepal, Nigeria, Pakistan, Portugal, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Slovenia, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, United Kingdom: Bermuda, United Kingdom: Guernsey, United Kingdom: Isle of Man, United Kingdom: Jersey, United Kingdom: Montserrat, Uzbekistan, Zambia); **Convention No. 135** (*Australia, Austria, Azerbaijan, Burundi, Czech Republic, Democratic Republic of the Congo, Finland, Gabon, Kazakhstan, Republic of Korea, Latvia, Lithuania, Mongolia, Netherlands, Netherlands: Aruba, Rwanda, Serbia and Montenegro, Sri Lanka, Turkey, United Kingdom, Uzbekistan, Yemen*); **Convention No. 151** (*Belize, Botswana, Chad, Chile, China: Hong Kong Special Administrative Region, Colombia, Latvia, Mali, Poland, Seychelles, Spain, Turkey, United Kingdom: Isle of Man*); **Convention No. 154** (*Albania, Azerbaijan, Belarus, Belize, Brazil, Colombia, Gabon, Greece, Guatemala, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Romania, Suriname, Switzerland, United Republic of Tanzania, Uganda, Ukraine, Uzbekistan*).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 98** (*Israel, Malawi*); **Convention No. 135** (*Chile*); **Convention No. 151** (*Belarus, United Kingdom*); **Convention No. 154** (*Hungary*).

Forced Labour

Afghanistan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(a) of the Convention. In comments made for a number of years, the Committee has noted that prison sentences involving an obligation to perform labour may be imposed under the following provisions of the Penal Code:

(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) sections 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.

The Committee had noted the Government's earlier indication that the obligation to perform prison labour provided for under section 3 of the Prisons Law covers persons convicted under the abovementioned sections of the Penal Code as well as those convicted of other misdemeanours and crimes; under section 13 of the Prisons Law, those convicted under the abovementioned sections of the Penal Code are kept in custody separately from ordinary prisoners, and are also engaged in different activities to keep themselves physically healthy and to provide themselves with gainful employment for which they are fully paid.

While noting 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.

The Committee hopes that the penal provisions will be 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 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 and that the Government will indicate the measures taken to this end.

The Committee hopes that the Government will make every effort to take the necessary action.

Algeria

Forced Labour Convention, 1930 (No. 29) (ratification: 1962)

1. *Civic service.* The Committee notes that the Government has not provided any information in reply to its comments on this subject. It is therefore bound to reiterate its previous request.

Since 1986, the Committee has been drawing the Government's attention to the incompatibility with the Convention of sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 respecting civic service, as amended in 1986, which require persons who have completed a course of higher education or training to perform a period of civic service of between two and four years in order to obtain employment or exercise an occupation.

On this subject, the Government indicated in a previous report that civic service is a statutory period of work performed for a public administration, body or enterprise in local communities by persons submitted to the civic service. It represents the contribution of these persons to the economic, social and cultural development of the country. According to the Government, persons covered by civic service have the same rights and obligations as the workers governed by the legislation respecting the general conditions of service of workers, including the right to receive remuneration from the employing entity in accordance with the law. Furthermore, the years of civic service performed are taken into account for purposes of seniority, promotion and retirement, as well as in the contract period during which the person concerned is bound to a public body by a training contract. Finally, with regard to the incompatibility noted by the Committee, the Government pointed out that persons covered by civic service are assigned exclusively to the specialized branch or discipline in which they were trained.

The Committee took due note of these explanations. However, it also pointed out that under sections 32 and 38 of the Act, refusal to perform civic service and the resignation of the person concerned without acceptable grounds result in their prohibition from exercising an activity on their own account, such as setting up as a trader, craft worker or promoter of a private economic investment, and that any violation is punishable under section 243 of the Penal Code. Similarly, under sections 33 and 34 of the Act, before they engage workers, all private employers are required to satisfy themselves that applicants are not covered by civic service or can produce documentation proving that they have discharged it, and that any private employer knowingly employing a citizen who has evaded civic service is liable to imprisonment and a fine. Therefore, although the persons liable to civic service benefit from working conditions (remuneration, seniority, promotion, retirement, etc.) similar to those of regular public sector workers, they discharge this service under a menace because, in the event of refusal, they are denied access to any professional self-employed activity or to any employment in the private sector, as a result of which civic service falls within the concept of compulsory labour within the meaning of

Article 2, paragraph 1, of the Convention. Furthermore, since it consists of a contribution by the persons concerned to the economic development of the country, this compulsory service violates Article 1(b) of Convention No. 105, which has also been ratified by Algeria.

The Committee again reiterates that forced labour means any work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered her or himself voluntarily. Referring once again to the explanations provided in paragraphs 55 to 62 of its 1979 General Survey on the abolition of forced labour, the Committee trusts that the necessary measures will be taken to repeal or amend the provisions in question in the light of Conventions Nos. 29 and 105 and that the Government will soon be able to report on the measures adopted in this respect.

2. *National service.* For a number of years, the Committee has been referring to Ordinance No. 74-103, of 15 November 1974, issuing the Code of National Service, under which conscripts are required to contribute to the operation of various economic and administrative sectors. It has also referred to the Order of 1 July 1987, which requires conscripts, after three months of military training, to serve in priority sectors of national activity, and particularly as teachers. The Committee noted that they are also required to perform two, three or four years of civic service (see point 1 above). The Committee recalled that, under the terms of *Article 2, paragraph 2(a)*, of the Convention, compulsory military service is excluded from the scope of the Convention only where conscripts are assigned to work of a purely military character.

The Committee notes the information provided by the Government in its last report on this matter, according to which the civil form of national service has been suspended since 2001 by the government authorities.

While noting this information, the Committee requests the Government to indicate whether Ordinance No. 74-103 and the Order of 1 July 1987 have been repealed or amended so that the law is in conformity with practice and, by the same token, with the provisions of the Convention and, if so, to provide copies of the relevant texts.

3. The Committee is addressing a request directly to the Government on certain other matters.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)

Article 1(a) of the Convention. For a number of years the Committee has referred to two provisions of the Associations Act, No. 90-31 of 4 December 1990, that allow the imposition of sentences of imprisonment involving the obligation to work in circumstances which are covered by the Convention.

- Under section 5 of the Act, an association's legal status is automatically invalidated if its objectives are contrary to the established institutional system, breach the peace or offend against morals or the laws and regulations in force.
- Section 45 provides that anyone who directs, administers or participates actively in an association that has not been approved or which has been suspended or dissolved, or facilitates meetings of the members of such an association, shall be liable to a prison term ranging from three months to two years involving the obligation to work pursuant to sections 2 and 3 of the Inter-ministerial Order of 26 June 1983 issuing arrangements for the use of prison labour by the National Office for Educational Work.

The Committee has recalled several times that the Convention prohibits the use of any form of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing certain political views or expressing opposition to the established political, social or economic system.

The Committee noted that, according to the Government, the legislation in force does not distinguish between a political and a civil offence and that the work performed by convicted prisoners under the Associations Act is considered to be corrective action. In its latest reports, the Government reiterates that prison work is an activity forming part of the rehabilitation, training and social promotion of prisoners.

The Committee observed that to impose prison labour on persons convicted under Act No. 90-31 with a view to their "rehabilitation" is contrary to the Convention because it is imposed on persons convicted for expressing certain political views or manifesting their ideological opposition to the established political, social or economic system.

The Committee trusts that the Government will shortly take the necessary steps to ensure observance of the Convention, either by amending sections 5 and 45 of Act No. 90-31 or by exempting from prison labour persons convicted for expressing certain political opinions.

2. In its previous comments the Committee requested the Government to provide information on the practical effect given to section 87bis of the Penal Code (Ordinance No. 95-11 of 25 February 1995) on "terrorist or subversive acts".

The Committee notes the information supplied by the Government that section 87bis of the Penal Code deals with acts which, through the use of violence, target the security of the State, territorial integrity, national unity, stability and the normal working of institutions.

However, as the Committee pointed out in its previous comments on this point, section 87bis of the Penal Code treats as a terrorist or subversive act any act targeting the stability and normal working of institutions that seeks "to hinder traffic and freedom of movement on thoroughfares and occupy public places with gatherings", "to damage means of communication and transport, public and private property, to take possession thereof or to occupy it improperly", or "to hinder the operation of public institutions ...". This means that acts in which violence is not used but which seek to express ideological opposition to the established political system may thus fall within section 87bis. The Committee recalls that the imposition of prison labour on persons convicted under such provisions is contrary to *Article 1(a)* of the Convention. It

accordingly once again requests the Government to indicate the measures taken or envisaged to ensure compliance with the Convention in this matter and to provide information on the application in practice of section 87bis of the Penal Code, including copies of any court decisions clarifying the scope of this provision.

Article 1(d). For a number of years the Committee has referred to section 41 of Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike. It has noted that under this provision “requisition orders may be issued pursuant to the legislation in force for workers on strike who hold posts in public institutions or administrations, or in enterprises, that are essential for the safety of persons, plant and property and for the continuity of public services which are essential to the vital needs of the country, or who carry on activities essential to supplying the public”. According to section 42, “without prejudice to the penalties laid down in the Penal Code, refusal to execute a requisition order constitutes serious professional misconduct”.

The Committee noted that sections 37 and 38 of Act No. 90-02 establish a list of essential services in which the right to strike is limited and for which a compulsory minimum service is to be organized. It observed that the list is very broad and includes services such as banking and telecommunications, which, according to the Committee on Freedom of Association, do not constitute essential services in the strict sense of the term (paragraph 545 of the *Digest of decisions and principles of the Freedom of Association Committee*). The list in sections 37 and 38 of the Act also includes court registry services.

The Committee furthermore referred to section 43 of Act No. 90-02 prohibiting strikes in certain sectors of public institutions and administrations, such as the judiciary and customs.

The Committee again requests the Government to provide information on the application in practice of sections 41 and 43 of Act No. 90-02, specifying the number of persons convicted and supplying copies of the relevant court decisions.

Austria

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Article 1(1) and Article 2(1) and (2)(c) of the Convention. A. Prisoners hired to private enterprises. 1. In its previous observation, the Committee noted that under section 46, paragraph 3, of the law on the execution of sentences, as amended by Act No. 799/1993, 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 pointed out that compulsory labour of prisoners for private enterprises is not compatible with the Convention.

2. In its reply, the Government recognizes 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 further observes that private enterprise representatives give only technical instructions to prisoners hired to them and have no disciplinary powers, which remain with the prisons administration. In this connection, the Government argues that there may be some link between the two cumulative conditions in *Article 2(2)(c)* of the Convention and that there may be no “placing at the disposal” of the prisoner in the present case, where the private enterprise is under contractual obligations towards the prisons administration.

3. Referring once again to the explanations in paragraphs 96 et seq. of its General Report to the 2001 Conference, the Committee notes from the Government’s indications 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 that contracts for the hiring of prison labour to private enterprises in Austria correspond in all respects to what is proscribed by *Article 2(2)(c)*, namely, that a person be “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.

4. The Government further states that national law and practice comply in all respects with the United Nations Standard Minimum Rules for the Treatment of Prisoners, which provide, inter alia, in rule 73(1), that “Preferably institutional industries and farms should be operated directly by the administration and not by private contractors”. The same preference is followed in Austria, where altogether only 10 per cent of prison labour is hired to private enterprises, including both labour employed in workshops run by private enterprises inside prisons and prisoners working outside for private companies; in the Government’s view, the latter prisoners need not even be considered here, since their consent is required. The Government concludes that compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners cannot be in contradiction with the Convention.

5. The Committee takes due note of these indications. Referring again to the explanations given in paragraph 102 of its General Report to the 2001 Conference, the Committee must point out that there is no contradiction between the preference expressed by rule 73(1) of the Standard Minimum Rules and the requirements of *Article 2(2)(c)* of the Convention, and that compliance with a less demanding, non-binding set of standard minimum rules does not dispense the Government from abiding by the stricter rules of a ratified basic human rights Convention.

. *Free employment of prisoners* 6. The Committee has always held that the strict conditions laid down by the Convention for exempting from the scope of its prohibition labour imposed on persons as a consequence of a conviction in a court of law should not prevent access by prisoners to the free labour market. Work by prisoners, even for private enterprises, does not come under the scope of the Convention if there is no compulsion involved.

7. *Consent requirement and conditions of employment approximating a free labour relationship.* The Committee recalls that prisoners' obligation to work, as laid down in the Act on the execution of sentences, concerns any work to which they are assigned, and is enforceable with fines. The prisoner's consent is not required for work in private enterprise workshops on prison premises, but only for "uncontrolled" work outside prison premises. Besides, as indicated by the Committee in point 10 of the general observation on the Convention in its report to the 2002 Conference, in the context of a captive labour force which has no alternative access to the free labour market, "free" consent to a form of employment going prima facie against the letter of the Convention furthermore needs to be authenticated by conditions of employment approximating a free labour relationship, such as the existence of a labour contract between the prisoner and the private company using his or her labour and free labour market oriented conditions regarding wage levels, social security and safety and health.

8. In applying these observations to the country circumstances, the Committee notes that:

- (a) Under the Act on the execution of sentences, a prisoner has no labour contract with a private company using his or her labour inside or outside prison premises – nor with the prison authorities. The general scope of protective legislation mentioned by the Government in this connection is no indicator of a freely accepted employment relationship.
- (b) The Government indicates in its report that safety and health legislation applies in prisons, that prisoners enjoy specific health care, as well as work accident compensation "up to" that provided under general social insurance, and that they are covered by the unemployment insurance, but remain excluded from old-age insurance. It thus appears that, with the exception of unemployment insurance, prisoners, including those working for private enterprises, remain excluded from the social security coverage of free workers.
- (c) As regards wages, the Government indicates that gross hourly wages in 2000-02 ranged between 4.08 and 6.13 euros, and from 23 December 2003 between 4.27 and 6.41 euros. The only mandatory deductions are the contributions to prison costs and to unemployment insurance, and the only part of wages that may be attached, within limits, is that which is to be paid upon release from prison. When employed full time, prisoners draw a net monthly work income of around 200 euros after deductions. The Committee has taken due note of these indications. It must, however, again conclude that, with a contribution for board and lodging taking away 75 per cent of a remuneration that is already substantially lower than prevailing rates on the free market, the work income of a prisoner hired to a private enterprise is far from approximating market conditions. In assessing this level of remuneration, the Government considers that reference should be made not only to free market wage rates, but also to the principle of equal treatment among prisoners, all the more where they are not in a position to decide whether to work in a company workshop or for a public authority. As regards equal treatment among prisoners, the Committee already noted in point 12 of the general observation on the Convention in its report to the 2002 Conference that while the Convention provides protection mainly to prisoners working for private enterprises, it is no obstacle to introducing free market principles to state organizations as well.

9. The Committee again expresses the 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.

Bahamas

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat the matters raised in its previous observation.

Article 1(c) and (d) of the Convention. For many years, the Committee has been referring to sections 128 and 130 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). It also referred to section 134 of the Act, which provides for the forcible return of deserting seafarers to ships registered in another country, provided the Minister is satisfied that reciprocal arrangements will be made in that country. The Committee notes the Government's indication that some amendments to the Merchant Shipping Act have been concluded. It observes, however, that copies of the amendments have not yet been communicated by the Government. The Committee hopes that the abovementioned provisions of the Act will at last be amended so as to bring the legislation into conformity with the Convention and asks the Government to supply copies of the amendments.

Article 1(d). Over a number of years, the Committee has been referring to section 73 of the 1970 Industrial Relations Act (*Official Gazette*, Supplement Part I, 10 September 1970, No. 36), under which the Minister may refer a dispute which is not in an essential service to the Industrial Relations Board for settlement, if he considers that a strike which is in progress affects or threatens the public interest; any worker who continues to participate in such a strike is liable to a punishment of imprisonment (involving an obligation to perform labour). The Committee expressed the hope that the necessary amendments would be adopted to ensure that compulsory arbitration, when enforced by sanctions involving compulsory labour, be limited to services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee also referred to section 72 of the same Act, under which participation in a strike is punishable with imprisonment, inter alia, if the strike has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged or if it is designed or calculated to coerce the Government either directly or by inflicting severe hardship on the community. Referring to paragraph 128 of its 1979 General Survey on the abolition of forced labour, the Committee pointed out that the prohibition of purely political strikes lies outside the scope of the Convention, but that restrictions on the right to engage in strikes should not apply to matters of a broader economic and social nature affecting the occupational interests of workers.

The Government indicates in its report that the proposed Trade Unions and Industrial Relations Bill was concluded and tabled in the House of Assembly in May 2001, and that it contains no provisions imposing sanctions of imprisonment for breach of the legislation, which may be punished only with fines. The Government reiterates its previous statement that the above provisions of the Industrial Relations Act have never been applied in practice, and that the legislation will be amended when a consensus is achieved after further consultation with the social partners.

The Committee notes this information. It expresses 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 and the legislation will be brought into conformity with the Convention. The Committee asks the Government to supply a copy of the new Trade Unions and Industrial Relations Act, as soon as it is adopted.

The Committee hopes that the Government will make every effort to take the necessary action.

Bangladesh

Forced Labour Convention, 1930 (No. 29) (ratification: 1972)

Forced child labour and trafficking of children. In its earlier comments the Committee raised its concern about the large number of children who are working, including in rural areas, as domestic servants as well as in other areas of the informal sector, often in hazardous and harmful conditions, and in conditions that resemble servitude. The Committee urged the Government to examine the situation of child domestic workers in light of the Convention, to communicate all information on the working conditions of child domestic workers and on the modalities of their employment, as well as on all measures taken or envisaged to protect such children from forced labour. The Committee also expressed its concern about the alarming increase of child trafficking from Bangladesh, primarily to India, Pakistan and certain other countries, largely for purposes of forced prostitution, although in some cases for labour servitude, and asked the Government to provide information on measures to prevent child trafficking and to combat it.

The Committee has noted the Government's reply to its previous observation on the subject, as well as the communication received in September 2002 from the International Confederation of Free Trade Unions (ICFTU) concerning the issue of trafficking. It notes that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and has already sent its first report on the application of that Convention. 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 issues of trafficking of children and forced labour of children working as domestics can 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 comments on the application of Convention No. 182.

Trafficking in persons. The Committee previously noted that the Ministry of Women and Children Affairs, in collaboration with the ILO-IPEC and UNICEF, had adopted a countrywide programme on the prevention of trafficking of women and children. It also noted the adoption of the Supervision of Violence Against Women and Children Act, 2000, which repealed the Oppression of Women and Children (Special Provisions) Act of 1995.

In its latest report, the Government indicates that continuous programmes are being adopted by organizing seminars, workshops, conferences, etc., in order to make people aware of the problem of trafficking and measures to be taken to prevent it, and that radio, television and newspapers publish news and articles with current information to increase awareness of the people. The Committee requests the Government to describe such programmes in more detail and communicate copies of any relevant reports, articles, etc., as well as any other information concerning awareness-raising and prevention measures.

Law enforcement. As regards law enforcement, the Committee previously noted from the 2001 report of the United Nations Special Rapporteur on violence against women, its causes and consequences, submitted to the United Nations Commission on Human Rights at its 57th Session (E/CN.4/2001/73/Add.2), that "though the law provides severe penalties for trafficking, few perpetrators are punished. ... Exact numbers of charges against traffickers are difficult to obtain and traffickers are usually charged for lesser crimes, such as crossing the border without the correct documentation" (paragraph 63). The Committee has also noted that in the communication received in September 2002 from the ICFTU referred to above, the ICFTU shares the concern of the United Nations Special Rapporteur and expresses the view that the legislation has not been effective in preventing trafficking of women and children from Bangladesh, partly because of the fact that the legislation is not being properly enforced.

Recalling that, under *Article 25 of the Convention*, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the

penalties imposed by law are really adequate and are strictly enforced, the Committee hopes that appropriate measures will be taken by the Government in order to strengthen the law enforcement mechanism and that the Government will supply information on the number of trafficking offences reported, the number of prosecutions initiated and the number of convictions obtained, indicating the penalties imposed. The Government is also asked to provide information on the manner in which the Suppression of Violence Against Women and Children Act, 2000, is applied in practice, and to supply a copy the Act.

The Committee requests the Government to continue to provide information on the progress achieved in the implementation of the multisectoral action programme against trafficking of the MOWCA and on the progress of the Law Commission it has set up to review existing laws and enact new ones to safeguard women's rights and to prevent violence against women including trafficking.

Restrictions on freedom of workers to terminate employment. In its earlier comments, the Committee has drawn attention to the fact that, under the Essential Services (Maintenance) Act, No. LIII of 1952, termination of employment by any person employed by the central Government without the consent of the employer is punishable with imprisonment for up to one year, notwithstanding any express or implied term in the contract of employment providing that the employee may freely, and with notice, terminate his or her employment (sections 3, 5(1)(b) and Explanation 2, and section 7(1)). 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. Similar provisions are contained in the Essential Services (Second) Ordinance, No. XLI of 1958 (sections 3, 4(a) and (b) and 5).

The Committee referred to the explanations provided in paragraphs 67 and 116 of its General Survey of 1979 on the abolition of forced labour, where it pointed out that workers may be prevented from leaving their employment in emergency situations within the meaning of *Article 2, paragraph 2(d)*, of the Convention, i.e. any circumstances that would endanger the life, personal safety or health of the whole or part of the population; but, even regarding employment in essential services whose interruption would endanger the existence or the 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 not in conformity with the Convention.

The Committee has noted the Government's indication in the report that the proposed new Labour Code which is now under active consideration will help to resolve many ILO queries and to bring national provisions into conformity with the ratified Conventions. It expresses firm hope that the necessary measures will at last be taken to repeal or amend the Essential Services (Maintenance) Act, No. LIII of 1952, and the Essential Services (Second) Ordinance, No. XLI of 1958, and that legislation will be brought into conformity with the Convention on this point.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1972)

Article 1(a), (c) and (d) of the Convention. 1. In comments it has been making for a number of years, the Committee referred to various provisions of the Penal Code, the Special Powers Act, No. XIV of 1974, the Industrial Relations Ordinance, No. XIII of 1969, as amended, 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 Bangladesh Merchant Shipping Ordinance, No. XXVI of 1983. Under these provisions, compulsory labour may be imposed as a means of political coercion or as a punishment for expressing political views or views opposed to the established political system. It may also be imposed as a punishment for various breaches of labour discipline, and as a punishment for the participation in strikes in a wide range of circumstances. Furthermore, under the Bangladesh Merchant Shipping Ordinance, seafarers may be forcibly conveyed on board ship to perform their duties.

2. The Committee previously noted from the Government's 1999 report, that a report of the National Labour Law Commission, which was established in 1992 with a view to examining the existing laws and to submitting recommendations regarding their amendments, was still under consideration by the Government. The Government expressed the hope that a comprehensive labour code, to be made after due consideration of the National Labour Law Commission's report and recommendations, would be in conformity with the Abolition of Forced Labour Convention. In its 2001 report, the Government indicated, however, that the Commission's report containing a draft labour code raised objections and complaints on the part of employers and workers, as well as other legal bodies and organizations, and had to be re-examined by legal experts, which had submitted their views for consideration by the Government. Regarding the Committee's comments on the Penal Code and the Special Powers Act, the Government repeatedly indicated that the Law Commission had been examining the existing laws and would submit recommendations to the Government regarding their amendment.

3. The Committee notes the Government's indication in its report that the report of the National Labour Law Commission is still under examination by a ten-member committee and would come out soon by enactment of law. The Committee trusts that the measures taken will lead to concrete results and that the national legislation will at last be brought into conformity with the Convention.

4. As regards the Committee's earlier comments concerning sections 198 and 199 of the Bangladesh Merchant Shipping Ordinance, No. XXVI of 1983, which provide for the forcible conveyance of seamen 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 an obligation to work) for various disciplinary offences, the Committee previously noted the

Government's statement in its 2001 report that it was not in favour of amending the above sections of the Ordinance due to socio-economic conditions of the country and because it considered that the decrease in punishment would increase the desertion of seafarers and reduce the employment opportunities for Bangladeshi seafarers on foreign ships.

5. The Committee recalled in this connection that *Article 1(c)* of the Convention prohibits the exaction of forced or compulsory labour as a means of labour discipline. Referring also to paragraphs 117-119 of its 1979 General Survey on the abolition of forced labour, the Committee pointed out that the Convention does not cover sanctions relating to acts tending to endanger the ship or the life or health of persons; however, as regards sanctions relating more generally to breaches of labour discipline such as desertion, absence without leave or disobedience, sometimes supplemented by provisions under which seafarers may be forcibly returned to their ship, such sanctions (involving compulsory labour) must be either repealed or restricted to offences that endanger the safety of the ship or the life or health of persons. The Committee therefore requested the Government to review the Ordinance in the light of the Convention and to indicate the measures taken or envisaged to bring its provisions into conformity with the Convention.

6. The Committee expresses the firm hope that the Government will soon be in a position to indicate that the necessary action has been taken to bring the legislation into conformity with the Convention and that the Government will also supply full information on the various points set out in a request addressed directly to it.

Belgium

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

Article 1(c) of the Convention. In its earlier comments, the Committee drew the Government's attention to the need to amend or repeal sections 10, 22, 25(1) and (2), 26(1), 27 and 28 of the Disciplinary and Penal Code for the Merchant Navy and the Commercial Fishing Fleet, which provide for penalties of imprisonment involving compulsory labour for seafarers found guilty of certain breaches of labour discipline.

The Government indicates in its report that a draft Bill aiming at the amendment of the existing Disciplinary and Penal Code in line with the Committee's comments has not been adopted because of the elaboration of the new text of the Disciplinary and Penal Code by the ad hoc working group. However, taking into account that the drafting will take considerable time, the Government has decided to include partially the provisions of the abovementioned draft Bill into the new draft legislation concerning various issues of transportation and certain obligations of the State, which was submitted to the Minister in August 2004.

The Committee trusts that the draft legislation referred to above will be adopted in the near future in order to ensure that penalties of imprisonment involving compulsory labour cannot be imposed upon seafarers for breaches of labour discipline which do not endanger the safety of the vessel or the life or health of persons, in conformity with *Article 1(c)* of the Convention.

Belize

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1983)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(c) and (d) of the Convention. 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 work) 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. The penalty of imprisonment may be imposed 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 notes from the Government's report that section 35(2) of the Trade Unions Act has not been amended, but there have been no recorded penalties of imprisonment imposed under this section. It points out once again that, under *Article 1(c) and (d)* of the Convention, legislation providing for sanctions involving compulsory labour as a punishment for violations of labour discipline or for having participated in strikes must be repealed.

The Committee draws the Government's attention to the explanations in paragraphs 110, 114-116 and 123 of its 1979 General Survey on the abolition of forced labour, where it considered that the Convention does not protect persons responsible for breaches of labour discipline that impair or are liable to endanger the operation of 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), or which are committed either to the exercise of functions that are essential to safety or in circumstances where life or health are in danger. However, to justify the non-application of *Article 1(c) and (d)* of the Convention in such cases, there must exist an effective danger to safety, life or health, not mere inconvenience. With regard to section 35(2) of the Trade Unions Act, the Committee previously noted that it 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, but also to others whose interruption would not endanger

the life, personal safety or health of the whole or part of the population, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

Noting also the Government's repeated indication that there are no recorded penalties of imprisonment imposed under section 35(2) of the Trade Unions Act, the Committee reiterates its hope that the necessary measure will at last be taken to bring section 35(2) of the Trade Unions Act into conformity with the Convention and the indicated practice. It asks the Government to provide, in its next report, information on the action taken to this end.

The Committee hopes that the Government will make every effort to take the necessary action.

Bolivia

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1990)

Article 1(d) of the Convention. In previous comments the Committee referred to section 234 of the Penal Code under which advocacy of lockouts, strikes or stoppages declared illegal by the labour authorities is punishable by imprisonment of one to five years. The Committee requested the Government to supply information on the effect given in practice to these provisions in order to enable it to evaluate their scope, and to provide copies of court decisions made under them, indicating the number of convictions.

With reference to this matter, the Committee noted the conclusions of the Committee on Freedom of Association regarding the complaint made by the World Confederation of Labour (WCL), Case No. 2007 (GB.277/9/1). According to the complaint, arrest warrants had been issued against a number of striking workers on the basis of section 234 of the Penal Code. The WCL alleged that this case set an extremely serious precedent in criminalizing a strike (GB.277/9/1, paragraph 263).

In its conclusions the Committee on Freedom of Association stated that the Committee of Experts in its comments on the application of Convention No. 87 by Bolivia in 1999 and previous years criticized certain restrictions in respect of the right to strike, such as the requirement for a majority of three-quarters of the workers of the enterprise to call a strike (section 114 of the General Labour Act and section 159 of the Regulation), the unlawful nature of general and sympathy strikes which are liable to penal sanctions (Legislative Decree No. 02565 of 1951) and the recourse to compulsory arbitration by decision of the Executive Power (section 113 of the General Labour Act). In these circumstances the Committee on Freedom of Association urged the Government to adopt measures as a matter of urgency with a view to amending legislation concerning strikes in respect of all the points raised by the Committee of Experts and with regard to the need to ensure that strikes may be declared illegal only by an independent body, given that excessive requirements and restrictions in many cases make legal strike action impossible in practice (paragraph 282). In its recommendations, the Committee emphasized that no worker on strike who had acted peacefully should be subject to criminal sanctions, and asked the Government to reform the Penal Code with this principle in mind and to inform it of any rulings handed down in this regard (paragraph 285(c)).

The Committee referred to the explanations contained in paragraphs 126 et seq. of its 1979 General Survey on the abolition of forced labour which indicate that excessive restrictions imposed on the exercise of the right to strike have an impact on application of the Convention. This is the case with the requirement for a qualified majority to call a strike and the existence of compulsory arbitration systems when such restrictions result in a declaration that the strike is illegal with the consequent penal sanctions and the imposition of compulsory prison labour. The Committee expressed the hope that the Government would take the necessary measures to ensure that penalties involving compulsory labour would not be imposed for participation in strikes.

The Committee notes the information provided by the Government in its report to the effect that, with the assistance of the ILO technical advisory mission carried out in April 2004, a draft Act has been drawn up on the basis of a tripartite agreement resulting from negotiations between representatives of the Bolivian Central Workers' Organization (COB), the Bolivian National Confederation of Private Sector Employers (CEPB) and the Ministry of Labour, who agreed on the amendment of various legal provisions, including sections 2, 9 and 10 of Legislative Decree No. 2565 of 6 June 1951, establishing penal sanctions for sympathy strikes, and section 234 of the Penal Code, which classifies as an offence strikes or lockouts declared illegal by the Ministry of Labour, thereby abolishing the penalties which had previously been imposed on strikes.

The Committee hopes that the Government will provide a copy of the amended legislation once it has been adopted.

Brazil

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

The Committee notes the information provided by the Government in its report and the comments made jointly by the "Gaucha" Association of Labour Inspectors (AGITRA) and the Association of Labour Inspectors of Paraná (AAIT/PR) and those of the International Confederation of Free Trade Unions (ICFTU), which were forwarded to the Government on 30 March 2004 and 1 September 2004, respectively.

The Committee acknowledges that, for several years, the Government has been adopting a series of significant measures demonstrating its commitment to combat forced labour and which were noted in detail in its previous

observation. Despite these measures, the phenomenon persists in many regions in which a high number of workers are subject to degrading conditions of work and debt bondage. Although the supervision undertaken by the Special Mobile Inspection Group have made it possible each year to liberate more workers from employers who exploit them, it does not nevertheless appear that the violations identified lead to the imposition of sufficiently dissuasive penalties against those who have imposed forced labour to be able to achieve the eradication of the phenomenon.

Legal framework

1. *Section 149 of the Penal Code.* The Committee notes that, following the adoption of Act No. 10.803 of 11 December 2003, section 149 of the Penal Code, which established a penalty of from two to eight years of imprisonment for the crime of imposing upon a person a condition similar to that of slavery, has been amended. It notes with interest that the concept of “imposing upon a person a condition similar to that of slavery” has now been developed, as section 149 now establishes conditions constituting the imposition of a condition similar to that of slavery, namely: subjecting a person to forced labour or to arduous working days or subjecting such person to degrading working conditions or restricting, in any manner whatsoever, her or his mobility by reason of a debt contracted in respect of the employer or her or his representative. Any persons who retain workers at the workplace either by preventing them from using means of locomotion, retaining their personal papers or property, or by maintaining manifest surveillance, are liable to the same prison sentence.

2. *Draft amendment to article 243 of the Constitution (PEC No. 438/2001).* The Committee noted previously that the measures envisaged under the National Plan of Action for the Elimination of Slave Labour, launched in March 2003 by the President of the Republic, included the adoption of the proposed amendment to article 243 of the Constitution providing for the expropriation without compensation of agricultural establishments in which the use of slave labour has been identified. The expropriated lands will be consigned to the agrarian reform and reserved as a priority for the persons who worked on them. The Government indicates that the proposal, approved by the Senate, is currently being examined by the Chamber of Deputies and it undertakes to provide political support for its rapid approval.

The ICFTU favours this proposal which, if it is adopted, will make it possible to impose a real penalty on those making use of slave labour and, by affording workers access to land, will prevent them from having to return to slave labour. This is very important as statistics show that 40 per cent of freed workers have already been freed more than once before. However, the ICFTU emphasizes that similar proposed amendments have been discussed by Congress since 1995, but have not been adopted.

The Committee hopes that, as it has undertaken to do, the Government will take all the measures in its power to accelerate the process of the adoption of this proposal which, when it is adopted, will make it possible to impose really dissuasive penalties on landowners having recourse to slave labour.

3. *List of persons or entities which use or have used slave labour.* In November 2003, a list of 52 names of individuals or entities convicted of having used slave labour was adopted with a view to preventing them from benefiting from public financing. Under the terms of Decree MTE No. 1234/2003 of 17 November 2003, a copy of which was provided by the Government, the list shall be communicated every six months to the various public institutions so that they can take measures in the areas within their competence. Furthermore, Decree No. 1150 of 18 November 2003 indicates that the Department for the Management of Financing for Regional Development of the Ministry of National Integration shall communicate this list to banks administering constitutional or regional financing funds so that no public credits are granted to the names included in the list. The Government adds that the Ministry of Finance and the Central Bank are seeking to extend this prohibition to private banks in relation to the resources controlled by the federal Government. It acknowledges that the issue of the granting of aid and credit to persons and entities which use slave labour is a grave problem, particularly in Amazonia, where several credit institutions make resources available for regional development.

The ICFTU expresses concern in this regard at the lack of an administrative follow-up mechanism to ensure that those named on the list do not benefit from public financing or incentives.

The Committee indicated previously that, in seeking to affect directly the financial interests of those who exploit slave labour, the adoption of this list marked an important step in combating forced labour. In this respect, it notes with interest that the list has been updated and now contains 49 names (Decree No. 540 of the Ministry of Labour and Employment, of 15 October 2004). In accordance with section 4 of this Decree, for two years following the inclusion of a name in the list, the labour inspectorate shall verify the conditions of work in the establishments concerned. If there is no repeat offence and if the fines and the debts to the workers have been acquitted, the name may be removed from the list. The Committee requests the Government to continue providing information on this subject, particularly with regard to the revision of the list, the extension to private banks of the prohibition on the granting of credits to the names appearing on the list and the manner in which compliance with this prohibition is enforced in practice.

Implementation

1. *Prevention and awareness raising.* Over the past two years, the Government has adopted a series of measures to combat slave labour, including the adoption in 2002 of the National Plan of Action for the Elimination of Slave Labour, the establishment of the National Commission for the Elimination of Slave Labour (CONATRAE) in March 2003, and the

launching of the national campaign for the elimination of slave labour in September 2003. CONATRAE, composed of government bodies and non-governmental organizations, ensures that the country has a permanent and effective entity for the coordination of all the action to be taken in the context of the National Plan of Action. The Government also refers to the cooperation project between the ILO and the Government “Combating forced labour in Brazil” (2002-07). The objectives of this project include:

- the reinforcement and coordination of the action undertaken by CONATRAE;
- the development of national awareness-raising campaigns;
- the establishment of a database containing data on forced labour from various sources so as to help the Government target and plan its action more effectively;
- the reinforcement of the Special Mobile Inspection Group; and
- the establishment of pilot programmes to assist freed workers.

The Committee notes with interest all of these actions, which bear witness to the Government’s commitment to combat slave labour, raise public awareness and carry out concerted action in this field. The Committee hopes that the Government will pursue this action and requests it to continue providing information on the measures taken to continue the implementation of the National Plan of Action for the Elimination of Slave Labour, the results achieved and the difficulties encountered.

2. *Action by the labour inspectorate.* The Committee noted previously the essential role played by the labour inspectorate in combating forced labour and emphasized that the action of the Special Mobile Inspection Group (GEFM) is an essential prerequisite, without which workers cannot be freed and those responsible convicted. While noting the measures already taken by the Government, it expressed the hope that it would continue to use all the means at its disposal to further strengthen the inspection services. The Government indicates that the GEFM intervenes without warning, based on the complaints received. Labour inspectors are accompanied by the federal police, who are responsible for their security and at the same time competent to undertake criminal investigations. The objective of these interventions is to free workers, obtain the payment of the amounts due to them and, when the operation is completed, to refer the case to the Office of the Federal Attorney-General where the situation amounts to the crime of imposing upon a person a condition similar to that of slavery or any other penal offence. In 2003, the GEFM was provided with 16 four-wheel drive vehicles, which are particularly suited to the inspections to be undertaken and, in 2004, a sixth team was established. Following the holding of a competition, 150 labour inspectors were selected and took up office in May 2004. They will be assigned as a priority to areas in which forced labour is concentrated. In general, the year 2003 saw the largest number of operations by the GEFM since its establishment in 1995. The same applies to the number of workers freed. A total of 196 establishments were inspected in the context of 66 operations, leading to the freeing of 4,879 workers.

The ICFTU recognizes that the increased number of workers freed demonstrates the effectiveness of the GEFM. However, it is concerned at the decline in the number of workers freed, as observed in the first half of 2004, which could indicate that the work of the GEFM is hampered by its lack of resources and by the climate of intimidation and impunity. Furthermore, the time elapsing between the lodging of a complaint and when the inspections are carried out has increased. According to the ICFTU, it is necessary to reinforce the GEFM both in terms of human resources and adequate vehicles to ensure rapid inspections in the most remote regions. The lack of resources of the labour inspectorate is also a matter of concern for AGITRA. Moreover, these two trade union organizations express concern at the climate of intimidation and violence affecting labour inspectors, judges, attorneys and all those combating slave labour. The murder of three labour inspectors and their driver on 28 January 2004 is an illustration of this climate. AGITRA considers that the phenomenon is all the more difficult to combat in view of the involvement of well-known persons. The ICFTU emphasizes the need for the Government to protect those engaged in combating slave labour and to ensure that all who make use of violence and intimidation are penalized and convicted.

The Committee notes all of this information and hopes that the Government will continue to provide detailed indications of the action taken by the GEFM and the resources made available to it by the Government, as well as on the number of operations carried out, the average time that elapses between the filing of a complaint and the inspection of the GEFM, and the number of workers freed. The Committee also expresses concern at the context of violence in which labour inspectors, attorneys, judges and, more generally, all those involved in combating slave labour, have to work. It notes that in August 2003, before the murder of the labour inspectors, in view of the many threats menacing their members, several institutions, including the Federal Human Rights Ombudsperson, the National Association of Labour Judges, the Office of the Labour Attorney, the Association of Attorneys of Brazil and the Pastoral Land Commission, issued a press release describing the situation and calling for appropriate measures to be taken. The press release was further pursued in the form of an appeal to the President of the Republic and the Minister of Justice for the Government take urgent measures to secure the life and safety of the persons engaged in the implementation of the National Plan of Action for the Elimination of Slave Labour. The Committee hopes that the Government will not fail to provide information on the measures adopted in this respect.

Imposition of effective penalties

1. *Administrative sanctions.* Considering that the effective imposition of penalties for violations of the labour legislation is an essential element in combating forced labour in so far as the combination of several such violations is indicative of certain forced labour situations, the Committee hopes that the Government will ensure that the fines inflicted for violations of the labour legislation are collected in practice so as to ensure the dissuasive nature of these penalties. The Government indicates that the Office of the Labour Attorney, through the regional labour attorneys, has taken various types of action to penalize those making use of slave labour and that 439 investigations are currently being undertaken. In this respect, the ICFTU and AGITRA express the fear that the fines are too low to be dissuasive and that many fines are not paid. The ICFTU regrets the absence of official data on the amounts of the fines imposed and the number of fines collected. The Committee notes this information. It notes several decisions by regional labour tribunals which, in addition to requiring the payment of wage arrears and other social contributions, have convicted those accused to fines and the payment of compensation, particularly for collective social prejudice. It would be grateful if the Government would provide full particulars on the decisions handed down by labour tribunals and on the difficulties encountered in collecting the fines that are imposed.

2. *Penal sanctions.* For many years, the Committee has been requesting the Government to provide information on the number of cases of forced labour forwarded by the inspection services of the Ministry of Labour to the Office of the Federal Attorney-General, the manner in which these cases are followed up, and particularly the percentage of cases which give rise to criminal proceedings in relation to the total number of complaints received by the inspection services, and the number of convictions under the relevant penal provisions, and particularly section 149 of the Penal Code. The Government indicates in its report that, between February 2003 and May 2004, the Attorney-General of the Republic initiated 633 administrative proceedings to verify allegations of slave labour. In this respect, the Committee notes, from the Internet site of the Attorney-General of the Republic (<http://www.pgr.mpf.gov.br/pgr/pfdc/pfdc.html>), a list of cases in which the competent jurisdiction was requested to receive a complaint (*denúncia*) with a view to initiating criminal proceedings, particularly under section 149 of the Penal Code. Despite the absence of information from the Government on the number of convictions under section 149, the Committee has been able to note with interest that such convictions have been imposed (see, in particular, Ruling No. 2001.04.01.045970-8/SC of the federal regional tribunal of the fourth region confirming on appeal a conviction to a sentence of imprisonment of two years and eight months for the offence set out in section 149 of the Penal Code).

The Committee therefore hopes that in its next report the Government will provide more complete information on current proceedings, both administrative proceedings undertaken by the Attorney-General of the Republic to verify the facts, to which the Government referred in its report, the action taken on complaints forwarded by the Office of the Attorney-General with a view to the initiation of criminal proceedings and the final rulings by the respective courts. The Committee recalls in this respect that, in accordance with *Article 25 of the Convention*, the Government is under the obligation to ensure that the penal sanctions imposed by the law are really adequate and are strictly enforced.

With reference to its previous comments, the Committee would be grateful to be informed whether the problem of the determination of the competent jurisdiction (federal jurisdictions or those of the states) to judge the crime of imposing upon a person a condition similar to that of slavery (section 149 of the Penal Code) has been resolved and whether a final decision has been issued on this matter.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1965)

The Committee notes the Government's report and the comments made by the Gaúcha Labour Inspectors Association (AGITRA) and the Association of Labour Inspectors of Paraná (AAIT/PR) received by the Office on 5 March 2004 and forwarded to the Government on 31 March 2004. Inasmuch as these comments come under the application of the Forced Labour Convention, 1930 (No. 29), the Committee refers to its observation under that Convention.

Burundi

Forced Labour Convention, 1930 (No. 29) (ratification: 1963)

The Committee notes the information provided by the Government in response to the ICFTU's comments. The Committee notes however that the Government's report has not been received. The Committee again raises the serious issues on which it requests the Government to report.

1. *Forced recruitment of children during armed conflicts.* The Committee of Experts has previously noted the concern expressed by the United Nations Committee on the Rights of the Child at the use of children by the state armed forces as soldiers or helpers in camps or in obtaining information. The Committee on the Rights of the Child also expressed its concern at the low minimum age of recruitment to the armed forces. According to these observations, there is also widespread recruitment of children by opposition armed forces and sexual exploitation of children by members of the armed forces (CRC/C/15/Add.133, paragraphs 24 and 71). The Committee also noted the evaluation report of the national action programme for the survival, protection and development of children for the 1990s (report produced in January 2001 as part of the follow-up to the World Summit for Children). This report refers to the situation of street children, child soldiers and the sexual and commercial exploitation of children (paragraphs 86 and 94). Child soldiers are

between 12 and 16 years of age and are used as messengers, servants, lookouts or scouts. As camp followers of the combatants they are often easy targets, being untrained in protection techniques. The rebels allegedly enrol primary school children from the age of 12 years. Even though the minimum age for conscription in the armed forces of Burundi is 16 years, there are indications that children are used by soldiers for odd jobs.

The Committee notes that in March 2003 the ICFTU made comments on the application of the Convention, confirming the use of child soldiers by the armed forces. The Committee notes that the Government has not provided any information on the measures adopted to protect children against recruitment in the armed forces as soldiers or to perform supporting tasks for military personnel. The Committee expresses particular concern at the situation of these children. The Committee also notes the report of the Secretary-General of the United Nations on children and armed conflict, submitted to the United Nations Security Council in November 2002. At the request of the latter, the report drew up a list of 23 parties to armed conflict that recruit or use child soldiers, in violation of the international provisions protecting them. The Committee also notes that this list includes the Government of Burundi, PALIPEHUTU/FNL (*Parti pour la libération du peuple Hutu/Forces nationales pour la libération*) and the CNDD/FDD (*Conseil national pour la défense de la démocratie/Front pour la défense de la démocratie*).

Finally, the Committee notes that Burundi ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), on 11 June 2002. As Convention No. 182 provides in Article 3(a) that the worst forms of child labour include “forced or compulsory recruitment of children for use in armed conflict”, the Committee considers that the problem of the recruitment of children in armed forces may be examined more specifically in the context of Convention No. 182. The protection of children is strengthened by the fact that Convention No. 182 places the obligation upon 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. While noting that in its reply to the comments of the ICFTU, the Government indicates that following the Arusha Peace Agreement and the Pretoria Ceasefire Agreement, the phenomenon of recruitment of the children in armed conflicts has almost disappeared and their socio-economic integration is continuing, the Committee requests the Government to provide more detailed information on the measures adopted to protect children against forced recruitment to serve as soldiers and to carry out supporting tasks for the armed forces in its first detailed report on the application of Convention No. 182.

2. 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 conformity with the Convention. The Committee noted in this respect that in 1993, a process of bringing the legislation into harmony with the Convention was initiated, but could not be completed due to the crisis experienced by the country. The Committee notes the Government’s indication that the national legislation considered contrary to the Convention and dealing with matters covered by the Ministry responsible for agriculture will be submitted for abrogation at one of the next meetings of the Council of Ministers. The Committee hopes that the Government will be in a position to report the adoption of specific measures to bring the provisions of the legislation referred to below into conformity with the Convention:

- the need to set forth in the law the voluntary nature of agricultural work performed in the context of the obligations respecting 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);
- the need to formally repeal certain texts with respect to 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 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 need to amend sections 340 and 341 of the Penal Code which provide that in the event of vagrancy or begging a person may be placed at the disposal of the Government for a period of between one and five years during which time such person may be forced to perform work in a prison institution.

Cameroon

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

1. *Work imposed for national development purposes.* For many years the Committee has been drawing the Government’s attention to the need to amend or repeal Act No. 73-4 of 9 July 1973 instituting national service for participation in development, which allows the imposition of work in the general interest on citizens aged between 16 and 55 years for 24 months with penalties of imprisonment for refusal. In this regard the Government indicated previously that a preliminary draft Act instituting national civic service to replace national civic service for participation in development had been transmitted to the senior levels of the Government. The compulsory and punitive clauses of Act No. 73-4 were removed and participation in national civic service was to become voluntary, the purpose of this service being to socio-economically rehabilitate young people who have been prematurely excluded from the education system or to direct them towards vocational training structures. The Committee notes that the Government no longer refers to this draft Act in its last report. It again indicates that the office responsible for national service has been dissolved, which makes the existence of any forced labour unlikely. While noting this information, the Committee again emphasizes the need to repeal formally

Act No. 73-4 of 9 July 1973 instituting national service for participation in development, which is contrary to the Convention, in order to guarantee legal certainty.

2. *Article 2, paragraph 2(c), of the Convention. Transfer of prison labour to private associations.* In its last comments the Committee noted that Decree No. 73-774 of 11 December 1973 concerning the prison system had been repealed and replaced by Decree No. 92-052 of 27 March 1992. It noted with regret that sections 51 to 56 of the new Decree still permitted the transfer of prison labour to private enterprises and individuals, without the formal consent of the persons concerned being required. The Committee has been reiterating for many years that in order to be deemed compatible with the requirements of *Article 2, paragraph 2(c)*, of the Convention, work done by convicted prisoners for private enterprises or individuals must be subject to the formal consent of the persons concerned and must be accompanied by guarantees covering the essential elements of a free labour relationship.

The Committee notes Order No. 213/A/MINAT/DAPEN of 28 July 1988, a copy of which was sent by the Government. This Order establishes a number of conditions of use and the rates of transfer of prison labour.

The Committee also notes that Order No. 213/A/MINAT/DAPEN was adopted following the implementation of Decree No. 73/774 of 1973, which has since been repealed and replaced by Decree No. 92-052 of 1992 concerning the prison system. The Government further states in its last report that a text concerning the prison system is in the process of finalization. The Committee would therefore be grateful if the Government would indicate whether Order No. 213/A/MINAT/DAPEN remains in force, or whether other regulatory texts have been adopted by the Minister for Prison Administration, in accordance with sections 51 to 56 of Decree No. 92-052 of 1992 concerning the prison system or pursuant to any other newly adopted decree. If applicable, please send a copy of the latter. The Committee hopes that the Government will use the adoption of a new text in this field as an opportunity for ensuring that the legislation is in conformity with the provisions of *Article 2, paragraph 2(c)*, of the Convention, for example by explicitly providing in the legislation that prisoners must express their formal consent to any work or service done for private individuals, companies or associations. The Committee requests the Government to provide information on all progress made in this regard.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(a) of the Convention. For a number of years, the Committee has been drawing the Government's attention to certain provisions of the Penal Code which provide for sentences of imprisonment involving compulsory labour:

- (a) Under section 113 of the Penal Code, any person who originates or propagates untrue information where such information is liable to prejudice the public authorities or national cohesion shall be liable to imprisonment of from three months to three years.
- (b) Under section 154(2) of the Penal Code, any person who, whether in speech or in writings intended for the public, incites a revolt against the Government and the institutions of the Republic shall be liable to imprisonment from three months to three years.
- (c) Under section 157(1)(a) of the Penal Code, any person who, by any means whatsoever, incites to obstruction of the execution of any law, regulation or lawful order of the public authority shall be liable to imprisonment of from three months to four years.

The Committee also referred to certain provisions of Act No. 90-53 concerning freedom of association:

- Under section 12 of this Act, associations may be dissolved by judicial decision upon the proposal of the Legal Department or at the request of any interested party in case of nullity as provided for under section 4 of the Act.
- Under section 4, associations founded in support of a cause or in view of a purpose contrary to the Constitution, and those whose purpose is to undermine the security, territorial integrity, national unity, national integration or the republican structure of the State shall be null and void.
- Section 14 provides that the dissolution of an association shall not bar any legal proceedings which may be instituted against the officials of such association.
- Section 33(1) provides for the imprisonment of from three months to one year of the board members or founders of an association which continues operations or which is re-established illegally after a judgement or decision has been issued for its dissolution. The same penalties apply to any persons who encourage meetings of the members of a dissolved association by allowing them the use of premises in their possession (section 33(3)).

In previous comments, the Committee noted that section 18 (new) of the Penal Code (Act No. 90-61 of 19 December 1990) no longer refers to the penalty of detention (a penalty depriving a person of her or his freedom for a political crime or lesser offence during which convicts are not required to work) and that sentences of imprisonment involving compulsory labour, under section 24 of the Penal Code, had replaced detention.

The Committee observed that, under the above provisions, sentences of imprisonment involving the obligation to work could be imposed on persons for the expression of certain political opinions or the manifestation of their ideological opposition to the established political, social or economic order.

It requested the Government to provide full particulars concerning the application in practice of these provisions, including the number of convictions for violating these provisions and copies of court decisions which define or illustrate their scope.

The Committee notes that, in its report received in October 2002, the Government indicates that in practice the persons protected by the Convention, particularly in relation to the expression of opinions, political activities and the exercise of the rights of association and assembly, cannot be subjected to penalties involving the obligation to work. Only those found guilty, inter alia, of the offences set out in sections 113 (the propagation of false information) and 157 (incitation to resist the execution of any law, regulation or lawful order of the public authority) of the Penal Code may be prosecuted.

While noting this information, the Committee once again requests the Government to indicate the measures taken or envisaged to ensure, in conformity with *Article 1(a)* of the Convention, that the persons protected by the Convention, particularly with regard to the expression of opinions by the press and political activities, the right of association and assembly, may not be subjected to penalties involving compulsory labour. It also requests the Government to continue providing full particulars on the application of these provisions in practice, including the number of convictions for violations of these provisions and copies of judicial decisions which may define or illustrate their scope.

Article 1(c) and (d). In comments that it has been making for many years, the Committee has noted that under sections 226, 229, 242, 259 and 261 of the Merchant Shipping Code (Ordinance No. 62/DF/30 of 1962), certain breaches of discipline committed by seafarers may be punished by imprisonment involving the obligation to work.

The Government stated previously that studies were being conducted with a view to revising the Merchant Shipping Code and harmonizing national law and practice with the provisions of the Convention. In its last report, the Government indicates that the measures envisaged are those established in the community code of the Economic and Monetary Community of Central Africa (CEMAC), and that the revision of this code is under way.

The Committee takes note of Regulation No. 03/01-UEAC-088-CM-06 of 3 August 2001 of the Council of Ministers of the Economic and Monetary Community of Central Africa, issuing the community Merchant Shipping Code, revised. Under the new provisions of this code, breaches of discipline committed by seafarers may not be punished by imprisonment involving the obligation to work. The Committee asks the Government to provide information on the progress of the adoption process of this Code.

Canada

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1959)

The Committee notes the information supplied by the Government in reply to its earlier comments.

Article 1(c) and (d) of the Convention. The Committee previously referred to section 247(1)(b), (c) and (e) of the Canada Shipping Act, under which penalties of imprisonment involving compulsory labour may be imposed for breaches of discipline that do not endanger the safety of the ship or the life or health of persons. Further to its earlier comments, the Committee notes the Government's indication in the report that the new Canada Shipping Act, 2001, which was introduced in Parliament on 1 March 2001, and received Royal Assent on 1 November 2001, is expected to be brought into force in 2006. The Government reiterates that, regarding the abovementioned section, the concept of possible imprisonment for wilful disobedience by a seafarer or an apprentice of any lawful command is not contemplated or reflected in the new Act.

However, the Committee notes that, under section 82(3) read in conjunction with section 101(1)(b) and (2) of the new Act, wilful obstruction of a master's operation of a Canadian vessel by a crew member is punishable with imprisonment for a term of up to 18 months, which involves compulsory prison labour. The Committee asks the Government to clarify the meaning of this provision and to indicate the measures taken or contemplated with a view to ensuring that no sanctions involving compulsory labour could be imposed for breaches of labour discipline in circumstances falling within the scope of the Convention. Please also communicate copies of regulations specifying what constitutes a serious violation of a contract of employment, referred to in section 100(k), as soon as they are adopted, so as to enable the Committee to assess their conformity with the Convention.

The Committee trusts that appropriate measures will be taken in order to ensure that no penalties of imprisonment involving compulsory labour are provided for breaches of labour discipline that do not endanger the safety of the ship or the life or health of persons. It also asks the Government to keep the ILO informed of the date of entry into force of the new Act and related regulations.

Central African Republic

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Since 1966, the Committee has been drawing the Government's attention to the need to repeal certain provisions of the national legislation under which forced or compulsory labour could be exacted and which are therefore contrary to the Convention:

- 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-prefecture* 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.

The Government has indicated on several occasions that these texts are obsolete and are no longer applied in practice and that texts to repeal them were under preparation. In its latest report, the Government once again indicates that, even if they have not been explicitly repealed, the legal texts referred to by the Committee are no longer applied. As this matter has been the subject of its comments for many years, the Committee trusts that the Government will take the necessary measures in the very near future to formally repeal the above texts so as to ensure legal certainty. In this respect, the Committee reminds the Government that it can have recourse to the technical assistance of the International Labour Office, which may help it to overcome the difficulties encountered in bringing its legislation into compliance with the Conventions on forced labour.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)

The Committee notes, according to the information provided by the Central African delegation to the United Nations Human Rights Commission in July 2004, that a reform of the Penal Code and the Code of Penal Procedure, which date from independence, has been under way since 2002 in cooperation with the United Nations Peace-Building Office in the Central African Republic (BUNOCA). The Committee requests the Government to provide fuller information on the process of reforming the penal legislation and, as appropriate, to provide copies of the texts adopted. It hopes that on this occasion, the Government will take into account the following comments.

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat the matters raised in its previous observation.

Article 1(a) of the Convention. 1. In its previous observations, the Committee noted that sentences of imprisonment involving compulsory labour may be imposed under 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). The Committee had requested the Government to amend or repeal the legislation in question and to provide copies of the new provisions adopted. The Committee noted the information to the effect that the Committee's comments on the above laws had been transmitted to the Minister of Communication. However, the Government did not indicate whether Act No. 60/169 and Order No. 3-MI had been amended. The Committee expresses the firm hope that the Government's next report will indicate the measures taken or envisaged to ensure compliance with the Convention.

2. With regard to freedom of expression, in earlier comments the Committee had requested the Government to provide information on the application in practice of certain provisions enumerated below with a view to ensuring that they are in conformity with the Convention:

- (i) section 77 of the Penal Code (dissemination of propaganda for certain purposes, acts such as to jeopardize public security, etc.); and
- (ii) sections 130 to 135 and 137 to 139 of the Penal Code (offences against persons occupying various public offices).

The Committee had noted that these provisions of the Penal Code provide for sentences of imprisonment involving the obligation to work, in accordance with section 62 of Order No. 2772 of 18 August 1955, issuing regulations respecting the operation of prison establishments and work by detainees. With reference to paragraph 105 of its 1979 General Survey on the abolition of forced labour, the Committee recalls that, in most cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of the Convention. On the other hand, if a person is in any way forced to work because she or he holds or has expressed particular political views, the situation is covered by the Convention.

With regard to freedom of association, the Committee also noted that sentences of imprisonment involving the obligation to work may be imposed under section 12 of Act No. 61/233 governing associations in the Central African Republic and section 62 of Order No. 2772, issuing regulations respecting prison labour. It notes that section 3 of Act No. 61/233 sets certain limits to the right of association and provides that any association which is "of a nature to give rise to political disturbance or cast discredit on political institutions and their functioning" shall be null and void. Section 12 of the above Act provides that 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.

The Committee recalls that the Convention prohibits the use of any form of forced or compulsory labour, including compulsory prison 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 protection provided by the Convention is not restricted to activities expressing or displaying opinions different from established principles. Consequently, if certain activities are directed towards the introduction of fundamental changes to the institutions of the State, this does not constitute a reason for considering them to fall outside the protection provided by the Convention, as long as the use of, or incitation to, violence is not made in arriving at the desired result. The Committee also observes the importance, for the effective respect of the Convention, of legal guarantees regarding the rights of assembly, of expression, to demonstration and association, and the direct incidence that restriction of these rights may have on the application of the Convention. Indeed, it is often in the exercise of these rights that political opposition to the established order may show itself. The Committee requests the Government to take the necessary measures to ensure that no sentence involving the obligation to work is imposed as a result of the expression of political opinions and to provide information on the measures that have been taken or are envisaged in this respect. While awaiting the adoption of the above measures, it requests the Government to provide information on the effect given in practice to sections 77, 130 to 135 and 137 to 139 of the Penal Code, and sections 3 and 12 of Act No. 61/233, and to provide copies of any court decisions handed down under these provisions.

Chad

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with regret that no report has been received from the Government for the third year in succession. It must therefore repeat its previous observation on the following matters:

The Committee has been referring for many years to the provisions of section 982 of the Tax Code (formerly 260bis) which allows authorities to impose labour for the purpose of tax collection, and article 2 of Act No. 14 of 13 November 1959 under which persons convicted of penal offences can be subjected, by administrative decision, to work which is in the public interest.

The Committee again noted that, according to the Government's report, these provisions had not yet been amended or repealed although the Government has repeatedly stated that this was its intent. The Committee hopes that the Government will take the necessary measures without further delay to ensure that the Convention is observed on these points.

The Committee hopes that the Government will make every effort to take the necessary action.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(a) and (d) of the Convention. The Committee has been referring for many years to Act No. 15 of 13 November 1959 which represses acts of resistance, disobedience and failings towards members of the Government, members of Parliament and the administrative and judicial authorities, and under which participation in a strike is punishable by imprisonment involving forced labour. In addition, the Committee has also referred to Act No. 35 of 8 January 1960 respecting subversive texts, under the terms of which persons who have expressed political ideas may be punished in a manner which is not compatible with the Convention. The Committee has previously requested the Government to take the necessary measures to amend these texts so as to ensure that forced labour is not exacted in a manner that is incompatible with the Convention and being used 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, or as a punishment for having participated in strikes.

The Committee notes that the Constitution of 31 March 1996 includes provisions on the freedoms of opinion and expression, communication, conscience, religion, the press, association, assembly, movement, demonstration and procession (article 27), trade union freedom (article 28) and the right to strike (article 29). It notes that sections 456 to 461 of Act No. 38/PR/96 of 11 December 1996, issuing the Labour Code, regulates the exercise of the right to strike: section 456 provides that the exercise of the right to strike is recognized for all employees; section 459 provides for the freedom of employees not to participate in a strike; and section 460(2) provides that employees may not be penalized for participation in a strike.

The Committee recalls that in its previous report the Government reaffirmed its determination to conduct inter-ministerial negotiations so that the texts referred to in the first paragraph above are repealed in the future. It therefore once again urges the Government to provide information in the near future on the measures taken in this respect.

The Committee hopes that the Government will make every effort to take the necessary action.

Chile

Forced Labour Convention, 1930 (No. 29) (ratification: 1933)

The Committee notes the detailed information provided by the Government in reply to its general observation on the hiring of prison labour by private enterprises.

The Committee notes with interest the provisions of the Regulations respecting penitentiaries, Judicial Decree No. 518/98, which provide that detainees shall have the right to perform work individually or in groups, which brings them some type of economic benefit to cover the costs of their family and create an individual savings fund for their release (section 61) and that work activities undertaken by detainees may consist of work for their own account or

subordinate work in the context of productive or training activities which are carried out within penitentiaries in the context of projects agreed upon by third parties with the Prison Administration (section 63).

The Committee also notes with interest the provisions of section 64, according to which the work activities carried out by detainees in the context of agreements implemented by third parties shall be governed by the common labour legislation and, in any event, irrespective of the applicable norms, it shall be provided in the respective concluded agreements, that the remuneration paid to detainees by enterprises or third parties covered by the contract may not be lower than the minimum wage determined annually by the competent authority for workers who are not detained; and that the insurance contributions shall also be made to the institution or institutions of the corresponding insurance scheme.

Colombia

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

Article 1 (a) and (d). In its previous comments, the Committee requested the Government to provide information on the effect given in practice to sections 199 (sabotage), 220 (slander), 265 (damage to the property of others), 353 (disturbing collective transport services) and 357 (damage to communications infrastructure or equipment) of the Penal Code, including the number of convictions and copies of the respective court decisions. These provisions establish penalties of imprisonment which involve compulsory labour under section 79 of the Prisons Code. The Committee referred to the impact that these provisions may have on the application of the Convention where they are applied in relation to activities of social protest and trade union activities, including strike action, or activities related to the expression of political opinions.

The Committee notes that the Government has not provided the requested information. The Committee hopes that the Government will indicate the measures adopted or envisaged to ensure that application in practice of the above provisions of the Penal Code does not allow the imposition of forced labour for the expression of political views or participation in strikes.

Comoros

Forced Labour Convention, 1930 (No. 29) (ratification: 1978)

The Committee notes the information supplied by the Government in reply to its previous comments.

Article 1(1) and Article 2(1) and (2)(c), of the Convention. In the comments it has been making for many years, the Committee has drawn the Government's attention to section 1 of Order No. 68-353 of 6 April 1968, under which labour is compulsory for persons in detention. In its reports received in November 2003 and March 2004, the Government indicates yet again that the Order has not been repealed but that in practice remand prisoners are not required to perform any kind of labour, either in or outside correctional institutions. The Government again states its intention of repealing Order No. 68-353 of 6 April 1968 and indicates that a bill to repeal it will be submitted to the Central Council for Labour and Employment (CSTE) at its next meeting. As to the observation by the Union of Comoros Workers' Autonomous Trade Unions (USATC), sent by the Government with its previous report, that judicial and prison authorities have had recourse to forced labour for remand prisoners and political detainees, the Committee notes that the Government once again condemns the fact that detained workers have been forced to perform urban cleaning work and confirms that the necessary steps have been taken to prevent recurrence of such abuse.

The Committee takes note of this information and again expresses the hope that the Government will very soon be in a position to indicate that Order No. 68-353 of 6 April 1968 has been repealed or amended to ensure that persons detained without having been convicted shall work only on a voluntary basis and at their request.

Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

1. *Article 2, paragraph 2(d), of the Convention.* In its previous comments, the Committee asked for the repeal of Act No. 24-60 of 11 May 1960 which allows persons to be requisitioned for work of public interest in cases which do not constitute the emergencies provided for in *Article 2, paragraph 2(d)*, of the Convention. 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 indication in its report that, although it has never been repealed, Act No. 24-60 has fallen into abeyance since the publication of the Labour Code, the Penal Code and the new Constitution of 2002. The Committee asks the Government to provide information on the measures taken to formally repeal this Act in order to avoid any legal ambiguity.

2. The Committee notes that the Government's report contains no information on the other matters raised in its previous observation. The Committee hopes that the Government's next report will contain replies to the following points.

1. In its previous comments, the Committee noted that the Government may request the population to carry out certain sanitation jobs. The Government indicated that this practice consisted of mobilizing the population for work in the community interest and was based on section 35 of the Statutes of the Congolese Labour Party, but that it no longer exists and such tasks (weeding, sanitation work) are now undertaken voluntarily by associations and employees of the State and local communities.

The Government indicates its intention of including, in the Labour Code currently being revised, a provision to establish the voluntary nature of sanitation work. The Committee asks the Government to provide a copy of the new provisions of the Labour Code once they are adopted.

2. *Article 2, paragraph 2(a)*. The Committee has several times drawn the Government's attention to section 4 of Act No. 11-66 of 22 June 1966 establishing the National People's Army and section 1 of Act No. 16 of 27 August 1981 introducing compulsory national service. The former provides for active participation by the army in tasks of economic construction for effective production and the latter stipulates that national service, which comprises both military and civic service, enables every citizen to take part in the defence and construction of the nation. The Committee drew the Government's attention to *Article 2, paragraph 2(a)*, of the Convention which provides that work or service exacted in virtue of compulsory military service laws is excluded from the scope of the Convention only when it is imposed for work of a purely military character. Work exacted from recruits as part of national service, including work related to national development, is not purely military in nature. The Committee referred in this context to paragraphs 24-33 and 49-62 of its General Survey of 1979 on the abolition of forced labour. According to the Government, the practice of imposing on recruits work which is not purely military in nature has fallen into disuse. The Committee notes that, in its last report, the Government expressed its intention of repealing Act No. 16 of 1981 on compulsory national service. The Committee hopes that the necessary steps will be taken to repeal the above Act in order to bring the national legislation into conformity with the Convention.

3. In its previous comments, the Committee referred to section 17 of Act No. 31-80 of 16 December 1980 on guidance for youth under which the party and mass organizations would gradually create all the conditions for the formation of youth brigades and the organization of youth workshops. The Committee notes that, according to the Government, these practices no longer exist. It observes, however, that the abovementioned Act has not been repealed. The Committee noted that a draft decree on voluntary work for young people was in the process of being approved, and requested specific information on the type of tasks performed, the number of persons concerned, the duration and conditions of their participation. The Committee asks the Government to indicate the measures taken or envisaged to bring the national legislation into line with the Convention and to provide a copy of the decree on voluntary work for young people as soon as it is adopted, together with relevant information.

4. *Trafficking in persons*. The Committee notes the Government's statement that child trafficking exists between Benin and Congo for the purpose of forcing the children to work in Pointe-Noire in trading (fixed and itinerant) and domestic work. According to the Government, the receiving families force the children to work in unimaginable conditions: they have to work all day, are frequently beaten and subjected to all kinds of hardships. The Government has recognized that such acts are contrary to human rights and has taken a number of measures to curb child trafficking. The Committee asks the Government to examine the situation of children working in Pointe-Noire in the light of the Convention and to provide full information on their working conditions, specifying their age, the circumstances in which this trafficking takes place and working conditions in Congo. The Committee also asks the Government to indicate which provisions of the national legislation punish trafficking in people and what measures are taken to ensure that the penalties are strictly applied to those responsible for imposing forced labour.

5. The Committee asks the Government to provide copies of the Penal Code, the Code of Penal Procedure and the Order regulating the operation of prisons and prison labour.

Cyprus

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(c) and (d) of the Convention. For many years, the Committee has been referring to section 3(1) of the Supplies and Services (Transitional Powers) (Continuation) Act (Chapter 175A), which authorizes the issuing of orders to make effective Defence Regulations 79A and 79B for the purpose of maintaining, controlling and regulating supplies and services: (i) to secure their equitable distribution or their availability at fair prices; (ii) to promote the productivity of industry, commerce and agriculture; (iii) to foster and direct exports and reduce imports and to redress the balance of trade; and (iv) to ensure that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. Regulation 79A gives authority to direct any person to perform services for any of these purposes and to require persons employed in undertakings engaged in work regarded as essential for any such purpose, not to terminate their employment or absent themselves from work or be persistently late for work, on pain of imprisonment (involving, under the Prison Regulations, the obligation to perform labour). Regulation 79B authorizes the Government to issue further regulations to prohibit strikes, on pain of imprisonment by virtue of Regulation 94.

The Committee previously noted that the Government had proceeded with the drafting of new legislation regulating the right to strike in essential services, and that the ad hoc Ministerial Committee set up to consider the issue effected several amendments to the draft legislation which were presented to the trade unions for consultation. In its report received in November 2001, the Government indicated that the dialogue with the social partners on this matter continued and that, following the views expressed in the course of this dialogue, the Government proposed to introduce a framework law which would be confined to defining "essential services" and "minimum service" and which would bound the parties in the case of a labour dispute in an essential service to follow for its settlement a procedure which would be defined and agreed upon by the parties.

While noting this information, and referring also to its observation addressed to the Government under Convention No. 87, the Committee trusts that the list of essential services will be limited to essential services in the strict sense of the term, and that participation in strikes will not be punishable with penalties involving compulsory labour, unless such strikes are likely to endanger the life, personal safety or health of the whole or part of the population. Furthermore, the workers concerned must remain free to terminate their employment by reasonable notice. The Committee hopes that the Government will be able to provide, in its next report, information on the progress made in this regard and asks the Government to supply a copy of the new law, as soon as it is adopted.

The Committee hopes that the Government will make every effort to take the necessary action.

Democratic Republic of the Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes the adoption of the new Labour Code (Act No. 015/2002 of 16 October 2002) and of the transitional Constitution. It notes with satisfaction that the new Labour Code has deleted the exception to forced labour provided for in section 2 of the 1967 Labour Code which permitted persons to be forced to perform work in the public interest beyond the scope of the exception contained in *Article 2, paragraph 2(b), 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 (those already deemed to be making their contribution are political representatives, wage earners and apprentices, public servants, tradesmen, members of the liberal professions, the clergy, students and pupils). In this regard the Government previously stated that Act No. 76-011 and its implementing legislation were not applied. It explains in its last report that the Ministry of Labour and Welfare asked the Monitoring Committee at the Ministry of Human Rights to examine the provisions of national legislation which conflict with the application of the Conventions ratified by the Democratic Republic of the Congo. The Committee trusts that further to this examination the necessary measures will be adopted to repeal or amend the abovementioned texts so as to ensure their conformity with the Convention.

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 provides for imprisonment involving compulsory labour, by decision of the chief of the local community or the area commissioner, of taxpayers who have defaulted on their minimum personal contributions. The Committee noted the information repeated by the Government reporting draft amendments to the provisions in question. It notes that, as for the texts referred to in point 1 of this observation, the provisions of Legislative Ordinance No. 71/087 will be submitted to the Monitoring Committee for examination. Recalling that this matter has been the subject of its comments for many years, the Committee expresses the firm hope that the Government will shortly adopt the necessary measures to ensure the conformity of the legislation with the Convention.

3. *Article 2, paragraph 2(c), of the Convention. Work exacted from detainees who have not been convicted.* 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. It noted in its last observation that, contrary to what the Government indicated, this Ordinance was not formally repealed by Ordinance No. 344 of 17 September 1965 governing prison work. In its last report the Government again indicates that the 1938 Ordinance concerning the prison system in indigenous districts has fallen into disuse and that since the country's independence the indigenous districts have ceased to exist. The Government also states 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 this information. It hopes that the next time the legislation in this field is revised the Government will not fail to adopt the necessary measures to repeal formally Ordinance No. 15/APAJ, so as to avoid any legal ambiguity.

4. *Forced labour of children.* On the basis of the concluding observations of the Committee on the Rights of the Child (CRC/C/15/Add.153), of the Committee on the Elimination of Discrimination Against Women (A/55/38), and of the observations of the Special Rapporteur of the Commission on Human Rights (E/CN.4/2001/40), the Committee previously requested the Government to provide information on the situation of children working in mines (notably the Kasaï mines and certain locations in Lubumbashi), on the recruitment of child soldiers and on the allegations concerning the sale, trafficking and exploitation for pornographic purposes of girls and boys and concerning the prostitution of girls.

Regarding the situation of child soldiers, the Government indicated in its report communicated in 2002 the adoption on 9 June 2000 of Legislative Decree No. 066 concerning the demobilization and reintegration of vulnerable categories of persons forming part of combatant groups. This Decree is aimed at the demobilization and reintegration into families and/or socio-economic structures of vulnerable categories of persons in the Congolese armed forces or in any other public or private armed group. Child soldiers – boys and girls under 18 years of age – form part of a particular vulnerable category justifying urgent humanitarian intervention. The same year, a national awareness campaign on the demobilization and reintegration of child soldiers was launched by the President of the Republic. The Government indicates that, in collaboration with the National Office for Demobilization and Reintegration (BUNADER), the test phase of the demobilization project has made it possible to demobilize 300 child soldiers enrolled in the army in the city of Kinshasa. Demobilization is continuing in the other provinces of the country and the goal of the project is to demobilize 1,500 child soldiers.

The Committee notes all the above information. It also notes that section 3 of the Labour Code provides for the abolition of all the worst forms of child labour, including the forced or compulsory recruitment of children for use in

armed conflicts. Despite the action taken by the Government in this field, the Committee notes with concern that the United Nations Security Council, in Resolution No. 1493 adopted on 28 July 2003, "... strongly condemns the continued recruitment and use of children in the hostilities in the Democratic Republic of the Congo, especially in North and South Kivu and in Ituri ...". In addition, the United Nations Commission on Human Rights, in Resolution No. 84 adopted on 21 April 2004, "... urges all the parties ... to put an end to the recruitment and use of child soldiers, contrary to international law ...".

The Committee notes that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and this year has provided the first report on its application. Inasmuch as Article 3, paragraphs (a) and (d) of Convention No. 182 state 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, including forced or compulsory recruitment of children for use in armed conflict" and "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children", the Committee considers that the problem of the recruitment of child soldiers, the situation of children working in mines and the allegations concerning the sale, trafficking and exploitation for pornographic purposes of girls and boys and concerning the prostitution of girls may be examined more specifically in the context of Convention No. 182.

5. *Article 25 of the Convention. 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 notes with interest 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 would be grateful if the Government would indicate the criminal law provisions which prohibit and penalize the use of forced labour. It once again requests the Government to send an up-to-date copy of the Penal Code and of the Code of Penal Procedure.

Denmark

Forced Labour Convention, 1930 (No. 29) (ratification: 1932)

The Committee notes a communication dated 22 July 2004 received from the Danish Masters' Association (*Dansk Magisterforening, DM*), which contains observations concerning the application of the Convention by Denmark. It notes that this communication was sent to the Government, on 16 August 2004, for any comments it might wish to make on the matters raised therein. The Committee observes that no such comments have been received from the Government so far and hopes that the Government will communicate its comments with its next report, so as to enable the Committee to examine them at its next session.

[The Government is asked to report in detail in 2005.]

Dominica

Forced Labour Convention, 1930 (No. 29) (ratification: 1983)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 2(2)(a) and (d) of the Convention. The Committee previously noted that, under sections 12 and 28 of the National Service Act, 1977, persons between the ages of 18 and 21 years, among others, are required to perform service with the National Service. It noted that servicemen are to undertake training and employment and perform such duties as may be prescribed and, where possible, be engaged in development and self-help projects including housing, school, construction, agriculture and road-building (section 29). Persons who fail without reasonable excuse to present themselves to serve when called upon may be punished with a fine and imprisonment (section 35(2)).

Having noted the Government's repeated statements that the National Service was created to respond to national disasters and that section 35(2) of the Act has not been applied, the Committee referred to section 9(1) of the Act, according to which the objectives of the National Service "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 observed that there is no reference to natural disasters, let alone a limitation in scope to such occurrences. It also referred to *Article 1(b)* of the Abolition of Forced Labour Convention, 1957 (No. 105), ratified by Dominica in 1983, which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development", and requested the Government to take the necessary measures with a view to repeal or amend the 1977 National Service Act so as to bring national legislation into conformity with Conventions Nos. 29 and 105.

The Government indicated in its report of 2000 that no measures had been taken to repeal the National Service Act of 1977. The Committee trusts that appropriate measures will be taken in the near future in order to bring national legislation into conformity with the Conventions and asks 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.

Dominican Republic

Forced Labour Convention, 1930 (No. 29) (ratification: 1956)

The Committee notes the Government's latest report and observes with regret that it does not contain any reply to the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention. The Committee notes that these comments were forwarded to the Government in November 2002. In view of the seriousness of the comments, the Committee requests the Government to communicate its reply with its next report to be provided in 2005, taking particular account of the following matters.

Article 2, paragraph 1, of the Convention. Situation of Haitian workers in sugar cane plantations. In its comments, the ICFTU indicates that Haitian workers in sugar cane plantations often work under conditions approximating slavery as they have no legal status in the country and are totally at the mercy of their employer. Several reports indicate that the clothing and property of these workers are kept locked up and their wages retained so that they cannot leave. According to the ICFTU, these workers are in constant fear of being deported or suffering violence from the authorities and are subjected to deplorable living and working conditions, without any means of recourse.

The Committee has on several occasions expressed concern at the conditions governing the hiring and work of Haitian workers in sugar cane plantations and it requested the Government to provide information on the progress achieved in the regularization of the status of Haitian nationals working and living in the Dominican Republic so that they benefit from the necessary guarantees to be able to choose their employment and working conditions freely. The Committee considered that the uncertainty related to the legal status of these workers, to whom the authorities did not grant residence or work permits and who could therefore be expelled at any time, placed them in a situation of vulnerability which facilitated abuse and practices which impair the rights protected by the Convention.

The Committee notes that, following the adoption of Act No. 141-97 reforming public enterprises, the executive authorities have authorized the concession of sugar plantations to private enterprises, following international tenders. The ten state sugar companies which were administered by the State Sugar Board (CEA) were conceded to private enterprises in 1999. However, the Committee understands that the State recently took back control of three sugar companies with a view to undertaking a rehabilitation, diversification and development project of the state sugar industry with the objective of producing fuel and electrical power from sugar cane, a project formulated with the participation of the United Nations Food and Agriculture Organization (FAO). With a view to ascertaining that no form of forced labour is practised in sugar cane plantations, whether they are the property of the State or of private entrepreneurs, the Committee requests the Government to provide information on the situation of Haitian workers employed there, and particularly on the conditions under which they are hired, the nature of their contracts, the manner in which their wages are determined and paid, etc. It would also be grateful if the Government would provide copies of reports relating to inspections carried out in plantations so that it can assess the manner in which the labour legislation is applied, the number and nature of the infringements reported and the penalties imposed as a result.

Article 2, paragraph 1. The trafficking of persons. In its comments, the ICFTU indicates that the trafficking of women and children with a view to their prostitution is a serious problem. Trafficking takes on several forms: women are victims of trafficking with a view to prostitution in other Latin American and European countries; women and children are the victims of trafficking with a view to their prostitution within the country; and women and children are removed from Haiti to the Dominican Republic to engage in begging. The ICFTU adds that there are severe penalties for the trafficking of persons and that the Government has made progress in its effort to eliminate the trafficking of persons, but that this practice remains widespread.

The Committee notes in this respect that Act No. 137-03 on the smuggling of migrants and the trafficking of persons entered into force on 7 August 2003. It notes with interest that, under the terms of section 3, the trafficking of persons is penalized by a sentence of imprisonment of between 15 and 20 years and a fine of 175 times the minimum wage. The Act also contains provisions on the assistance and protection that has to be provided to the victims of trafficking (advice, information on rights, accommodation, medical care, access to education, training and employment) and the measures which have to be taken to prevent the phenomenon of trafficking (implementation of policies, plans and programmes, development of national and international cooperation). The Committee requests the Government to provide information in its next report on the extent of the phenomenon of the trafficking of persons in the Dominican Republic and the manner in which Act No. 137-03 is applied in practice. In particular, please provide information on any difficulties encountered by the public authorities in combating the trafficking of persons and, where appropriate, the measures adopted to resolve them, as well as on the number of persons prosecuted and penalized under section 3 of the Act, and on the plans or programmes which have been adopted to prevent the trafficking of persons.

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

[The Government is asked to reply in detail to the present comments in 2005.]

Ecuador

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(c) and (d) of the Convention. Imprisonment involving compulsory labour for participation in a strike. In comments it has been making for many years, the Committee has requested the Government to take the necessary steps to ensure that *Article 1(c) and (d) of the Convention* is applied. The Committee has referred to Decree No. 105 of 7 June 1967, which allows a prison sentence of from 2 to 5 years to be imposed on anyone fomenting or taking a leading part in a collective work stoppage. The penalty laid down in the Decree for anyone who participates in such a stoppage without fomenting or taking a leading part in it, is correctional imprisonment of from 3 months to 1 year. For the purposes of this provision, there is a work stoppage “when there is collective stoppage of work or the imposition of a lockout except in the cases allowed by the law, the paralyzing of the means of communication and similar anti-social acts”. Prison sentences involve compulsory labour under sections 55 and 66 of the Penal Code.

Article 1(c). Section 65 of the Maritime Police Code forbids crew members from disembarking in a port other than the port of embarkation, except with the agreement of the ship’s master. It further provides that crew members who desert forfeit their pay and belongings to the vessel and, if recaptured, must pay the cost of arrest and be punished in accordance with the naval regulations in force.

The Committee notes that in its reports the Government reiterates that every effort is being made to bring the national legislation into line with the Convention.

In its comments of 2003 on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee likewise noted information from the Government to the effect that a reform of the legislation had been proposed, in which Decree No. 105 of 1967 was to be amended or repealed.

Since the Committee has been commenting on this matter for many years, it hopes that the Government will provide information without delay on the amendment or repeal of Decree No. 105 of 1967 and section 65 of the Maritime Police Code.

Ghana

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

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.

Guatemala

Forced Labour Convention, 1930 (No. 29) (ratification: 1989)

The Committee notes the comments made by the Trade Union Confederation of Guatemala (UNSI TRAGUA), on 24 May and 25 August 2004, and by the Trade Union of workers of Operators of Plants, Wells and Guards of the Municipal Water Company on 19 May 2004. These comments were forwarded to the Government on 13 July and 8 September 2004, so that it may make the comments thereon that it considers appropriate. Comments made by UNSI TRAGUA on 2 and 3 November have been forwarded to the Government and will be examined by the Committee at its next session.

I. Imposition of work to be performed outside normal working hours in the public and private sectors under the menace of a penalty

(a) *Public sector. Justices of the Peace – Judicial bodies.* 1. In its previous observation, the Committee noted that, according to the comments made by UNSI TRAGUA: “In most of the towns of the country, there is only one Justice of the Peace who has to be on duty 24 hours a day, every day of the year. The auxiliary staff of justices of the peace have to cover shifts by rotation as additional work supplementing their ordinary working day. The shifts worked on public holidays, Saturdays and Sundays are compensated with time off, but the shifts worked after the completion of the ordinary working day are not compensated in time off nor are they paid. Failure to perform such shifts constitutes an offence liable to be punished by dismissal.” The Committee discusses this further in paragraph 9 hereof.

Municipal Water Company (EMPAGUA). Municipality of the Capital City of Guatemala. 2. In the case of EMPAGUA workers, they have to work 24 continuous hours, followed by 48 hours of rest. In the view of UNSI TRAGUA, this organization of work avoids the payment of the hours worked outside the ordinary working day and failure to work such hours can lead to dismissal and even penal proceedings as the workers concerned have the status of public officials. With regard to the conditions and limits relating to the performance of overtime hours, the Committee refers to its observation on the Hours of Work (Industry) Convention, 1919 (No. 1). It also refers to paragraphs 123, 142 et seq. and 317 of its 2004 General Survey on the working time Conventions in which it indicates that taking into account the spirit of the Conventions (Nos. 1 and 30) and in the light of the preparatory work, it is appropriate to conclude that the competent authorities cannot have unlimited discretion in regard to the establishment of specific limits to the total number of additional hours, and that such limits must be “reasonable” and they must be prescribed in line with the general goal of the instruments, namely to establish the eight-hour day as a legal standard of hours of work in order to provide protection against undue fatigue. The Committee further indicates that the regulation of hours of work is also necessary from the “human rights” perspective of limiting the maximum length of working hours. In addition, it underlines the importance of consultations with the organization of workers and employers to determine the permanent and temporary exceptions to the principle of the eight-hour day.

National civil police. 3. According to UNSI TRAGUA, officers of the national civil police are often subjected to the total suspension of rest periods and leave, compelled to work in shifts outside the normal working day, without remuneration and under the menace of penalties, including penal sanctions in the case of failure to comply with such instructions. In cases in which a penalty other than dismissal is imposed, in accordance with the rules of the institution, such penalty prevents the officer from gaining promotion.

State employees (category 029). 4. In its previous comments, UNSI TRAGUA also referred to the situation of state employees belonging to the category 029. The classification of state employees is determined by the budgetary category to which they belong. The category 029 was established to allow the recruitment of skilled professional and technical personnel for specific tasks and periods, without such workers obtaining the status of public employees. Contracts are renewed when sufficient funds are allocated and these workers do not have the right to benefits to which permanent employees are entitled. UNSI TRAGUA alleged that workers contracted under this system are not paid for the hours worked in excess of the normal working day, that refusal to work these hours affects the evaluation of their performance and could result in the termination of the contract, with no liability for the State.

5. The Committee notes the Government’s reply according to which “the contracts of persons providing personal services are assigned in financial terms to category 029 of the general budget of the nation and do not constitute labour relations, but rather civil contracts, for which reason these workers do not have the status of workers, but of providers of services. The Government adds that if the persons concerned consider that their legal relationship with the State of Guatemala is a labour relationship, they should initiate legal proceedings to have it recognized as such”. In this regard, the Committee observes that the type of legal relationship, including the absence of a legal relationship, has no impact in relation to the application of the Convention, which affords protection against the imposition of forced labour in any labour relationship, including those which do not arise out of a contract of employment.

(b) *Private sector. Plantations.* 6. In its previous observation, the Committee also noted UNSI TRAGUA’s comments relating to cases of enterprises which set production targets for workers who, in order to earn the minimum wage, have to work in excess of the ordinary hours of the working day, with the additional hours being unpaid. According to the above organization, “such cases are occurring with greater frequency in ranches producing bananas as independent producers for the multinational fruit company in the United States known as *Chiquita*, which is present in the ranches in

the municipality of Morales in the department of Izabal and on the southern coast of Guatemala”. It also refers as an example to the “El Real and El Atlántico ranches in the district of Bogos in the municipality of Morales in the department of Izabal, where the employers refuse to negotiate unless it is first accepted that piecework is not subject to [ordinary] working hours, in violation of the provisions that are in force”. The Committee further noted the reports on the corporate responsibility of Chiquita Brands International indicating that in Guatemala “hourly workers and administrators sometimes work over 60 hours (a week)” and that “workers exceeded the maximum number of overtime hours”.

7. The Government’s report does not contain information on these issues and is confined to indicating that the general labour inspectorate is responsible for authorizing the hiring of rural workers.

8. In its latest comments, UNSITRAGUA alleges that the Ministry of Labour has not carried out, nor even tried to carry out, an investigation through the general labour inspectorate to identify cases and independent producer enterprises in which payment on a piece-work basis, or the imposition of production targets, are being used as mechanisms to extend normal working hours without additional remuneration. In relation to this matter, the Committee refers to its observation on the application of the Labour Inspection (Agriculture) Convention, 1969 (No. 129). It also refers to the General Survey of 1958 on Conventions Nos. 26 and 99 on minimum wage fixing, in paragraph 92 of which it indicated that “where a minimum wage system is based primarily on piece rates, great care needs to be exercised to ensure that, under normal conditions, a worker can earn enough to be able to maintain an adequate standard of living, and that his output, and consequently his earnings, are not unduly limited by conditions independent of his own efforts”.

Compulsory work performed outside normal working hours and the definition of forced labour for the purposes of the Convention. 9. The Committee notes the information on cases of workers who have been dismissed for refusing to work 24 hours continuously for a judicial body and for the Ministry of Public Health and Social Assistance. In its latest comments, UNSITRAGUA refers, by way of illustration, to the case of a worker dismissed for refusing to continue the shift, which was the subject of decisions by the First and Third Chambers of the Labour and Social Insurance Court of Appeal (Case No. 353-2003 and ruling No. 25-2004). The Committee notes that the Government’s report does not contain information on this case and requests it to provide a copy of the court decisions. UNSITRAGUA has also provided information on the case of a worker at Health Centre Four, Zone 7, in Guatemala City, who was dismissed on 4 April 2002. Decision No. 9158 of 8 November 2002, of the Ministry of Public Health and Social Assistance, indicates that he was dismissed for failure to turn up on three complete working days in the same month. The Fifth Chamber of the Labour and Social Insurance Court found that the worker incurred dismissal “by failing to turn up for work on 23 September 2001 when he was due to work 24 hours of the day consecutively, with such failure being equivalent to three full working days.” UNSITRAGUA adds that the Third Chamber of the Labour and Social Insurance Court of Appeal is currently examining the appeal lodged against this decision (Ruling No. 566-2003).

10. For the purposes of the Convention, the expression “forced or compulsory labour” means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered her or himself voluntarily. The Committee notes that, in the cases of employees in the public sector, refusal to perform work in addition to the normal hours of work gives rise to loss of employment. In the private sector, in the cases of enterprises which determine pay by setting performance targets, the obligation to work beyond the normal working hours is based on the need to be able to earn the minimum wage. In all these cases, the common denominator is the imposition of work or a service and the worker has the possibility to “free her or himself” from such imposition only by leaving the job or accepting dismissal as a sanction for refusing to perform such work. The Committee noted in its observation last year on these issues that, in theory, workers have the choice of not working beyond normal working hours, but their choice is not real in practice in view of their need to earn at least the minimum wage or to retain their employment, or for both reasons. The Committee considers that in such cases the work or service is imposed under the threat of a penalty. The Committee hopes that the Government will provide information on the measures taken to ensure compliance with the Convention in this respect.

II. *Practices of recruitment (enganche) and the removal of workers, and other forms of recruiting indigenous labour.* 11. In its previous observation, the Committee noted the report on the mission to Guatemala of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2003/90/Add.2, of 10 February 2003). The Special Rapporteur pointed out that practices persist “whereby indigenous workers are recruited and moved away to work in traditional and new plantations, as well as other ways of recruiting temporary labour at wages falling below the legal minima, without social security coverage or respect for basic rules relating to pay, security of employment or working conditions”. The Government’s report refers to article 4 of the political Constitution, which provides that no one may be subjected to servitude or any other condition, which is prejudicial to their dignity. The Committee hopes that the Government will provide information on the practices of recruitment (*enganche*) and the removal of workers, and other forms of recruiting indigenous labour, and on the measures adopted or envisaged to ensure compliance with the National Constitution and the Convention. The Committee also refers to its previous observations on the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

III. *Trafficking in persons.* 12. In its previous observation, the Committee noted that, according to comments made by the International Confederation of Free Trade Unions (ICFTU), although the Constitution prohibits forced labour, the practice of the trafficking in persons exists, and particularly children, for the purposes of prostitution. The ICFTU alleged that most of the children who are victims of trafficking come from Guatemala’s neighbouring countries and that this

situation is evident in the frontier regions with Mexico and El Salvador. In this respect, the Committee considers that the problem of trafficking of children may be examined more specifically in the context of the Worst Forms of Child Labour Convention, 1999 (No. 182), and refers to its comments under this Convention.

Guyana

Forced Labour Convention, 1930 (No. 29) (ratification: 1966)

The Committee has noted a communication dated 29 October 2003 received from the International Confederation of Free Trade Unions (ICFTU), which contains observations concerning the application of the Convention by Guyana. The ICFTU alleges, in particular, that there is evidence of forced prostitution and reports of child prostitution in cities and remote gold mining areas. The Committee notes that this communication was sent to the Government on 13 January 2004 for any comments it might wish to make on the matters raised therein. The Committee observes that no such comments have been received from the Government so far and hopes that the Government will communicate its comments with its next report, so as to enable the Committee to examine them at its next session.

[The Government is asked to report in detail in 2005.]

Haiti

Forced Labour Convention, 1930 (No. 29) (ratification: 1958)

The Committee notes with regret that no report has been received from the Government for the fifth year in succession. It must therefore repeat its previous observation on the following matters:

1. The Committee refers to its previous comments in regard to the employment of children as domestic servants, known as “restavek”. It had noted the Government’s commitment to communicate statistics in respect of the activities of the Directorate of the Social Welfare and Research Institution (IBESR), the municipal authorities and the labour courts, and to conduct an exhaustive study into general working conditions.

With respect to the ILO’s International Programme on the Elimination of Child Labour (IPEC) project established in Haiti, in order to assist the Government in combating effectively child labour in general, and the “restavek” system in particular, the Committee had expressed the hope that the Government would send a copy of the national plan of action to fight child domestic work which was to be adopted in the framework of this project, as well as any relevant information on developments noted, results obtained, statistical data established and legislative or regulatory measures taken.

Furthermore, the Committee had expressed the hope that the Government would specify the amount of the fines that can be imposed under the provisions of Chapter IX of the Labour Code, as amended, and that it would provide any indications it deemed useful concerning the issue of whether these amounts constitute, under *Article 25 of the Convention*, “really adequate” penalties.

In addition, the Committee hoped that the Government would supply detailed information on the practical application of Chapter IX of the Labour Code, including statistics on the number of permits issued by the IBESR and by the municipal administrations with regard to taking children into domestic service, on the visits and inquiries made in households where there are children in service, on breaches to the provisions of Chapter IX noted, on the reports prepared and inquiries addressed to the labour court by the IBESR, as well as the fines imposed and damages awarded in application of these provisions. The previous concerns of the Committee have been further reinforced by the following additional information transmitted to it.

2. The Committee noted the communication from the International Confederation of Free Trade Unions (ICFTU) dated 24 May 2002, and transmitted to the Government on 22 July 2002, in which it submitted comments on the application of the Convention in Haiti. It noted that, according to the ICFTU, child forced domestic labour is a widespread and very serious problem. Domestic labour by “restavek” children is very common in Haiti, and generally constitutes forced labour or slavery. “Restavek” involves the children of poor, primarily rural, families being sent to live with more affluent families and to perform domestic labour in exchange for room and board. In many cases the poor family receives income from the recipient family, effectively selling their children into slavery. Some estimates suggest nearly 300,000 “restavek” children in Haiti. Very few of the “restavek” children receive an education, only 20 per cent attend school at all, and less than one per cent reach secondary school. The Committee noted that the legal minimum age for domestic service is 12 (section 341 of the Labour Code), but, according to the ICFTU, some children start as young as 4 years of age. Eighty-five per cent are girls, and nearly a quarter of female “restavek” are raped by their owners, often resulting in unwanted pregnancies. The Committee noted that section 350 of the Labour Code requires that domestic workers of 15 years of age and older receive a salary at least equivalent to that of a hired domestic worker, but, according to the ICFTU, this serves to have families throw “restavek” out of the house before they reach 15, to be replaced by younger children. The Committee further noted the information contained in the ICFTU’s communication, that there are also reports of the trafficking of Haitians to work on sugar cane plantations in the Dominican Republic, although it is not clear to what extent the existing employment of Haitians in these plantations constitutes trafficking.

3. The Committee also noted the communication from the Coordination Syndicale Haïtienne (CSH) dated 26 August 2002, received at the San José Office, and transmitted to the Government on 18 October 2002. It notes that, according to the CSH, the IBESR as well as the local administration, who are responsible for dealing with the situation of child domestic workers, have failed in their duty. The great majority of these children stay out of the State’s control. Children employed in domestic work are treated like absolute slaves, the majority being illiterate, poorly fed, ill-treated, forced to do works which are too difficult for their age. Poorly dressed, they wake up early and stay up late. Their only way out of their situation is to abandon the house. The Committee notes that the CSH also addresses the problem of human trafficking, which takes place secretly between Haitian and Dominican traffickers in the border zone of Belladère.

The Committee observes that, even though not all work done by children in domestic services amounts to forced labour, it is essential to examine the conditions in which such work is carried out and to measure them against the definition of forced labour, particularly as concerns the validity of consent given to performing such work, the young age of the children involved and the possibility of leaving such employment, in order to determine whether the situation falls within the scope of the Convention.

The Committee urges the Government to take the necessary action without delay and to supply the long-awaited information respecting the measures taken to ensure the effective implementation of the existing repressive provisions in view of putting an end to the situation of the “restavek” children submitted to conditions of forced labour.

The Committee also requests the Government to respond to the observations made by the workers’ organizations.

The Committee hopes that the Government will make every effort to take the necessary action.

India

Forced Labour Convention, 1930 (No. 29) (ratification: 1954)

The Committee has noted the Government’s reports received in 2003 and 2004, which contain replies to its earlier comments, as well as a discussion which took place at the Conference Committee on the Application of Standards during the 91st Session of the International Labour Conference (June 2003). The Committee has also noted a communication dated 20 August 2003 received from the International Confederation of Free Trade Unions (ICFTU), which contains observations concerning the application of the Convention by India, as well as the Government’s reply to these observations received in October 2004.

Bonded labour

1. The Committee has previously referred on many occasions to the urgent need to compile accurate statistics of the number of persons who continue to suffer under bonded labour, using a valid statistical methodology, with a view to identification and release of bonded labourers. This issue is again the subject of each of the communications and discussion referred to in paragraph 1 hereof.

Government report 2003

2. The Committee has noted the Government’s report and in particular the following matters which the Government has emphasized:

- that it has a strong will and intent to eradicate bonded labour and has the necessary machinery and infrastructure to reach down to the grassroots to do so;
- that, since the enactment of the Bonded Labour System (Abolition) Act, 1976, and up to 31 March 2003, 282,970 bonded labourers had been identified and 262,952 had been rehabilitated (as compared to the data provided by the Government in its 2001 report of 280,411 bonded labourers identified and 251,569 rehabilitated up to 31 March 2000);
- that the work done in the field of identification and rehabilitation of bonded labourers represents significant progress and over a period, the incidence of bonded labour system is declining;
- that central assistance has been provided by the Government to the various state governments for conducting surveys on bonded labour in 120 districts;
- that the figures quoted by the non-governmental agencies regarding incidence of bonded labour are not based on facts, as no appropriate statistical tools have been adopted for collecting the primary data.

ICFTU report

3. The ICFTU in its 2003 report referred to above, adverted to a number of matters including the following:

- reiterated that the number of people identified by the Government since 1976 does not represent the total number of bonded labourers in the country. It referred to the survey conducted by the Ghandi Peace Foundation and the National Labour Institute (NLI) in 1978-79 (“the Ghandi Peace Foundation Survey”), which cited a number of 2.6 million bonded labourers, which number has been previously rejected by the Government on the grounds that the methodology of the survey was not scientific;
- pointed out that even if an allowance was made for a significant overestimation, such as 10 per cent, the figures would still leave over 2 million bonded labourers, being considerably larger than the Government had so far identified;
- indicated that the Ghandi Peace Foundation Survey only deals with bonded labour in agriculture and had made no estimate of the number of bonded labourers in other industries like mining, brick kilns, silk and cotton production and *bidi* production which is also likely to affect millions of people across India.

Conference Committee June 2003

4. The Conference Committee in the course of its discussions, urged the Government once again to adopt measures to reinforce the statistical system and to ensure the full implementation of the Convention.

Government report 2004 and response

5. The Committee has noted that in its reply to the ICFTU the Government made the following comments:

- it denies the existence of bonded child labour in the silk industry and in cotton production in India and expresses the view that assistance provided by the children to their families in *bidi* production cannot be considered as bonded/forced labour;
- it admits that some incidences of bonded/forced labour in brick kilns, quarries and mines have been reported, but such complaints are invariably sent to the concerned state government for investigation through vigilance committees, so that bonded labourers on identification are released and rehabilitated;
- it indicates that the state government concerned is being advised by the Government of India to conduct periodic surveys for identification of bonded labourers;
- it expresses the Government's view that in India, which is a vast country with federal structure, having a wide range of religious, linguistic and cultural diversities, a centralized survey for identification of bonded labour may not be feasible or practicable. Hence, the central Government has been directing the state governments to conduct the surveys for identification of bonded labour at the local level with the help of their field agencies and also by taking the services of local NGOs and research institutions;
- it again refers to the modification in May 2000 of the Centrally Sponsored Scheme for Rehabilitation of Bonded Labourers in order to provide funds to the state governments to conduct surveys on bonded labour in all sensitive districts on a regular basis once every three years.

6. While noting with interest the above information on the progress achieved, the Committee reiterates its hope that a statistical survey on bonded labour throughout the country will at last be prepared, using also the results obtained through measures taken on the state and district levels referred to above. The Committee requests the Government to communicate the surveys' findings with its next report and also provide information on the activities of the National Human Rights Commission, which has been overseeing the progress made by the state governments in identification and rehabilitation of bonded labour.

Vigilance committees

7. The Committee has previously requested information on the functioning of vigilance committees, which the Bonded Labour System (Abolition) Act, 1976, requires to be established to deal with the problem.

8. In relation to the operation of the vigilance committees, this Committee has noted the following:

- the Government indicated in its 2001 report that such committees existed in 29 states and union territories; they were constituted at the district and subdivisional levels and the meetings were held regularly;
- the Government's response to the 2002 comments by the ICFTU (which expressed doubt as to the satisfactory functioning of these committees), that during the last six months of 2002, 221 meetings of these vigilance committees have been held and that no case of bondage had been reported;
- the Government's response to the 2003 comments by the ICFTU, that, for example, in the State of Punjab, there are 84 vigilance committees (17 at the district level and 67 at subdivisional level), and their meetings have been held regularly;
- that the ILO is implementing a subregional project entitled "Preventing and Eliminating Bonded Labour in South Asia" (PEBLISA), which operates in four countries of the region, including India, and addresses the issues of release and rehabilitation of bonded labourers, in particular in Tamil Nadu, through capacity building of vigilance committees at panchayat and district levels.

9. In the light of the above matters, the Committee hopes that the Government will continue to provide information on the practical functioning of vigilance committees, as well as information on measures taken or envisaged to increase their efficiency.

Law enforcement

10. In its earlier comments, the Committee referred to the law enforcement problem in connection with the eradication of bonded labour and sought information on the number of prosecutions, convictions and acquittals in various states under the Bonded Labour System (Abolition) Act, 1976, and also questioned the adequacy of the penalties imposed. The Committee previously observed that, in the light of *Article 25 of the Convention*, the number of prosecutions launched under the Act did not appear to be adequate when compared to the number of identified and released bonded labourers reported by the Government.

11. On this topic, the Committee has noted the following:

- that, in the communication received in 2003, the ICFTU refers to comments by Anti-Slavery International, which expressed concern that "in some states the district magistrates are not functioning effectively in terms of releasing bonded labourers or ensuring the prosecution of those responsible for using bonded labourers";
- the Government indicated in its 2003 and 2004 reports that exact information on the number of prosecutions launched for offences relating to forced/bonded labour during the period under review is not available, but the state governments have been requested to furnish the exact details in this regard, so that the authentic information is maintained;

- the Government, in its reply to the 2003 observations by the ICFTU, received in October 2004, stated that 4,859 cases of prosecutions under the bonded labour system have been reported so far (as compared to 4,743 cases of prosecutions reported by the Government in December 2001). It expressed the view that one of the major factors for the lesser number of prosecution and conviction cases, is the Indian social and anthropological system and the psyche of the people living in the rural and informal sector of the country where an “informal system of equilibrium” is in place to cater to their needs; which also includes the system of grievances and disputes resolution through conciliation.

12. The Committee hopes that the Government will continue to provide, in its future reports, full information on the number of prosecutions, as well as on the number of convictions and on the penalties imposed, including sample copies of relevant court decisions.

Child labour

13. The Committee previously raised a number of questions concerning efforts to eliminate child labour falling under the Convention (i.e. in conditions which are sufficiently hazardous or arduous that the work concerned cannot be counted as voluntary). The Committee has noted the following matters:

- the Government’s indications in its 2001 and 2003 reports that census data for 1991 had estimated the number of working children in the country as 11.28 million;
- that a survey conducted by the National Sample Survey Organization (NSSO) in 1999-2000 indicated the number of working children in the country at around 10.40 million, but that the results of the census held in 2001 were still awaited;
- the ICFTU, in its communication received in June 2002, estimates that the numbers of working children in India vary between 22 million and 50 million, and that the efforts to reduce child labour have yet to have much impact and must be considered inadequate to deal with the scale of the problem, although some progress has been made;
- the information submitted by the Government representative to the Conference Committee in June 2003 concerning the efforts made by the Government to address this issue;
- the Government’s reply to the Committee’s previous observation received in August 2003;
- the information concerning the enforcement of the Child Labour (Prohibition and Regulation) Act, 1986, which provides for prosecution and punishment of employers found employing children in occupations and processes prohibited under the Act;
- the Government’s indications in its 2003 report that inspections conducted by the enforcement agencies during the last five years identified 21,246 violations, and that prosecutions were launched in 12,348 cases resulting in 6,305 convictions;
- the implementation of the national child labour projects (the number of which was increased to 100 in 1999), which the Government indicates are operational for the rehabilitation of 210,000 children withdrawn from work through 4,002 special schools, and about 170,000 children have so far been mainstreamed from the special schools set up under the projects into the formal education system;
- the Government’s indication in its 2003 report that about 164 projects have been operational under the International Programme for the Elimination of Child Labour (IPEC) in various child labour endemic districts, which cover about 110,000 children;
- that a National Conference on Child Labour was held on 22 April 2003 (with the participation of labour secretaries and labour commissioners of the states, officials of central ministries, NGOs and international organizations), paying special attention to the elimination of child labour from hazardous occupations and to the strengthening of the law enforcement machinery;
- the Concluding Observations of the United Nations Committee on the Rights of the Child (CRC) following its examination of the report of the Government of India on the Convention on the Rights of the Child (UN document CRC/C/15/Add.228, 26 February 2004), which noted that it was extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded labourers, especially in the informal sector, in household enterprises, as domestic servants and in agriculture. The Committee is further very concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law. Further, that the Committee on the Rights of the Child also made recommendations that the Child Labour Act, 1986, should be amended so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children; and that India should ratify ILO Conventions Nos. 138 and 182.

14. While noting with interest the Government’s commitment to eliminate child labour expressed both in its reports as well in the statement by the Government representative during the 2003 Conference Committee discussion, together with the Government’s efforts directed to that end, the Committee:

- hopes that the Government will redouble its efforts in this field. This is particularly important with regard to the identification of working children and strengthening the law enforcement machinery, in order to eradicate exploitation of children, especially in hazardous occupations;
- requests the Government to supply the results of the latest census on the number of working children in the country and in addition asks that the Government address the issue of differing statistics in its next report;
- notes from the Government's 2003 reports, that the examination of Conventions Nos. 138 and 182 with a view to their ratification, is under active consideration by the Government in consultation with the social partners, state governments and other relevant bodies, and that a meeting of the Tripartite Committee to examine the possibility of the ratification was held in December 2002, and looks forward to receiving further information on this subject.

Prostitution and sexual exploitation

15. In its earlier comments, the Committee welcomed the adoption of a National Plan of Action to combat trafficking and commercial sexual exploitation of women and children, among other positive measures taken by the Government, as well as the Government's intention to review the existing legal framework including the Immoral Trafficking (Prevention) Act, the Indian Penal Code, the Criminal Procedure Code and the Evidence Act, with a view to making the punishment more stringent for traffickers but at the same time, more victim-friendly. However, the Committee noted from the report of the Committee on prostitution, child prostitutes and children of prostitutes (1998) that there were no reliable estimates of the extent and magnitude of trafficking and commercial sexual exploitation in India, and expressed the hope that measures will be taken to compile reliable statistics, including that concerning child prostitutes, which would contribute to the process of their rehabilitation.

16. The Committee has noted the Government's indications in its 2003 report of a number of measures being taken, specifically:

- a survey on trafficking has been initiated within the country to investigate the cause and behavioural aspects of all agents in trafficking, including investigation of the magnitude of the problem and estimating the number of persons involved and trafficking routes;
- another survey has also been commissioned to estimate the extent and magnitude of the problem of prostitution in the country;
- the statistical information supplied by the Government concerning the rescue and rehabilitation of trafficked victims in the National Capital Territory of Delhi and other states where the problem exists (Andhra Pradesh, Mumbai, Kolkata, Karnataka, Tamil Nadu, Rajasthan, Bihar);
- the nine innovative model projects under Grant-in-Aid at an approximate cost of Rs.4.2 million that have been sanctioned during the financial year 2002-03 for combating trafficking and rehabilitation of rescued victims, a number of support services (such as short-stay homes, crèches and family counselling centres) have been developed and awareness-raising programmes for women have been undertaken;
- as to the review of legislation, the Government states that consultations have been initiated, pursuant to the recommendations of the Law Commission of India in its 172nd report, with regard to proposed changes, in order to make the laws more victim-friendly and to increase the punishment imposed on perpetrators.

17. The Committee notes the above information with interest and hopes that the Government will continue to provide, in its future reports, information on the action taken to combat trafficking and commercial sexual exploitation of women and children, pursuant to the National Plan of Action referred to above, and in particular, as regards the revision and development of the legislative framework and implementation of rehabilitation projects.

Indonesia

Forced Labour Convention, 1930 (No. 29) (ratification: 1950)

With reference to its previous observation, the Committee notes the information provided by the Government in March 2004 in reply to the comments made by the International Confederation of Free Trade Unions (ICFTU) concerning the exploitation of Indonesian migrant workers. It also notes the information provided by the Government during the discussion on the application of the Convention in the Committee on the Application of Standards of the International Labour Conference in June 2004, the Government's report received in August 2004 and the new comments made by the ICFTU in August 2004, a copy of which was forwarded to Government on 2 September 2004.

1. *Forced labour of children on fishing platforms.* In its previous comments, the Committee requested the Government to provide information on the action taken to eradicate work by children on fishing platforms (*jermals*) and on the results achieved in practice through this action. Noting that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and provided reports on its application, the Committee requests it to refer to the comments that it is making on the application of that Convention. Indeed, as Convention No. 182 provides in Article 3(a) 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 considers that the

problem of the forced labour of children on fishing platforms may be examined more specifically in the context of Convention No. 182.

2. *Trafficking of persons.* In its previous comments, the Committee referred to the observations made by the ICFTU indicating that the trafficking of persons, including for the purpose of forced prostitution, is widespread in Indonesia and that many migrants should be considered as victims of trafficking, with as many as 20 per cent of the 5 million Indonesian migrant workers being victims of trafficking. It noted in this respect the measures adopted by the Government to combat this phenomenon, including: the formulation of Bills on trafficking-related crimes; the establishment of 200 special centres and 19 integrated service centres to combat the trafficking of persons; the action taken by the police to prevent and combat the phenomenon; and the adoption on 30 December 2002 of the National Action Plan for Abolishing Woman and Child Trafficking. The Committee requested the Government to provide information on the adoption of the Bills for the prevention and repression of the trafficking of persons, the measures taken in the context of the National Action Plan for Abolishing Woman and Child Trafficking, the results obtained in combating the trafficking of persons in general (as women and children are the only categories covered by the Action Plan) and any legal proceedings initiated with a view to penalizing those responsible for trafficking.

During the discussion of the application of the Convention by Indonesia in the Conference Committee on the Application of Standards and in its report submitted subsequently, the Government has provided certain information on this subject:

- the implementation of the National Plan of Action for Human Rights, 2004-09, which includes a programme to improve the integrated efforts for child protection from trafficking and sexual exploitation;
- the reinforcement of the national police so that it is better able to deal with the crime of the trafficking of women and children;
- the organization by the Ministry of Manpower and Transmigration of workshops to raise the awareness and train labour inspectors from various provinces and officials responsible for the enforcement of labour legislation so that they can address matters related to trafficking at the workplace with a view to its prevention;
- the launching of a regional initiative in cooperation with the Government of Australia and the hosting of the Regional Ministerial Conference on People Smuggling and Trafficking in Persons in 2002 and 2003 with a view to enhancing regional cooperation and establishing a regional mechanism to combat trafficking in persons;
- the continued updating of data on cases of trafficking, which is essential for the formulation of effective policies and programmes in this field;
- the continuation of the process of harmonizing the legislation, particularly the Criminal Code and the law on immigration, with a view to including provisions on the trafficking in persons, and the finalization of the draft law on the eradication of people trading and trafficking in persons; and
- in the context of collaboration with the ILO, participation in a project designed to address in particular the problems encountered by Indonesian domestic workers, including trafficking (the project on “Mobilizing Action to Protect Domestic Workers from Forced Labour and Trafficking”).

The Committee notes all of this information and observes with interest that the Government, which is aware of the importance of the problem of trafficking in persons, is continuing to adopt awareness-raising, prevention and repression measures, particularly through the reinforcement of the capacities of the police and labour inspectors, regional cooperation and ILO technical assistance. Nevertheless, the Committee would be grateful if the Government would provide more concrete and detailed information, with particular reference to the following points:

- assessing the scope and nature of the phenomenon of trafficking: the Committee hopes that the collection of data, to which the Government refers in its report, will mean that information becomes available on the number of persons concerned (men, women, children), the different forms of trafficking (national and transnational), the categories of workers concerned, etc., which will assist the Government in targeting the measures to be taken and assessing their effectiveness;
- the penalties imposed: the Committee notes that the Government has not provided any information on the judicial proceedings initiated against those responsible for trafficking, nor the penalties imposed. In this respect, it notes that the draft law on trafficking in persons, to which the Government was already referring in 2003, has still not been adopted. The Government should take all the necessary measures rapidly to ensure that the legislation includes a full text defining trafficking in persons, providing for effective and dissuasive penal sanctions and containing provisions on the protection of victims and their compensation. The adoption of a text explicitly defining and penalizing trafficking would make it possible to resolve the shortcomings of the legislation in this field and would constitute an important stage in combating the trafficking in persons. In the meantime, the Committee notes that courts are nevertheless able to judge those responsible for trafficking based on other legal provisions, such as section 297 of the Penal Code, under which those responsible for the trafficking of women and boys are liable to a sentence of imprisonment of a maximum of six years, and the provisions of the Penal Code regarding sexual exploitation, as well as by penalizing failure to comply with the labour legislation (hours of work, working conditions, etc.). As *Article 25 of the Convention* provides that the illegal exaction of forced or compulsory labour shall be punishable by

penalties that are really adequate, the Committee once again requests the Government to provide information on the complaints lodged for trafficking, the judicial proceedings initiated against the perpetrators, the penalties imposed, with copies of the relevant decisions, and the protection afforded to the victims;

- the practical results achieved through the action carried out in the context of the National Action Plan for Abolishing Woman and Child Trafficking, adopted in December 2002. In this respect, the Committee draws the Government's attention to the fact that the measures that it has announced do not appear to cover male victims.

3. *Exploitation of migrant workers.* In its previous comments, the Committee requested the Government to provide full information in reply to the comments made by the ICFTU on the exploitation of migrant workers. The requirement for migrants to go through recruitment agencies and the absence of legislation laying down the rights of Indonesian migrant workers and regulating the labour migration process make these workers vulnerable to exploitation. According to the ICFTU, unskilled Indonesians wishing to work abroad have to go through recruitment agencies, which charge them extortionate processing and training fees. Migrant workers are thus severely indebted even before they start working abroad. They are legally required to sign contracts with the recruitment agencies and have little power to negotiate their terms. Some contracts are even drafted in a foreign language and applicants are forced to lie about their age, address and even their identity. These workers end up accepting whatever work they are offered, even if it is different from the work envisaged in the contract. They are therefore in a situation of vulnerability to exploitation and forced labour.

According to the ICFTU, prospective migrant workers are exploited before, during and after their period abroad. Agencies require prospective migrant workers to live in training camps for up to 14 months, where they may be forced to work for the recruitment agency staff. Furthermore, conditions in these centres are extremely difficult and certain workers do not always benefit from freedom of movement. The agencies generate substantial profits as the exploitation of migrant workers continues after their departure for host countries. Once they are abroad, migrant workers have to pay off agency fees, which are usually higher than the legal maximum set by the Government. Depending on the country to which they emigrate, the agency is paid a sum corresponding to a number of months salary, which varies according to the country. In these circumstances, it is difficult for the workers, who are mistreated and forced to work longer hours than the normal working day under harsh conditions, to leave because of the contracts they have signed and the money owed to recruitment agencies. These workers encounter difficulties in obtaining information and assistance from their consular authorities, particularly on any redress mechanisms. Finally, migrant workers also have to pay agency fees to renew their contracts, which are usually higher than the legal maximum. Some agencies, by using coercion and deception for the recruitment and transportation of migrant workers abroad, are engaged in the trafficking of persons and should be punished accordingly. In its communication received in August 2004, the ICFTU reiterates these allegations in full.

In reply, the Government indicates that the recruitment of Indonesian migrant workers comes under its responsibility. It is regulated by Decree No. 104A/MEN/2002 and is carried out through public and private recruitment agencies, of which there are currently around 400. Private recruitment agencies have to obtain an official licence, which is only issued after verification of certain criteria. The Government acknowledges that abuses may occur throughout the recruitment process of migrant workers. It therefore supervises the activities of recruitment agencies and sanctions those which do not comply with the regulations. During the period 2002-03, a total of 61 agencies were sanctioned, 53 licences were withdrawn and legal proceedings were initiated against eight agencies. In cooperation with the police, the Ministry of Manpower and Transmigration raided several training and accommodation centres. The Government even suspended the sending of Indonesian workers to the Asian-Pacific area between February and August 2003.

The Government also provides information on the various stages of the recruitment process to which the ICFTU referred in its comments:

- agencies are under the obligation, under penalty of sanctions, to inform workers of the nature of the job proposed, the conditions of work and constraints relating to the destination country so that they can decide freely whether to agree to leave and sign the employment contract. If the job does not correspond to the one envisaged in the contract, the worker has to refer the matter to the competent government institution so that action can be taken against the agency or employer. Agencies have already been sanctioned in this respect (withdrawal of their licences, the obligation to compensate the worker) and the Government keeps a blacklist of those in violation;
- the Government establishes the cost of the placement of migrant workers on the basis of various factors, such as supply and demand, particularly with a view to preventing the worker being exploited by the agency. In this respect, the placement agreement concluded between the agency and the worker has to establish the rights and obligations of both parties, and particularly the cost of placement borne by the worker and the payment system. The Government verifies these agreements to prevent excessive costs being borne by workers;
- the preparation of workers in training centres and the living conditions in dormitories are duly regulated. The Government adds that it has not received any complaint from workers who, having completed their training, are placed in households while awaiting the document authorizing their departure abroad;
- the obligation to return to Indonesia upon completion of the contract is intended to allow workers to socialize with their families. Such a return is sometimes made compulsory by the host country. This obligation also affords workers the opportunity to extend their working contracts by themselves without going through the agency, thereby avoiding exploitation.

Finally, the Government indicates that it is aware of the lack of bargaining power of migrant workers and for this reason is seeking to improve their conditions through the conclusion of protocol agreements with host countries. Furthermore, a Bill on migrant workers' placement and protection is under preparation and is intended to: raise the minimum age for working abroad; increase the role of manpower offices in recruitment processes and placement at the regional level; limit the validity of the licences granted to agencies; limit the placement costs borne by workers; and increase sanctions for placement agencies which infringe the law.

The Committee notes all of this information. It observes that the Government is aware of the abuses which may occur during the course of the process of the placement of Indonesian migrant workers and is endeavouring to take measures to combat such abuses and to penalize those responsible for them. Whilst welcoming these government initiatives, the Committee would be grateful if the Government would continue to provide information, particularly on:

- the nature of the supervision carried out over the activities of placement agencies on the national territory, particularly with regard to the verification of placement agreements and employment contracts and compliance with their terms, the cost of placement actually borne by the worker, the training provided, the living conditions in training centres and dormitories and waiting periods;
- the means available to the Ministry of Manpower and Transmigration to carry out these controls;
- the nature of the infringements reported, the penalties imposed and any court decisions with copies of the decisions;
- the facilities provided (assistance, redress mechanisms, etc.) to Indonesian migrant workers who are exploited in host countries and the protocol agreements signed with these countries, and to provide copies thereof.

Finally, the Committee hopes that the Bill on migrant workers' placement and protection will be adopted in the very near future. It requests the Government to provide information on the comments made on this subject by the Indonesian Trade Union Congress, which were forwarded to the Government on 15 November 2004.

Jamaica

Forced Labour Convention, 1930 (No. 29) (ratification: 1962)

Article 1(1) and Article 2(1) and (2)(c), of the Convention. 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 Government indicated in its 2001 report 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 noted the information concerning the functioning of the Correctional Services Production Company (COSPROD), supplied by the Government in 2001 and 2002, 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 the report that the Department of Correctional Services under the Ministry of National Security and Justice contemplates no change or deviation in its governing rules or general practices, and that there is no consideration being given to reintroducing forced labour. The Government indicates that inmates who work on farms do so willingly and without coercion.

The Committee reiterates its hope, referring also to the explanations provided in paragraphs 97-101 of its 1979 General Survey on the abolition of forced labour, that on the occasion of a future amendment of the Correctional Institution (Adult Correction Centre) Rules, section 155(2) will be amended so as to ensure that no prisoners may work for private individuals, companies, etc., except where they do so under the conditions of a freely accepted employment relationship, with their formal consent and subject to guarantees regarding the payment of normal wages and social security, etc., 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 adopted under 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. For a number of years, the Committee has commented on certain provisions of the 1894 Merchant Shipping Act which provided for the punishment of various disciplinary offences with imprisonment (involving an obligation to perform labour under the Prisons Law) and for the forcible conveyance of seafarers on board ship to perform their duties.

The Committee previously noted that the punishment of disciplinary offences with imprisonment (involving an obligation to perform labour) is still provided for in sections 178(1)(b), (c) and (e) and 179(a) and (b) of the new Jamaica Shipping Act, 1998, which came into operation on 2 January 1999. While the new Act contains no provisions concerning the forcible conveyance of seafarers on board ship, the offences of desertion and absence without leave are still punishable

with imprisonment (involving an obligation to work) (section 179). Similarly, penalties of imprisonment are provided for in section 178(1)(b), (c) and (e), inter alia, for wilful disobedience or neglect of duty or combining with any of the crews to impede the progress of the voyage, and by virtue of section 178(2) an exemption from liability under subsection (1) 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.

The Committee pointed out, referring also to paragraphs 117-119 and 125 of its 1979 General Survey on the abolition of forced labour, that provisions under which penalties of imprisonment (involving an obligation to work) 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 new Shipping Act) have no bearing on the Convention.

The Government indicates in its report that the Maritime Authority has 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.

The Committee notes this indication with interest and trusts that the necessary measures will at last be taken to bring the legislation into conformity with the Convention, e.g. by amending or repealing the abovementioned provisions of the Shipping Act, 1998, and that the Government will soon report the progress made in this regard.

Japan

Forced Labour Convention, 1930 (No. 29) (ratification: 1932)

1. The Committee has discussed on a number of occasions the application of this Convention to sexual slavery (so-called "comfort women") and industrial slavery, both during the Second World War.

2. The issues have been examined at length in earlier comments by the Committee, and there is no need to repeat them again. The Committee noted in 2001, after a very detailed examination of the situation, that: "it has no mandate to rule on the legal effect of bilateral and multilateral international treaties and is therefore unable and does not finally pronounce on that legal issue. It has previously indicated its concerns about the ageing of the victims of the Government's earlier breach of the Convention and the failure of the Government to meet their expectations in spite of similarly publicly expressed views by other reputable bodies and persons on the issue. The Committee repeats its hope that the Government will take measures in the future to respond to the claims of these victims. The Committee asks to be kept informed as to any relevant court decisions, legislation or government action". This statement has been repeated in later observations in 2002 and 2003.

3. *Additional comments received.* In the Committee's previous observation, in 2003, it requested the Government to reply to observations received from workers' organizations under article 23 of the Constitution, as follows:

- comments made by the Korean Confederation of Trade Unions (KTCU) and the Federation of Korean Trade Unions (FKTU), received on 8 September 2003;
- comments made by the All Japan Shipbuilding and Engineering Union, received on 29 August 2003;
- comments made by the Japanese Trade Union Confederation (JTUC-RENGO), received on 30 September 2003.

4. Since the Committee's last session, three additional sets of observations have been submitted by the All Japan Shipbuilding and Engineering Union, which were communicated to the Government between June and September 2004. A 347-page observation (which included many historical documents) was also received from the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU), which was communicated to the Government on 2 September 2004. The Government communicated its comments on all these in a 794-page observation (much of which consisted of the text of Court decisions) on 8 October 2004. Additional information from the All Japan Shipbuilding and Engineering Union was also received by the Office only very shortly before its session began, and it has been sent to the Government on 10 November 2004.

5. Save the most recent information forwarded to the Government on 10 November, the Government has replied to these observations in its communication of 8 October 2004 with minor amendments indicated by letter of 20 October 2004. The Committee notes that the Government has once again stated that the Committee should desist from further examination of this case, in particular since in 2004 the Conference Committee declined to take up the Committee's comments in a tripartite discussion.

6. The Government referred to the observation received from JTUC-RENGO on 30 September 2003 which stated that there is no violation of the Convention in current legislation or practice in Japan, and that it is beyond the mandate of the ILO to examine a case in which there has been no violation for 55 years. In this respect, the Committee has earlier indicated the basis on which it has kept the situation under review. In addition, the Government in its response referred, as it has done previously, to the Asian Women's Fund (AWF), which is supported by the Government. The AWF is comprised of donations from private Japanese corporations and citizens in a public-private partnership with the Government. The Government has again emphasized its financial contribution to the AWF which consists of bearing administrative costs and sending the Prime Minister's letter of apology to women victims. The Government also referred

to the payment of atonement money from the AWF to 285 former comfort women in the Philippines, the Republic of Korea and Taiwan.

7. *Relevant court decisions.* The Government's response and observations from workers' organizations have detailed a number of lawsuits filed by victims of sexual or industrial slavery, seeking compensation for damages against the Government, the corporations concerned, or both. This information is provided in response to the Committee having asked to be kept informed of relevant court decisions. The Government has informed the Committee that in relation to women's claims for compensation for damages against the Government, court rulings in the Japanese Supreme Court, High Court and district court, as well as in the United States district court in cases which have so far been completed through the relevant processes, have resulted in their claims against the Government being dismissed. The Committee also notes that, at the time of the Government's report, some cases were still awaiting finalization of appeal processes. The Committee further understands that, in at least one case, one of the companies sued has decided to offer a monetary settlement to wartime victims of forced labour, at the suggestion of the court, before the appeals process was concluded.

8. The Committee notes this information, and asks the Government to continue to inform it in future reports of the results of those cases still not finally resolved, and of any others that may be filed.

Kenya

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)

In its earlier comments, the Committee referred to various 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 imprisonment (involving an obligation to perform 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 Government reiterates in its report its earlier commitment to see to it that the national legislation is brought into full conformity with the Convention and indicates that serious discussions are still under way between the Office of the President, the Attorney General's Chambers, the Law Reform Commission and the Ministry of Labour regarding the proposals to be introduced for that purpose. The Government also states that a full report on the current measures being taken in order to bring national law and practice into conformity with the Convention will soon be forwarded to the ILO.

The Committee expresses the firm hope that the necessary measures will be taken in the near future to bring the abovementioned provisions 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)

The Committee has noted the information provided by the Government in reply to its earlier comments.

1. *Articles 1(1) and 2(1) of the Convention. Domestic workers and similar categories.* In its earlier comments, the Committee expressed concern about the conditions under which domestic servants can freely leave their employment and their possibility to have recourse to courts if necessary.

The Committee previously noted that the Labour Code currently in force excludes domestic workers but that, according to the Government, the new draft Labour Code would cover this category of workers and, pursuant to 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 the Government's indication in its 2003 report that the new Labour Code has not yet been adopted and that no ministerial order on the subject has been issued, the Committee expresses the firm hope that the new Labour Code will provide adequate protection for these 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, as well as any ministerial order or any other legislative text specifying the rules governing the relationship between domestic servants and their employers.

Pending the adoption of these provisions, the Committee asks the Government to continue to provide information on any judicial procedures relating to the freedom of domestic workers to terminate employment.

2. *Article 25.* In its earlier comments, the Committee 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 has noted that the Government referred in its reports to various penal provisions (such as sections 49 and 57 of Act No. 31 of 1970 on the amendment of the Penal Code, or section 121 of the Penal Code) prohibiting public officials or employees from forcing 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.

While noting these indications, the Committee wishes to point out once again that the abovementioned provisions do not appear to be sufficient to give effect to this Article 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 hopes that the Government will take the necessary measures (e.g. through the adoption of the new Labour Code) in order to give full effect to this Article of the Convention. Pending the adoption of such measures, it asks the Government to provide information on the application of these penal provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.

3. *Measures to prevent, suppress and punish trafficking in persons for the purpose of exploitation.* The Committee previously noted the Government’s statement in its reply to the Committee’s 2000 general observation on the subject that the victims of forced labour have the right to refer 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 forced labour to stay in the country at least for the duration of court proceedings.

Having noted from the Government’s report that no such measures have been taken, the Committee asks the Government to indicate any other measures taken or contemplated to encourage the victims to turn to the authorities, such as, for example, protection of victims willing to testify from reprisals by the exploiters. Please indicate whether there is an intention to introduce penal provisions aiming specifically at the punishment of trafficking in persons for the purpose of exploitation.

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

Liberia

Forced Labour Convention, 1930 (No. 29) (ratification: 1931)

The Committee notes with regret that no report has been received from the Government for the fifth year in succession. It must therefore repeat its previous observation on the following matters:

1. In its previous observation, the Committee referred to a communication of the International Confederation of Free Trade Unions, dated 22 October 1998, by which a report on forced child labour in south-eastern Liberia was sent. That report, dated September 1998, had been prepared by Focus and the Justice and Peace Commission (JPC), two local organizations.

The Committee noted the Government’s comments on that communication. It noted the report of the special investigation committee sent by the Government in May 1998 to investigate alleged forced labour in the south-eastern region. It noted that the special investigation committee did not find or establish any conclusive or physical evidence to confirm acts of forced labour in the region. The Committee however observes that the special investigation committee recommended in its report that a national committee be established to trace and reunite displaced women and children that were taken captive during the war and also that a committee be sent to investigate allegations of forced labour and hostage situations particularly in some parts of Grand Kru and Nimba Country. The investigation committee further recommended 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”.

In their report, Focus and JPC found that the case of forced labour was “a spillover of the gross abuses that characterized the civil war” and that it was a common practice of ex-combatants (mainly former commanders) of former warring factions who chose to take advantage of the extremely difficult economic situation in the region. The report stated that there are practices of exploitative and forced labour and captivity taking place in that part of the country, chiefly in the Government Camp area in Sinoe Country. The report also mentioned chief Solomon Moses (Chief Solo) in Sinoe Country and Chief Gonda, in Grand Gedeh Country, as alleged perpetrators, both of them being heads of Joint Security Forces. It mentioned the difficult situation of socially abandoned children who had to fend for themselves and orphans who, although in the care of some adult, “due to financial difficulties were made to perform tasks against their will” so as to “raise funds for their support”. The Committee notes that in their recommendations, Focus and JPC urge the Government to address the plight of children in the south-east, especially that of children held hostage by adults and used as a source of forced and captive labour.

The Committee noted that both reports found 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 exploitation were due to the consequences of the war. It further noted from the Government’s latest report that the region is cut off to a very large extent from the rest of the country because of the bad state of the roads, that the limited resources available do not allow for the immediate building of the needed hospitals and schools and that because of the economic situation in the region, there are hardly any alternatives to farming, small-scale mining and other activities which require massive and cheap labour.

The Committee understands from the documents before it that the Government as well as Focus and JPC have independently sent teams to investigate the situation and report on it. It hopes that the Government will 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 that the Government will supply full information on measures taken to this end, as well as on action taken on the following recommendations of the special investigation committee:

- (a) the establishment of a national committee to trace and reunite displaced women and children taken captive during the war;
- (b) the sending of a committee to investigate allegations of forced labour and hostage situations particularly in Grand Kru and Nimba Country;

- (c) directing local authorities to encourage the citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment, for appropriate investigation and corrective measures, in the framework of the National Reconciliation and Reunification Programmes.

The Committee furthermore hopes that the Government will take specific action to investigate the situation in the south-east as regards practices of forced labour, including allegations that children are held hostage by adults as captive labour, and more particularly the allegations that forced labour was being imposed in the Government Camp area in Sinoe Country and by heads of Joint Security Forces in Sinoe Country and Grand Gedeh Country. The Committee hopes that the Government will supply full information on the action taken and the results.

2. *Article 25 of the Convention.* The Committee recalls 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 on the State to ensure that the penalties imposed are really adequate and are strictly enforced. It notes from the Government's latest report that the use of forced or compulsory labour is to be held a crime. The Committee hopes that the necessary action to give effect to *Article 25* of the Convention will be completed in the near future and that the Government will send the text of the Act as soon as it is adopted.

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

The Committee hopes that the Government will make every effort to take the necessary action.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

The Committee notes with regret that no report has been received from the Government for the fourth year in succession. It must therefore repeat its previous observation on the following matters:

Article 1(a) of the Convention. 1. 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.

2. The Committee notes with interest 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.

3. 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). 4. 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 110 of its General Survey of 1979 on the abolition 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.

5. 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 referred to paragraphs 117 and 125 of its General Survey of 1979 on the abolition 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.

6. In its earlier comments the Committee referred to Decree No. 12 of 30 June 1980 prohibiting strikes. It notes with interest 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.

Mauritania

Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

The Committee recalls that the question of the persistence of slavery in Mauritania has been discussed for many years, and most recently in 2003 in the Committee on the Application of Standards of the International Labour Conference.

1. The Committee notes the information provided by the Government in its report of 28 September 2004 and the report of the direct contacts mission which visited the country from 9 to 13 May 2004. The Committee also notes the comments on the application of the Convention provided by the World Confederation of Labour (WCL) on 30 August and

2 September 2004, which were forwarded to the Government on 1 and 13 September 2004, respectively, as well as the comments made by the International Confederation of Free Trade Unions (ICFTU) on 1 September 2004, which were forwarded to the Government on 14 September.

Eradication in practice of the vestiges of slavery. 2. For many years, the Committee has been examining the issue of those persons, descended from former slaves, who, according to the comments received from workers' organizations on the application of the Convention, are subjected to conditions of labour which are covered by the Convention in so far as they are obliged to work for a person who claims the right to be able to impose such work in his or her capacity as "master". The Committee notes the adoption of the new Labour Code, which entered into force on 6 July 2004, according to the information provided by the Government. Section 5 of the new Labour Code establishes a general prohibition of forced labour, defined as work or service which is exacted from a person under the menace of any penalty and for which the said person has not offered her or himself voluntarily. The Committee notes with interest that this new provision extends the prohibition of forced labour to any labour relationship, even where it is not derived from an employment contract.

Persistence of the phenomenon. 3. In its previous observation, the Committee noted the serious and concordant allegations of certain trade union organizations reporting the persistence of slave-like practices, and the vestiges of slavery that has been abolished in law, which were not acknowledged by the Government. The Committee notes in this respect that, according to the report of the direct contacts mission, "for the government authorities of Mauritania, the practice of forced labour is entirely exceptional, and in any case not more developed than in certain major cities in the industrialized world" and that in the view of the Employers' National Council of Mauritania (CNPM) and the Workers' Confederation of Mauritania, "these practices do not exist". It further notes that, according to the Government's report of September 2004, the issue of slavery in Mauritania is raised in the context of a campaign of deception and is based on fanciful allegations.

4. The Committee nevertheless notes that, according to the report of the direct contacts mission, in the view of the General Confederation of Mauritanian Workers (CGTM), "the views expressed and the texts are not given effect" and, according to the Free Confederation of Mauritanian Workers (CLTM), "situations of forced labour are widespread in Mauritania". The Committee further notes the report of the organization SOS-Slaves in 2004, attached to the comments of the WCL and the ICFTU. In the view of the WCL and the ICFTU, forced labour continues to exist in Mauritania and the numerous cases reported in the document of SOS-Slaves bear witness to this fact. According to the report by SOS-Slaves "practices of slavery are still very common in Mauritania, despite the legal texts abolishing it; state employees, due to their conservative attitudes, are insensitive to the scandalous nature of slavery and there is collusion between "masters" and the judicial system". The information contained in this exhaustive report, which has been forwarded to the Government, describes many cases in which victims are identified by name and their situation is described in detail. The Committee notes that in its reply to its previous comments, the Government indicates that these allegations are of a general nature "reflecting the point of view of a trade union, the CLTM, which is making use of this subject for political purposes". The Committee requests the Government to provide detailed information in its next report on the investigations carried out into the specific cases described in the report of SOS-Slaves and the solutions that are adopted.

Article 25 of the Convention. Penalties. 5. The Committee notes that violations of the general prohibition of forced labour now set forth in section 5 of the Labour Code referred to above are punishable by the penal sanctions established by Act No. 2003-025 of 17 July 2003 punishing the trafficking of persons. It observes that, in relation to the penalties applicable under this provision, it is necessary to refer to the Act on trafficking. In this respect, the Committee refers to the concerns expressed in the report of the direct contacts mission concerning a combination of texts which is "not very transparent on an internal level and involves the risk of the defective application of the law by the judicial system". Indeed, the general prohibition of forced labour is contained in the Labour Code and the penalties in a specific law penalizing another offence.

6. The Committee further notes that no reference is made to the specific situation of persons in the households of former masters who are denied their freedom of movement and their freedom to work elsewhere. As indicated in the report of the direct contacts mission, "the importance of the effective exercise of their right of redress by the victims of forced labour is decisive, particularly in ambiguous situations which can only be qualified as forced labour where persons who wish to avail themselves of their right of freedom of choice come up against pressure or threats by the 'master' in whose household they live and on whom they depend". It further notes that, according to the same report, "the government authorities, and particularly the Minister of Justice and the Human Rights Commissioner, have emphasized their will to address without complacency the cases submitted to them". The Committee notes the information concerning two cases of forced labour which came before the Commissariat for Human Rights. The report of the direct contacts mission also refers to the action taken by the Government at the level of its economic and social strategy to combat poverty and its contribution to addressing the vestiges of slavery and the prevention of any forced labour practices. The Committee encourages the Government to put in place, with the assistance of the ILO, an information and awareness-raising campaign to sensitize all elements of the population, including those who are the most susceptible to being victims of forced labour.

7. The Committee hopes that this first step in the adoption of adequate and strictly enforced penalties, as required by the Convention, will lead to the adoption of provisions setting forth in the same text the prohibition of forced labour and

the applicable penalties. In the meantime, the Committee requests the Government to provide information on the jurisdictions that are competent to receive complaints and the penalties imposed under section 5 of the Labour Code and the Act on trafficking, including the number of complaints lodged and copies of the respective court decisions.

Application of the legislation prohibiting forced labour. 8. The Committee notes that the report of the direct contacts mission refers to the absence of a mechanism for the enforcement of labour legislation, and particularly to the very scarce resources allocated to the labour inspectorate. Furthermore, it notes that, during the mission, all the parties acknowledged the importance of social dialogue in seeking a more effective application of workers' rights in the country, including through the ratification and application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Committee encourages the Government to continue considering this possibility and, if necessary, to request the technical assistance of the ILO.

Article 2, paragraph 2(d). 9. With reference to its previous comments concerning Act No. 70-029 respecting the requisitioning of persons to ensure the operation of services considered to be indispensable to meet an essential need of the country or the population, the Committee notes with interest the adoption of Order No. 566 MIPT/MFPE/2004, of 6 June 2004, establishing the complete list of establishments or services considered to be essential. In this respect, the Committee refers to the comments that it is making under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

10. The Committee notes the Government's indication that a Bill has been approved to repeal Ordinance No. 62-101 of 26 April 1962 empowering local chiefs to take certain measures necessary for the security of the State or the maintenance of public order. The Committee hopes that the Government will soon be able to report the adoption of this Act.

Mauritius

Forced Labour Convention, 1930 (No. 29) (ratification: 1969)

Commercial sexual exploitation of children. 1. In its earlier comments, the Committee expressed its concern regarding the commercial sexual exploitation of children in Mauritius and Rodrigues Island and requested the Government to take all the necessary measures to protect children against trafficking and forced labour involving sexual exploitation.

2. The Committee has noted the Government's reply to its previous observation on the subject, as well as the Government's response to the communication of the International Confederation of Free Trade Unions (ICFTU) dated 24 October 2001. It notes that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and refers in this connection to its request addressed directly to the Government in 2003 on the application of that Convention. 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 trafficking of children for the purpose of exploiting their labour 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 comments on the application of Convention No. 182.

Article 2(2)(c) of the Convention. Prison labour exacted as a consequence of a conviction in a court of law. 3. The Committee previously noted that under section 27(2) of the Prisons Ordinance (Title XXIII, Chapter 313) of 1888, as amended in 1945, labour shall be optional for prisoners detained pending enquiry or committed for trial. The Committee observed, however, that under section 16 of the Prison Regulations 1989, detainees may be required to work provided such work is of a kind authorized by the commissioner. Referring to paragraph 90 of its General Survey of 1979 on the abolition of forced labour, the Committee recalled that work can only be exacted from a prisoner as a consequence of a conviction. It follows that persons who are in detention but have not been convicted – such as prisoners awaiting trial or persons detained without trial – should not be obliged to perform labour (as distinct from certain limited obligations intended merely to ensure cleanliness). The Convention does not prevent work from being made available to such prisoners at their own request, to be performed on a purely voluntary basis.

4. The Committee has noted the Government's indication in its report of 2002 that detainees work under the supervision and control of prison officers and are engaged in activities which contribute towards their rehabilitation, such as domestic duties in the prisons, vocational and rehabilitation activities. The Committee requests the Government to describe such vocational and rehabilitation activities (as distinct from domestic duties in the prisons) of detainees awaiting trial. It hopes that the necessary measures will be taken to ensure, with regard to the Prisons Regulations 1989, that work is only exacted from prisoners as a consequence of a conviction, in conformity with *Article 2(2)(c)* of the Convention and section 27(2) of the Prisons Ordinance referred to above, and that work is made available to detainees awaiting trial only at their own request, to be performed on a purely voluntary basis.

Article 25. Illegal exaction of forced or compulsory labour punishable as a penal offence. 5. Referring to its earlier comments the Committee has noted the Government's statement in its report that there is no provision in the existing legislation which makes the exaction of forced or compulsory labour punishable as a penal offence. It recalls that, under

Article 25 of the Convention the illegal exaction of forced or compulsory labour shall be punishable as a penal offence and that ratifying States have an obligation to ensure that penalties imposed by law are really adequate and are strictly enforced. The Committee therefore hopes that the necessary measures will be taken to introduce legal provisions making the exaction of forced or compulsory labour punishable as a penal offence and to ensure that such provisions are made effective by means of penalties which are adequate and strictly enforced. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)

The Committee has noted the Government's reply to the communication of the International Confederation of Free Trade Unions (ICFTU) dated 24 October 2001.

1. *Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers.* The Committee previously noted 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 (involving an obligation to perform 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 paragraphs 110 to 125 of its 1979 General Survey on the abolition of forced labour, the Committee recalled that, in order to be compatible with the Convention, the provisions mentioned above should be restricted to punishing breaches of labour discipline that endanger the safety of the ship or the life or health of persons on board.

The Committee has noted the Government's indications in its 2003 report and in its reply to the communication of the ICFTU referred to above, that the Government has undertaken to amend the Merchant Shipping Act, and in particular sections 183 and 184, with the assistance of the International Maritime Organization, with a view to removing the possibility of having recourse to compulsory labour, in order to make the Act compatible with the Convention.

The Committee reiterates its hope that the Merchant Shipping Act will be brought into conformity with the Convention in the near future, and that the Government will soon be able to indicate the progress achieved in this regard.

2. *Article 1(d). Sanctions for participation in strikes.* For many years in its comments, the Committee has observed that under sections 82 and 83 of the Industrial Relations Act, 1973, submission of any industrial dispute to compulsory arbitration is left to the discretion of the minister. The decision handed down following this procedure is enforceable (section 85) and any strike becomes unlawful (section 92). Finally, participation in a strike thus prohibited may be punished by imprisonment (section 102) involving compulsory labour (section 35(1)(a) of the Reform Institutions Act). The Committee observed that these provisions are incompatible with *Article 1(d)* of the Convention. It pointed out that for provisions regarding compulsory arbitration, enforceable with sanctions involving compulsory labour, to be compatible with the Convention, their scope should be limited to essential services in the strict meaning of the term (namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population).

The Committee has noted the Government's indications in its 2003 report and in its reply to the communication of the ICFTU referred to above, that the Government has undertaken to review the Industrial Relations Act, and that the Committee's comments has been taken into consideration. The Government also indicates that, to this effect, decision has been taken to set up a tripartite committee, and that in the meantime, a technical committee chaired by the Permanent Secretary of the Ministry of Labour and Industrial Relations is considering amendments to be brought to the Act.

The Committee expresses the firm hope that the Industrial Relations Act will be amended in the near future and that the legislation will be brought into conformity with the Convention on this point. It asks the Government to provide, in its next report, information on the progress made in this regard.

Republic of Moldova

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1993)

The Committee notes a communication received in February 2004 from the Confederation of Trade Unions of the Republic of Moldova, which contains observations concerning the application of the forced labour Conventions Nos. 105 and 29, ratified by the Republic of Moldova. It notes that this communication was sent to the Government in March 2004, for any comments it might wish to make on the matters raised therein. The Committee observes that no such comments have been received from the Government so far. It therefore hopes that the Government will not fail to supply its comments with its next report, so as to enable the Committee to examine them at its next session.

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

Morocco

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1966)

The Committee notes the comments made by the International Confederation of Free Trade Unions (ICFTU) and the Government's reply to these comments.

Article 1(d) of the Convention. In its previous comments, the Committee referred to section 288 of the Penal Code (violation of the freedom of work), which provides for imprisonment of one month to two years, including compulsory labour (pursuant to section 28 of the Code), for anyone who through violence, use of force, threats or deception causes or maintains, or endeavours to cause or maintain, a coordinated stoppage of work, with the aim of forcing an increase or decrease in wages or jeopardizing the free exercise of industry or work.

The Committee previously noted the request made by the Moroccan Labour Union (UMT) to the Government to repeal this provision which, according to the UMT, is frequently used by the courts to imprison UMT militants because of their peaceful participation in strikes. It noted the Government's statement that the acts sanctioned under section 288 are violence, use of force, threats or deception, as well as violations of the freedom of work. The Committee previously observed that, in one of the judgements handed down under section 288, a copy of which was provided by the Government at the Committee's request, the element constituting violation of the freedom of work was the fact of having placed stones on the access road to the workplace, without any mention of violence or of any consequences giving rise to injury. Furthermore, in four out of the nine judgements communicated by the Government, the court acquitted the accused of the charges brought against them.

The Committee also noted the complaint against the Government of Morocco presented by the UMT to the Committee on Freedom of Association on 4 September 1999 alleging the arrest of trade union leaders and members following strikes.

The Committee requested the Government to examine section 288 of the Penal Code in the light of the Convention and the restrictions that application of this penal provision causes to the free exercise of freedom of association and the right to strike, which are in fact guaranteed in the country's Constitution (article 14).

The Committee notes that the Government reiterated in a previous report that section 288 of the Penal Code does not contradict the provisions of the Convention since it does not penalize the exercise of the right to strike but a collective stoppage of work accompanied by violence, use of force, threats or deception, and the only acts condemned by this section are acts which violate the freedom of work.

The Committee notes the Government's statement that revision of section 288 of the Penal Code is envisaged in the context of an overall revision of the Penal Code and the new text of this section will be communicated to the Office once it is adopted.

The Committee trusts that the revision of section 288 of the Penal Code will make it possible to ensure that sanctions including the obligation to work cannot be used to repress the normal exercise of the right to strike. Noting that article 14 of the Constitution provides for the adoption of an Organic Act to lay down the circumstances and forms in which the right to strike may be exercised, the Committee requests the Government to indicate whether this Act has been adopted and, if so, to provide a copy.

Article 1(a). In its previous observation, the Committee referred to the concluding observations of the Human Rights Committee (CCPR/C/79/Add.113), further to consideration of the fourth periodic report submitted by Morocco, in which the Committee expressed its concern at the provisions of the Press Code which seriously restrict freedom of expression.

The Committee notes the adoption of Dahir No. 1-02-207 of 25 Rejeb 1423 (3 October 2002) promulgating Act No. 77-00 amending and supplementing Dahir No. 1-58-378 of 3 Joumada I 1378 (15 November 1958) establishing the Press and Publishing Code.

The Committee notes that, under the following provisions of the Press Code, prison sentences including compulsory labour may be imposed for certain offences relating to the press and in order to penalize the exercise of freedom of expression:

- Article 20 states that any proprietor of a newspaper or editor of a publication or one of his collaborators who receives funds or any other consideration, directly or indirectly, with the exception of funds for the payment of advertising, from a foreign government or foreign third party shall be liable to imprisonment of one to five years;
- Article 28 states that any person who produces, publishes or prints a newspaper, journal or periodical beyond the expiry date of the relevant authorization shall be liable to imprisonment of one month to one year;
- Article 29 states that any person who knowingly puts on sale, distributes or reproduces newspapers, journals or periodicals which are detrimental to the Islamic religion, the monarchy, territorial integrity, respect for the King or public order, shall be liable to imprisonment of six months to three years;
- Article 30 states that any person who engages in the distribution, sale, public exhibition or possession with a view to distribution, sale, or exhibition for propaganda purposes of bulletins, tracts or publications of foreign origin or receiving foreign support which are detrimental to the sacred values of the country laid down in section 29 above or to the best interests of the nation shall be liable to imprisonment of one to three years;
- Article 40 states that any person responsible for provocation by speeches, cries or threats uttered in public places or meetings, by written tracts put on sale or exhibited in public places or meetings, by notices or posters placed on public view or by audiovisual or electronic information media which has the purpose of inciting the armed forces of

land, sea or air or law enforcement officers to fail in their duties and in the obedience which they owe to their superiors shall be liable to imprisonment of two to five years;

- Article 41 states that any person found guilty of any insult towards the King, royal princes or princesses or responsible for the publication of any newspaper, journal or periodical which is detrimental to the Islamic religion, the monarchy or territorial integrity shall be liable to imprisonment of three to five years;
- Article 42 states that any person responsible for the publication, dissemination or reproduction in bad faith by whatever means of false reports, allegations, inaccurate facts, or fabricated or falsified items attributed to third parties, causing disruption of public order or anxiety among the general public, shall be liable to imprisonment of one month to one year. The penalty shall be imprisonment of one to five years where such publication, dissemination or reproduction may undermine the discipline or morale of the armed forces;
- Article 52 states that any person found guilty of publicly insulting the person or rank of the Heads of State, Heads of Government or Foreign Ministers of foreign countries shall be liable to imprisonment of one month to one year;
- Article 53 states that any person found guilty of publicly insulting the person or rank of foreign diplomatic or consular officials shall be liable to imprisonment of one to six months.

The Committee recalls that the Convention prohibits any recourse to forced or compulsory labour, including compulsory prison 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 recalls that the protection afforded by the Convention is not limited to activities expressing or manifesting divergent opinions in the context of established principles. Consequently, even though the aim of certain activities is to bring about fundamental changes to state institutions, this does not constitute a reason for considering that they are outside the scope of the Convention, provided that there is no recourse or call to violent methods for the purpose of achieving the desired result.

The Committee requests the Government to provide information on the practical application of the abovementioned provisions of the Press Code, indicating the number of convictions pronounced and attaching a copy of the judgements handed down in application of these provisions.

Myanmar

Forced Labour Convention, 1930 (No. 29) (ratification: 1955)

1. The Committee notes the Government's report and the comments by the International Confederation of Free Trade Unions (ICFTU) contained in communications dated 14 June, 31 August, 1 September, 7 October and 10 November 2004. These comments, which are accompanied by many documents reporting the persistence of the use of forced labour in Myanmar, have been forwarded to the Government for any comments which it wishes to make in this respect. The Committee also notes the documents submitted to the Governing Body at its 289th and 291st Sessions (March and November 2004) on developments concerning the question of the observance by the Government of Myanmar of Convention No. 29, as well as the discussions in the Governing Body during these sessions and in the Conference Committee on the Application of Standards in June 2004.

2. Once again this year, the Committee is examining the measures adopted by the Government to give effect to the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 following a complaint submitted in June 1996 under article 26 of the Constitution. In the report that it published in July 1998, the Commission of Inquiry concluded that the Convention was violated in national law and in practice in a widespread and systematic manner, and it adopted the following recommendations:

- (a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (c) 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.

Amendment of the legislation, paragraph 539(a) of the report of the Commission of Inquiry

Brief history

3. The Committee has previously set out the history of this situation in detail in earlier observations. In brief, the Committee recalls that, in its report, the Commission of Inquiry urged the Government to take the necessary steps to ensure that the Towns Act, 1907, and the Village Act, 1908, which confer broad powers upon the local authorities to requisition labour, in violation of the Convention, were without further delay brought into conformity with the Convention. In summary, under particular sections of these acts, non-voluntary work or services may be exacted from any person residing in a village tract or in a town ward, and failure to comply with a requisition made under the legislation is

punishable with penal sanctions. The Commission of Inquiry found that these Acts therefore provide for the exaction of “forced or compulsory labour” within the definition of *Article 2, paragraph 1, of the Convention*.

4. In its observation in 2001, the Committee noted that although the Village Act and the Towns Act still needed to be amended, an “Order directing not to exercise powers under certain provisions of the Towns Act, 1907, and the Village Act, 1908”, Order No. 1/99, as modified by an “Order Supplementing Order No. 1/99”, dated 27 October 2000, could provide a statutory basis for ensuring compliance with the Convention in practice, if bona fide effect was given by the local authorities and by civilian and military officers empowered to requisition or assist with requisition, under the Acts. In effect, the Order provides for the possibility of requisitioning labour in exceptional circumstances, where such work or service is important and of direct interest for the community and in the event of an emergency posing an imminent danger to the general public and the community, and in circumstances where it is impossible to obtain voluntary labour by the offer of the usual rates of wages. It also provides for the possibility of issuing directives which may set aside the restrictions on powers of requisitioning. In this respect, the Committee indicated that a bona fide application of this Order involved the adoption of the measures indicated by both the Commission of Inquiry in paragraph 539(b) of its report and by the Committee of Experts in its previous comments (regarding specific instructions and the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour).

5. The Committee observes that, as set out in the paragraphs below, the measures requested have not been adopted or have only been adopted partially and that the exaction of forced labour persists on a broad scale. It appears that the orders have not been effective and that it has therefore become more imperative to take action without delay for the amendment or repeal of the Towns and Village Acts with a view to the elimination of the legislative basis for the exaction of forced labour and the incompatibility of these texts with the Convention. The Committee notes that, in his intervention in the Conference Committee on the Application of Standards in June 2004, the Government representative of Myanmar stated that, with regard to the “amendment of the Village Act and the Towns Act (...) his Government had been exploring ways and means to modify certain of their provisions” and had consulted with various parties in this respect. Recalling that the Commission of Inquiry recommended that these amendments should be done without further delay and completed at the very latest by 1 May 1999, the Committee of Experts hopes that the Government will finally take the necessary measures to amend in the very near future the provisions in question of the Towns Act, 1907, and the Village Act, 1908, as it has been promising to do for over 30 years.

Measures to bring an end to the exaction of forced labour in practice (paragraph 539(b) of the report of the Commission of Inquiry) and available information on existing practices

6. The Committee recalls that, in its recommendations, the Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring to an end the exaction of forced labour in practice, in particular by the military. In its previous observations, the Committee of Experts identified four areas in which measures should be taken by the Government to achieve this outcome: 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.

7. *Specific and concrete instructions.* In its previous observations, the Committee drew the Government’s attention to the fact that, in the absence of specific and concrete instructions enabling the civilian and military authorities to identify the various forms and manners of exaction of forced labour, it would be difficult to bring an end to forced labour in practice. The Committee observed that, although “explanations”, “instructions” and “directives” had been given at offices of the Peace and Development Councils at various levels and the offices of the General Administration Department, the Department of Justice and the police forces and township courts, and despite the guidance provided by the field observation teams during their visits in the country, the Government had supplied no details on the contents of the explanations, instructions, directives or guidance, nor had it provided the text of any instruction or directive containing details of the tasks for which the requisitioning of labour is prohibited or the manner in which the same tasks are to be performed without resorting to forced labour.

8. The Committee notes that, in its latest report, the Government states that it has made every effort to ensure the prohibition of the use of forced labour under Order No. 1/99 and its Supplementing Order. The Government also provides three documents intended to support its contentions (Instructions No. 1/2004, dated 19 August 2004, of the Department of General Administration, in Burmese; the Directive issued by the Supreme Court to all states and divisional judges, all district judges and all township judges, by letter dated 2 November 2000 and letter No. 1002(3)/202/G4 “to prevent illicit summon on the requisition of forced labour”, signed by the director-general of the police force, which had already been provided to the ILO). The Committee observes that none of these documents would enable the authorities concerned to identify practices which constitute forced labour.

9. The Committee also notes from the Government’s last report, and the intervention of the Government representative in the Conference Committee on the Application of Standards in June 2004, the reference to the holding of information workshops on the implementation of Convention No. 29 in various regions of the country during the course of 2004. The Committee considers that such workshops do not appear to have had the desired effect and that, until effective

measures have been taken to enable the civilian and military authorities to identify the various forms and manners of exaction of forced labour that should be prohibited, it will not be possible to bring an end to forced labour in practice.

10. In conclusion on this point, the information provided by the Government shows once again that clear and effectively conveyed instructions are still required to indicate to all the representatives of the authorities, including the members of the armed forces, the kinds of practices that constitute forced labour and for which the requisitioning of labour is prohibited, and the manner in which the same tasks are henceforth to be performed. In a previous observation, the Committee enumerated a number of tasks and practices which are closely related with the exaction of forced labour, namely:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camps/facilities;
- other support for camps (guides, messengers, cooks, cleaners, etc.);
- income-generation by individuals or groups (including work in army-owned agricultural and industrial projects);
- national or local infrastructure projects (including roads, railways, dams, etc.);
- cleaning/beautification of rural or urban areas;
- the supply of materials or provisions of any kind, which must be prohibited in the same way as demands for money (except where due to the State or to a municipal authority under the relevant legislation) since in practice, demands by the military for money or services are often interchangeable.

The Committee once again requests that these matters be addressed urgently.

11. *Publicity given to orders.* The Committee noted previously, from the information provided by the Government, that measures continued to be taken in order to make the prohibition of forced labour contained in Order No. 1/99 and its Supplementing Order widely known by all the authorities concerned and the general public. It noted that these measures included conveying information through bulletins and pamphlets, distributing copies of orders translated into ethnic languages, and the work of field observation teams.

12. In its last report, the Government reaffirms that copies of Order No. 1/99 and its Supplementing Order have been widely distributed throughout the country. The Committee understands, from the information provided by the Government, which appears to be confirmed by the Liaison Officer a.i., that the translation of the Orders into the four Chin dialects has been completed. In this respect, the Committee notes that, according to the Liaison Officer a.i., “although all the translations have been completed, he has yet to see these translations posted in any ethnic area that he has visited, or to meet anyone in these areas who has seen these translations, and he is therefore yet to be convinced that they have been widely distributed by the authorities” (document GB.289/8, submitted to the 289th Session of the Governing Body in March 2004, paragraph 10).

13. The Committee hopes that the Government will provide copies of the instructions issued to the armed forces and information on the meetings, workshops and seminars organized for the dissemination of these instructions in the armed forces. It once again hopes that measures will be taken to ensure that the texts, duly translated, are distributed and displayed in ethnic areas, which are those where the prevalence of forced labour practices appear to be the highest.

14. *Budgeting of adequate means.* In its recommendations, the Commission of Inquiry emphasized the need to budget for adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour. In its report, the High-level Team (2001) stated that it had received no information allowing it to conclude that the authorities had indeed provided for any real substitute for the cost-free forced labour imposed to support the military or public works projects.

15. In its previous observations, the Committee pursued the matter and sought to obtain concrete evidence that adequate means are budgeted to hire voluntary paid labour. The Government in response has reiterated its previous statements according to which there is always a budget allotment for each and every project, with allocations which include the cost of material and labour. The Committee observed, however, that in practice forced labour continued to be imposed in many parts of the country, in particular in those areas with a heavy presence of the army, and that the budgetary allocations that may exist were not adequate to make recourse to forced labour unnecessary. The Government has not provided any information on this subject in its latest report. The Committee once again asks that adequate means be budgeted for the civilian and the military authorities to allow them to carry out their tasks without using forced labour and that the next report indicate the measures taken in this regard.

16. *Monitoring machinery.* With regard to the measures taken by the Government to ensure the enforcement of the prohibition of forced labour, the Committee notes the information provided by the Government representative to the Conference Committee on the Application of Standards in June 2004. It notes that these measures include the establishment of seven field observation teams empowered to carry out investigations into allegations of the use of forced labour, the findings of which are submitted to the Convention 29 Implementation Committee. With regard to the activities of the Implementation Committee, the Committee of Experts notes, according to the information contained in the document submitted to the Governing Body in November 2004 (GB.291/5/2, paragraph 13), that “recent experience of the Liaison Officer a.i. has shown that specific complaints of forced labour brought to the attention of the Convention 29

Implementation Committee are systematically denied, and cases brought directly before the courts are rejected. The picture which emerges is of a response by the authorities to complaints of forced labour that is lacking in credibility. This is all the more concerning given the types of cases involved. While a number of the allegations which have been raised with the authorities are extremely serious cases involving the army often in remote areas, others relate to comparatively minor cases of forced labour imposed by local officials in central Myanmar. Action on these latter cases should be more straightforward because of both the location and nature of the offences involved. The fact that the authorities have not taken steps to deal with these latter cases must raise serious doubts as to the possibility of making significant progress in those areas under the control of the army, where all the indications are that the forced labour situation is far more serious in both form and extent”.

17. The Committee also notes that, in the view of the Liaison Officer a.i., “the mechanism put in place by the authorities for addressing forced labour allegations, that of sending an ad hoc team composed of senior government officials to the region to conduct an investigation, is not well suited to dealing with the increasing numbers of cases” (GB.291/5/1, paragraph 12). The Liaison Officer a.i. indicates that allegations of forced labour tend to be investigated internally by the General Administration Department. Cases concerning the army (that is, cases of forced recruitment, or forced labour allegedly imposed by the army) are referred by the Convention 29 Implementation Committee to the representative of the Ministry of Defence. These cases are also investigated internally by the army. The Committee of Experts notes that, “of the 38 cases referred to the Convention 29 Implementation Committee, responses have been received in 18 cases. In all these cases, the allegation that forced labour was involved was rejected. In the six cases where individuals complained directly to the court, three cases were rejected on the grounds that there was no prima facie evidence of forced labour (...)”.

18. The Committee observes, as does the Liaison Officer a.i., that the assessments made by the field observation teams and the Convention 29 Implementation Committee appear to lack credibility, particularly as the ILO continues to receive trustworthy evidence that this practice continues to be widespread. The Committee once again expresses the hope that the Government will take the necessary measures to develop a credible, fair and more effective procedure for investigating allegations of forced labour, in particular those involving the army, and that it will cooperate more closely in future with the Liaison Officer.

Information available on actual practice

19. The Committee notes that the Liaison Officer a.i.’s general evaluation of the forced labour situation, on the basis of all the information available to him is that “although there have been some improvements since the Commission of Inquiry, the practice remains widespread throughout the country, and is particularly serious in border areas where there is a large presence of the army” (report of the Liaison Officer a.i., document GB.291/5/1, paragraph 9). The Committee further notes that at the time of his report (22 October 2004), the Liaison Officer a.i. had received a total of 72 complaints in 2004, and that interventions had been made with the authorities on 38 cases. Of these 38 cases, 18 concerned various forms of forced labour (other than forced recruitment); 13 concerned forced recruitment of minors into the armed forces; one case concerned alleged harassment of a complainant; and six were direct complaints by individuals to Myanmar courts under section 374 of the Penal Code, copies of which had been communicated to the Liaison Officer a.i. by the complainants.

Recent information

20. In communications dated 14 June, 31 August, 1 September and 7 October 2004, the ICFTU forwarded many documents to the ILO bearing witness to the persistence of the systematic use of forced labour by the military authorities on a very broad scale. The cases of forced labour described in these documents occurred in many areas of Myanmar (the States of Chin, Kachin, Kayin, Mon, Rakhine and Shan and the Ayeyarwady, Magway, Bago, Sagaing, Tenasserim and Yangon Divisions) during the period between September 2003 and September 2004, and are supported by precise information referring to the locations and dates of the reported facts and the army units and the names of the officers involved.

21. The documents provided include a report by the Federation of Trade Unions of Burma (FTUB) of over 100 pages in length entitled “Forced labour in Burma (Myanmar): Forced labour after 2003 International Labour Conference”. This report contains dozens of testimonies by victims of forced labour for the military. The witnesses were mostly used as porters (of arms, munitions, wood, supplies, etc.), on construction or maintenance sites of roads or bridges, or exploited in labour camps and paddy fields controlled by the army. The experiences of the witnesses included:

- being requisitioned as a consequence of a military order directed to village heads in rural areas to provide villagers for unpaid labour for portering, working on construction sites and the maintenance of military camps (many provided copies of labour requisition orders);
- being forced to participate in military training programmes, doing sentry duty or acting as guides;
- being forced by military chiefs to comply with a system of enforced labour rotation whereby each family in a village must provide a certain number of family members each day, under the menace of reprisals or a fine. The requisitioned workers have to equip themselves with their own tools and provide the food necessary for their own subsistence for the duration of their work, which is mostly unknown.

In addition, witnesses report that the types of ill-treatment suffered include:

- being deprived of food;
- being systematically beaten when they collapsed through exhaustion or sought permission to rest;
- in the most serious cases, reporting that porters incapable of walking due to a wound or extreme fatigue were purely and simply assassinated;
- mutilations and violent deaths occurring during mine-clearing operations, with the persons equipped only with rakes.

The military are also said to commit other acts of violence, including: murders, rapes, torture, pillage, the intentional burning of habitations, the destruction of plantations and consumer goods, forced expropriations and expulsions, as well as confiscating and extorting money and goods under the pretext of various types of taxation.

22. The ICFTU also forwarded a document prepared by the Asian Legal Resource Centre, an NGO with general consultative status with the United Nations Economic and Social Council, and which is based in Hong Kong, reporting two cases of forced labour imposed upon civilians by the authorities. The document illustrates the manner in which the authorities endeavour to turn against those who refuse to comply with requisition orders. The first case concerns two inhabitants of Henzada (old name for Hinthada) Township, Ayeyarwady Division, who in July 2003 refused to perform sentry duty at the Buddhist monastery of Oatpone village. They were sentenced respectively to one month and six months of imprisonment under the Penal Code for intentional failure to furnish assistance to a public servant in the execution of his public duty (section 187) and the threat of injury to any public servant (section 189). They filed a case under section 374 of the Penal Code (penalizing the imposition of unlawful compulsory labour), but both complainants were dismissed by the Henzada Township Court. The authorities filed a counter-complaint for defamation (sections 499 and 500 of the Penal Code) and the two complainants were both subsequently sentenced to six months' imprisonment on 7 October 2004. The second case concerns an inhabitant of Kawmhu Township, Yangon Division, who in April 2004 brought a complaint against the local authorities under section 374 of the Penal Code, and who had previously been threatened with legal action for failing to comply with instructions to work on a road in the neighbourhood. The local authorities then organized other villagers to depose that no one had been coerced to undertake the road construction and that the work in question had been carried out voluntarily. The ICFTU expresses the fear that the case may be decided against the complainant, in the same way as in the first case.

23. The other documents provided by the ICFTU include:

- three other reports by the FTUB, entitled: "State-induced violence and poverty in Burma", dated June 2004; "Impact of US sanctions on the textile and garment industry in Burma" and "All-round impact of promotion of tourism on the entire community of Ngwe Saung area in Ayeyarwady Division, Burma", both dated 2004, and the testimony of a child soldier, dated 2 January 2004;
- articles by various press agencies and human rights defence organizations reporting dozens of cases of forced labour, including the use of around 250 villagers from the Muslim minority in Rohingya in Maungdaw Township, Arakan State, to build houses for 130 families of Buddhist settlers from the centre of the country, and the requisitioning of 500 other villagers in June 2004 to build a bridge under the orders of the NaSaKa (border security forces). These articles refer to other cases of the exploitation of ethnic minorities by the authorities, such as the forced labour exacted from Naga villagers for the construction of tourist accommodation for the Naga New Year celebrations in Layshee (Sagaing Division) and the exploitation for the purposes of tourism of certain Salons (also called Mokens), forced to perform traditional dances (Tenasserim Division). Other cases reported include the abduction of civilians for use as human shields during a military operation carried out against the armed groups in southern Mon State and northern Tenasserim Division during the period December 2003-January 2004 and the rape of women villagers in southern Ye Township (Mon State) during the same period;
- the authentic translation of the ruling in Criminal Regular Trial No. 111/2003 of the Yangon Northern District Court of 28 November 2003 sentencing nine persons to death for high treason, based on evidence for the charges which included alleged contacts between a number of them and the ILO and having received or communicated information relating to the activities of the Organization;
- the authentic translation of the ruling of the Supreme Court in the same case, reducing the sentences of the accused to transportation for life for five of them and, for the four others, to three years' imprisonment with rigorous labour (case No. 457/2003, *Nay Win, Shwe Mann, Naing Tun and others v. Union of Myanmar*). The ILO subsequently received, on 21 October 2004, the authentic translation of the ruling issued on 14 October 2004 by the Supreme Court on the application for special appeal in the same case. The sentences of the four accused who had been convicted on appeal to three years' imprisonment with rigorous labour were reduced to two years' imprisonment with rigorous labour, while that of Shwe Mann, convicted on appeal to transportation for life, was reduced to five years' imprisonment with rigorous labour. Moreover, the Supreme Court found that references to contacts with the ILO contained in the ruling of the Yangon Northern District Court should be deleted from the judgement, as the Supreme Court indicated that "communication and cooperation with the ILO does not amount to an offence under the existing laws of Myanmar";
- the second preliminary report of the Ad Hoc Commission on the Depayin Massacre, dated May 2004; and

- two documents prepared by the Federation of Trade Unions Kawthoolei (FTUK) reporting dozens of other cases of forced labour, including two interviews with victims of forced labour dated 19 June 2004.

24. The Committee notes the new allegations of the forced recruitment of children by the armed forces contained in the documents supplied by the ICFTU and the report on the activities of the Liaison Officer a.i. submitted to the Governing Body in November 2004 (document GB.291/5/1). Among the cases brought to the attention of the Liaison Officer a.i., is one of a young person of 15 years of age who, according to the allegations, was recruited into the army and then escaped, before being arrested and convicted by a court martial to four years' imprisonment for desertion.

25. The Committee recalls in this respect that it previously requested the Government to provide information on any investigation that may have been undertaken to ascertain that in practice no person under 18 is recruited into the armed forces and that it hoped that the Government, with the assistance of the ILO, would make every effort to carry out a thorough assessment of the extent of this practice and would take the necessary action to put an end to it.

26. With regard to programmes of military training and service, the Government indicates in its last report that it has established a Committee for Prevention against Recruitment of Minors, headed by the Secretary (2) of the State Peace and Development Council. While noting this information, the Committee observes, from a reading of the many documents in the file, that the recruitment of children to serve in army units is still current and that certain young persons have been convicted by military courts to sentences of imprisonment for desertion. The Committee urges the Government to bring an end to these practices and to enter into full and complete collaboration with the Liaison Officer a.i. in dealing with complaints that are brought to his attention, and to ensure that young persons who are victims of such abuses cannot in future be convicted by military courts.

27. In conclusion on this subject, the Committee notes that forced and compulsory labour continues to be prevalent in many areas of the country, and particularly in the border areas inhabited by ethnic minorities, in which there is a strong military presence. It notes with concern the many documents brought to its attention by the ICFTU and the cases followed by the Liaison Officer a.i., that demonstrate forcefully that the exaction of forced labour is far from disappearing in practice. It notes the Government's statement concerning its determination to eliminate forced labour in the country; however, the Committee considers that this determination has not so far led to the achievement of the expected results. The Committee trusts that the Government, in keeping with its expressed intention, will significantly increase its efforts to bring a definitive end to forced labour, and urges the Government to pursue its cooperation with the ILO for this purpose. The Committee hopes that the Government will reply in detail concerning all the cases of forced labour reported by the ICFTU.

Imposition of the penalties established by the Penal Code in cases of the illegal exaction of forced or compulsory labour

28. The Committee recalls that in its report the Commission of Inquiry urged the Government to take the necessary measures to ensure that the penalties established 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. In the view of the Commission of Inquiry, this would require thorough investigation, prosecution and adequate punishment of those found guilty.

29. The Committee notes from the report submitted by the Liaison Officer a.i. to the Governing Body in November 2004 (document GB.291/5/1, paragraph 13 and Appendix II) that, for the first time, cases have been brought to the courts of Myanmar under section 374 of the Penal Code concerning the illegal exaction of forced labour. However, it notes that none of the six cases brought during the course of 2004 led to the initiation of proceedings, nor even to recognition of a situation of forced labour. In three cases, the courts rejected the cases on the grounds that there was no prima facie evidence of forced labour. Further, in two of the three cases which have been completed, the complainants were even sentenced to six months' imprisonment for defamation and these persons had already been imprisoned for refusing to carry out the forced labour. The three other cases were still ongoing at the time of the report (22 October 2004). Furthermore, the Liaison Officer a.i. indicates in his report that "two individuals were arrested after returning to their village following a visit to him in Yangon. During the visit, one of the individuals provided details on a direct complaint he had made to a court under section 374 of the Penal Code, concerning forced labour in Kawhmu Township (Yangon Division)" (document GB.291/5/1, paragraph 17).

30. The Committee notes that, although for the first time cases have been brought under section 374 of the Penal Code by individuals claiming to be victims of the exaction of forced labour, none of these cases has yet been found receivable. It notes that the fact that certain victims have been arrested after contacting the Liaison Officer a.i., or convicted to a sentence of imprisonment for defamation after bringing a case under section 374 of the Penal Code, creates a climate of fear which is likely to dissuade victims from turning to the courts. It hopes that the Government will make every effort to ensure that the victims of forced labour are in practice able to avail themselves of the provisions of section 374 of the Penal Code without risking prosecution for defamation and that they can freely contact the Liaison Officer a.i. without running the risk of being arrested or interrogated by the police forces. It hopes that the Government will provide information in its next report on the progress achieved in this field.

Joint Plan of Action

31. In its last observation, the Committee noted with interest that a Joint Plan of Action for the Elimination of Forced Labour Practices in Myanmar had been agreed upon on 27 May 2003 between the ILO and the Government. Although the Joint Plan of Action was welcomed by the Conference Committee on the Application of Standards during the discussion at the 91st Session of the International Labour Conference, the Conference Committee also observed that its debate was taking place in the context of recent events, and the resulting climate of uncertainty and fear, which “called seriously into question the will and ability of the authorities to make significant progress in the elimination of forced labour”. The Committee of Experts notes that the situation has scarcely improved since then, particularly in the view of the fact that three persons have been convicted for high treason on grounds which include contacts with the ILO. Although the Supreme Court ruling on a special appeal commuted the death sentence which had been imposed on these persons in November 2003 by a court in Myanmar to sentences of imprisonment of two and five years and acknowledged the legality of contacts with the ILO, the Committee notes that the Workers’ group, the Employers’ group and many Government members of the Governing Body expressed regret at the continued detention of the persons concerned and called for their immediate release or pardon. The situation of these persons is a matter of great concern to the Committee. The Committee regrets that, under these conditions, the Joint Plan of Action cannot be implemented as envisaged. It notes the decision of the Governing Body to field a very high-level mission to evaluate the attitude of the authorities and assess their determination to continue their cooperation with the ILO (GB.291/5, Conclusions).

Concluding comments

32. The Committee notes once again with grave concern, that the recommendations of the Commission of Inquiry have still not been implemented: the provisions of the Towns Act, 1907, and the Village Act, 1908, allowing requisition of labour in violation of the Convention, have not been repealed; forced labour continues to be exacted in many areas of the country, in circumstances of severe cruelty and brutality; and no person responsible for the exaction of forced labour has been prosecuted or convicted under the relevant provisions of the Penal Code. The Committee expresses its strongest condemnation and urges the Government to demonstrate its expressed determination to eliminate forced labour and to take the necessary measures to ensure compliance with the Convention.

New Zealand

Forced Labour Convention, 1930 (No. 29) (ratification: 1938)

Work of prisoners for private employers. Further to its earlier comments on the subject, the Committee notes with satisfaction from the Government’s report that, since 31 July 2002, the Department of Corrections has had no inmates hired to private individuals or private sector organizations for work, as the Department has ceased all contractual arrangements where there had been direct private sector management of industries.

Oman

Forced Labour Convention, 1930 (No. 29) (ratification: 1998)

Use of children as camel jockeys. In its earlier comments, the Committee raised its concern on the situation of children involved in camel races who are subjected to exploitation and are placed in conditions in which they cannot freely give their consent, nor can such consent validly be provided by their parents in their place. It requested the Government to take all the necessary measures to prevent children who are involved in camel races from being subjected to conditions of forced labour and exploitation and to adopt provisions prohibiting the employment of young persons under 18 years of age as camel jockeys and establishing severe penalties for the perpetrators.

The Committee has noted the Government’s reply to its previous observation on the subject. It recalls that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and has already sent its first report on the application of that Convention. 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 this problem can 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 comments on the application of Convention No. 182.

The Committee is also addressing a direct request to the Government on certain other points.

Pakistan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

The Committee notes with regret that no report has been received from the Government. 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

observations communicated by the All Pakistan Federation of Trade Unions (APFTU) in July 2003 and transmitted to the Government on 5 September 2003, as well as on the following matters raised in its previous observation:

The Committee has noted the observations received in September 2001 from the International Confederation of Free Trade Unions (ICFTU) concerning the application of the Convention, which were transmitted to the Government in October 2001 for such comments as might be considered appropriate. The Committee hopes that the Government will refer to these observations in its next report.

Article 1(c) and (d) of the Convention

1. In its earlier comments made under the present Convention and the Forced Labour Convention, 1930 (No. 29), the Committee noted that the Pakistan Essential Services (Maintenance) Act, 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.

2. The Committee previously noted the comments made under the Convention in July 1999 by the All Pakistan Federation of Trade Unions (APFTU), in which it stated that the provisions of the Essential Services Act apply, inter alia, to workers employed in various public utilities such as WAPDA, Railway, Telecommunication, Karachi Port Trust, Sui Gas, etc., and these workers cannot resign from their service and cannot go on strike. The Committee also noted from a report by the ILO South Asia Multidisciplinary Advisory Team that the Ghazi Barotha Hydro Power Project (in which the World Bank was providing assistance for the construction of a power complex on the Indus river) had been declared by the Government as an essential service, so that the abovementioned restrictions applied to workers on the project.

3. The Committee has noted the Government's repeated statement in its reports that the application of the 1952 Act has been made very restrictive and it is extended only in cases of extreme nature, when peaceful and uninterrupted supply of goods and services to the general public appears to be disturbed. The Government also indicated that all workers covered by the Act had joined service without force and the requirement to obey justifiable and lawful orders of the employer did not constitute forced labour. The Committee recalls that, during the discussion in the Conference Committee in 2000, the Government's representative repeated indications previously given to this Committee to the effect that the Act applied to only six categories of establishments (a reduction from an initial list of ten categories) which were considered truly essential to the life of the community. As regards the Ghazi Barotha Hydro Power Project, which had been placed under the Act, the Government's representative assured the Conference Committee that the application of the Act to this project was a temporary measure. The Government's representative also informed the Conference Committee that the observations of the Committee of Experts concerning the Act had been placed before the Tripartite Commission on the Consolidation, Simplification and Rationalization of Labour Laws, and that the Commission's recommendations would be provided to the ILO and to the social partners when finalized.

4. While noting these indications, and referring also to the explanations provided in paragraphs 110 and 123 of its General Survey of 1979 on the abolition of forced labour, the Committee points out once again 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 therefore reiterates firm hope that the Pakistan Essential Services Act and corresponding provincial Acts will be either 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. The Committee previously referred to sections 100 to 103 of the Merchant Shipping Act, 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. It noted the Government's indications in its reports received in 1997 and 1999 that the abovementioned sections of the Act had been reintroduced in the Merchant Shipping Bill, with some modifications. The Government indicated in its latest report that the Bill had been converted into Ordinance 2001, which was in the process of enactment. In the Government's view, the new Ordinance would fulfil the requirements of the Convention. The Committee trusts that the necessary amendments will at last be adopted, so as to remove the penalties involving compulsory labour from sections 100 and 100(ii), (iii) and (v) of the Merchant Shipping Act (or limit their scope to offences committed in circumstances endangering the safety of the ship or the life, personal safety or health of persons) and to repeal the provisions of sections 101 and 102 of the Act under which seafarers may be forcibly returned on board ship to perform their duties. The Committee asks the Government to provide information on the progress made in this regard.

6. 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 expressed the hope that the necessary measures would be taken to bring the Industrial Relations Ordinance into conformity with the Convention, either by repealing sections 54 and 55 of the Ordinance or by repealing the penalties which may involve compulsory labour, or by limiting their scope to circumstances endangering the life, personal safety or health of the population. During the discussion in the Conference Committee in June 2000, the Government's representative indicated that sections 54 and 55 were placed before the Tripartite Commission on Consolidation, Simplification and Rationalization of Labour Laws. The Committee noted the Government's indication in its latest report that the Commission had finalized its recommendations, on the basis of which the draft labour laws were being prepared. It expresses firm hope that the Industrial Relations Ordinance will be brought into conformity with the Convention, and that the Government will supply full information on the provisions adopted to this end.

Article 1(a) and (e)

7. In comments made for a number of 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. As regards the West Pakistan Press and Publications Ordinance, 1963, the Committee previously noted the Government's indication in its report, as well as the information provided by the Government's representative to the Conference Committee in June 2000, according to which the Ordinance was repealed in 1988, and the Registration of Printing Press and Publication Ordinance was enacted. However, the Government indicated in its previous report that the latter Ordinance was allowed to lapse in 1997, and since then there had been no such law in force. The Committee noted the Government's indication in its latest report that a new draft press law had been finalized, in consultation with the All Pakistan Newspapers Society (APNS) and the Council of Pakistan Newspapers' Editors (CPNE); the Government indicated that the draft was at the vetting stage. The Committee requests the Government to supply a copy of the new press law, as soon as it is adopted.

9. As regards the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, the Committee previously noted that during the discussion in the Conference Committee in June 2000, the Government's representative indicated that both Acts had been brought to the attention of the competent authorities. It noted that the Government's latest report contained no new information on this subject. The Committee expresses firm hope that the necessary measures will soon be taken in order to bring the abovementioned provisions of these Acts into conformity with the Convention and that the Government will report on progress achieved. Pending action to amend these provisions, the Government is again requested to supply information on their practical application, including the number of convictions and copies of any court decisions defining or illustrating the scope of the legislation.

10. 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 Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punished with imprisonment for a term which may extend to three years.

11. The Committee has noted the Government's repeated statement 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 institution. According to the Government's view, the Penal Code imposes equal obligations on all citizens, whatever their religion, to respect the religious sentiments of others; an act which 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.

12. The Committee previously noted the report presented to the United Nations Commission on Human Rights in 1991 by the Special Rapporteur on the Application of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Conviction (document E/CN.4/1990/46 of 12 January 1990), referring to allegations according to which proceedings were instituted, on the basis of sections 298B and 298C of the Penal Code, in the districts of Guranwala, Shekhupura, Tharparkar and Attock, against a number of persons having used specific greetings. The Committee also noted from the report by the Special Rapporteur presented to the Commission on Human Rights in 1992 (document E/CN.4/1992/52 of 18 December 1991) that nine persons were sentenced to two years' imprisonment for acting against Ordinance XX of 1984 in April 1990, and that another person was sentenced to one year of imprisonment in 1988 for wearing a badge, the sentence being upheld by the Court of Appeal. It was stated that the Ahmadi daily newspaper had been banned during the past four years, its editor, publisher and printer indicted, and Ahmadi books and publications banned and confiscated. There was also reference to the sentencing under sections 298B and 298C of the Penal Code of two Ahmadis to several years' imprisonment.

13. The Committee requested the Government to provide factual information on the practical application of the provisions of sections 298B and 298C of the Penal Code, including the number of persons convicted and copies of court decisions, in particular in the proceedings mentioned by the Special Rapporteur, as well as of any court ruling that sections 298B and 298C are incompatible with constitutional requirements. The Government indicated in its latest report that five cases had been registered in the district of Attock against persons belonging to Ahmadis: four persons had been acquitted and the conviction of one person had been maintained by the High Court. The Committee also noted the information communicated by the Government on four cases registered against persons belonging to Quadiani group who had been professing and convincing other people to join the group, on the basis of section 298C of the Penal Code: two cases were reported for cancellation, two others were pending trial in the court. The Committee observes that no information has been supplied on court practice which would contradict the findings of the Special Rapporteur referred to above.

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 its firm hope that 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.

The Committee hopes that the Government will make every effort to take the necessary action.

Papua New Guinea

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)

The Committee notes the Government's reply to its earlier comments.

Article 1(c) and (d) of the Convention. In comments it has been making since 1978, the Committee has been referring to section 7(1)(a), (c), (d) and (e) of the Seamen (Foreign) Act, 1952 (now section 2(1), (2), (4) and (5)), according to which a seafarer belonging to a foreign ship who deserts or commits certain other disciplinary offences is liable to imprisonment (involving an obligation to perform work). It also noted that, under section 8 of the same Act (now section 1(2)) and section 161 of the revised Merchant Shipping Act (Chapter 242) (Consolidated to No. 67 of 1996), foreign seafarers deserting their ship may be forcibly returned on board ship.

As the Committee repeatedly pointed out, 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 on board, 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 has noted the Government's repeated indication that the Committee's comments have been communicated to the Department of Transport with a view to amending these provisions. It has also noted the Government's renewed intention to ask the ILO for technical assistance in this respect, under the ILO programme of activities for Papua New Guinea for 2004.

The Committee trusts that the abovementioned provisions will at last be brought into conformity with the Convention, and that the Government will soon be in a position to indicate the progress achieved in this regard.

Paraguay

Forced Labour Convention, 1930 (No. 29) (ratification: 1967)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. *Articles 1 and 2(1) of the Convention.* The Committee in its previous comments expressed concern about the existence of cases of debt bondage in the indigenous communities of the Chaco. The Committee noted that the Government forwarded copies of the communications it had sent to the Ministry of the Interior, the Office of the Public Prosecutor, the Supreme Court of Justice, the House of Deputies and the Senate, as well as to the Federation of Production, Industry and Commerce (FEPRINCO) and the Rural Association of Paraguay (ARP), the employers' organization representing the owners of large ranches in the Chaco. In these communications, the Ministry of Justice and Labour requested that "all the information available on these allegations be provided as soon as possible".

The Committee noted that "the Office of the Public Prosecutor is aware of the labour problems that a number of indigenous communities are experiencing in the Chaco" and that "the ranches in the Chaco should be inspected immediately". The Government also indicated that the Ministry of Justice and Labour has planned such inspections.

The Committee regards debt bondage as constituting a serious violation of the Convention. The Committee trusts that the Government will indicate the results of the inspections carried out in the Chaco ranches and that it will take the necessary measures to protect indigenous workers in this region against debt bondage and will inform the Committee of the progress made to this end.

2. *Article 2(2)(c).* In its previous comments, the Committee referred to section 39 of Act No. 210 of 1970, which provides that work shall be compulsory for detainees. Section 10 of the above Act defines detainees as not only convicted persons, but also persons subjected to security measures in a prison establishment. The Committee recalled that, under the terms of *Article 2(2)(c)* of the Convention, work or service may only be exacted from a person as a consequence of a conviction in a court of law. Persons who have been detained but not convicted shall not be obliged to carry out any type of work.

In its report the Government reiterated that a new Prison Code, which was under examination, would replace Act No. 210 of 1970. The Committee requests the Government to provide a copy of the Prison Code, once it is adopted.

The Committee hopes that the Government will make every effort to take the necessary action.

Qatar

Forced Labour Convention, 1930 (No. 29) (ratification: 1998)

Trafficking of children with a view to their exploitation as camel jockeys. In its earlier comments, the Committee raised its concern on the situation of children involved in camel races who are subjected to exploitation and are placed in conditions in which they cannot freely give their consent, nor can such consent validly be provided by their parents in their place. It requested the Government to take all the necessary measures, in cooperation with the other governments concerned, with a view to eliminating the trafficking of children for their use as camel jockeys and to punish those responsible through the strict application of the appropriate penal sanctions.

The Committee has noted the Government's reply to its previous observation on the subject. It notes that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and has already sent its first and second reports on the application of that Convention. 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 trafficking of children for the purpose of exploiting their labour can 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 comments on the application of Convention No. 182.

The Committee is also addressing a direct request to the Government on certain other points.

Russian Federation

Forced Labour Convention, 1930 (No. 29) (ratification: 1956)

Trafficking in persons

The Committee has noted the Government's reply to a communication dated 2 September 2002 of the International Confederation of Free Trade Unions (ICFTU) submitting comments concerning the problem of trafficking in persons for the purpose of sexual and labour exploitation.

The ICFTU alleges that 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. The victims often find themselves in debt bondage as they owe the traffickers recruitment and transport costs which are then inflated with charges for food, accommodation and interest on the debt. It is also alleged that internal trafficking within the Russian Federation is taking place; women are generally forced to work as prostitutes while men are trafficked into agricultural or construction work. There are also said to be confirmed cases of children being trafficked for sexual exploitation.

The ICFTU considers that the absence of specific anti-trafficking legislation and the lack of specialized training in law enforcement are serious impediments to preventing people from being subjected to trafficking and forced labour, and that the lack of adequate resources available for providing support and assistance to victims who have returned to the Russian Federation leaves them vulnerable to being re-trafficked.

The Committee has noted from the Government's reply that the Criminal Code contains provisions punishing trafficking in minors (section 152), as well as abduction (section 126) and various sexual crimes (sections 132 and 133). It has noted with interest the ratification by the Russian Federation of the Worst Forms of Child Labour Convention, 1999 (No. 182). The Committee has also noted that the Russian Federation has signed the UN Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The Committee has noted the Government's indications in the report concerning the practical measures to combat trafficking in women taken in cooperation with the neighbouring States, e.g. within the framework of the Council of the Baltic Sea States, and joint police operations conducted to liberate girls who were trafficked and illegally detained in Turkey, Greece and Italy in 2000-02. The report also contains information on the development of a network of shelters and other measures to protect the victims of trafficking, as well as on the awareness-raising campaign launched in collaboration with the media and NGOs.

The Committee has noted with interest the elaboration of a draft Law on Combating Trafficking in Human Beings which provides for a system of bodies to combat trafficking and contains provisions concerning prevention of trafficking, as well as protection and rehabilitation of victims. As regards punishment of perpetrators, the Committee has noted with interest the Government's indications concerning draft amendments to be introduced to the Criminal Code, which defines crimes related to trafficking and provides for severe sanctions of imprisonment. The Committee hopes that these amendments, as well as the new Law on combating trafficking, will soon be adopted, and that the Government will supply copies thereof for the examination by the Committee. The Committee would also appreciate it if the Government would continue to provide information on the practical measures taken or envisaged to combat trafficking in human beings with a view to eliminating it.

Rwanda

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(a) of the Convention. In its previous comments, the Committee noted that, under section 9(1) and (2) of Act No. 33/91 of 5 August 1991 concerning demonstrations on public thoroughfares and public meetings, any person who organizes an unauthorized demonstration or meeting shall be liable to a sentence of imprisonment. Also noting that, under section 39 of the Penal Code and section 40 of Ordinance No. 111/127 of 20 May 1961 concerning the prison system, work is compulsory for all convicted prisoners, the Committee requested the Government to ensure that persons who hold or express – by means or methods that neither use violence nor incite to violence – an opinion opposed to the established political, social or economic system do not incur prison sentences including the obligation to work. In its last report the Government indicated that a seminar on international labour standards was due to take place, and that on this occasion the comments of the Committee of Experts would be examined so that a reply could be made to them. The Committee hopes that, further to this seminar, appropriate measures will have been taken to ensure the respect of *Article 1(a)* of the Convention, which prohibits the recourse to any form of forced or compulsory labour, including compulsory labour in prison, 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 is also addressing a request regarding certain points directly to the Government.

Sierra Leone

Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

The Committee notes the Government's reply to its earlier comments.

Articles 1(1) and 2(1) of the Convention. Compulsory cultivation. Since 1964, 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", and requested the Government to repeal or amend this provision. The Committee previously 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 notes the Government's indication in its report 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, as far back as 1964, has indicated that the legislation would be amended, the Committee expresses the firm hope that the necessary measures will be taken in the near future in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice, 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.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

The Committee notes the Government's reply to its earlier comments.

Article 1(a) of the Convention. In its earlier comments the Committee requested the Government to supply information on the evolution of the political situation, in so far as it relates to the application of the Convention. The Committee noted that in July 1996, the Constitutional Reinstatement Provisions Act reinstated the suspended parts of the 1991 Constitution and requested the Government to provide information on the application of provisions concerning the freedom of speech and press, freedom of peaceful assembly and association.

The Committee notes the Government's indications in the report that, since 1996, the political climate of Sierra Leone has improved with regards to speech and press freedom, freedom of peaceful assembly and association, an independent media commission has been established and more radio stations and newspapers have emerged. The Government also states that the Constitutional Review Committee is still ongoing.

The Committee hopes that the Government will provide, in its next report, information on the application in practice of sections 24, 32 and 33 of the Public Order Act (concerning public meetings, the publication of false news and seditious offences), as well as the information on the activities of the independent media commission referred to in the Government's report. Please also provide particulars of the outcome of work of the Constitutional Review Committee, to which the Government has been referring since 1995.

Singapore

Forced Labour Convention, 1930 (No. 29) (ratification: 1965)

Articles 1(1) and 2(1) of the Convention. Over a number of years the Committee has been referring to sections 3 and 16 of the Destitute Persons Act, 1989 (which repeated without change certain provisions of the Destitute Persons Act, 1965), under which any destitute person may be required, subject to penal sanctions, to reside in a welfare home, and to section 13 of the same Act, under which any person resident in such a home may be required to engage in any suitable work for which the medical officer of the home certifies him to be capable, either with a view to fitting him for an employment outside the welfare home or with a view to contributing to his maintenance in the welfare home.

The Committee pointed out that the imposition of labour under the Destitute Persons Act, 1989, comes under the definition of "forced or compulsory labour" in *Article 2(1)* of the Convention, and that the Convention makes no exception for labour imposed "in the context of rehabilitation" of destitute persons.

The Committee has noted the Government's repeated indications that section 13 of the Act should be interpreted in the context of rehabilitative services for destitute persons, and that, in practice, residents in the welfare home are not compelled to work and are only assigned chores after they have given their written consent, and also receive payment for their participation. The Government considers that, since residents are not forced to work, the provision in question does not violate the Convention.

While noting that the current practice under the Destitute Persons Act, 1989, which appears to be in conformity with the Convention, the Committee again draws the Government's attention to the need to bring the legislative provisions into conformity with the Convention, so as to ensure compliance both in law and in practice. Recalling also that the question of work imposed on destitute persons has been the subject of comments since 1970, the Committee trusts that the necessary measures will at last be taken with a view to amending the wording of section 13 of the Act so as to provide clearly that any work in a welfare home is to be done voluntarily, thus bringing the abovementioned legislation into conformity with

the Convention and the indicated practice. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.

Sudan

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

Abolition of slave-like practices

1. For a number of years, the Committee has been examining, in relation to the application of the Convention, information concerning the practices of abduction, trafficking and forced labour affecting thousands of women and children in the regions of the country where an armed conflict is under way. The Government was requested to provide detailed information on the measures taken to combat the practice of forced labour through abduction of women and children and to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators.

2. The Committee takes note of the Government's report received in October 2004 and of the Information Note about the activities of the Committee for the Eradication of Abduction of Women and Children (CEAWC) supplied in January 2004, as well as of the discussion that took place in the Conference Committee on the Application of Standards in June 2004. It also notes the observations dated 31 August 2004 received from the International Confederation of Free Trade Unions (ICFTU) concerning the application of the Convention by Sudan, which were transmitted to the Government in September 2004 for such comments as might be considered appropriate. As the Government's report received in October 2004 contains no reference to these serious observations, the Committee requests that the Government communicate its comments with its next report.

Conference Committee on the Application of Standards

3. The Committee notes that, in its conclusions adopted in June 2004, the Conference Committee again expressed its deep concern at continuing reports of abductions and slavery, particularly in the region of south Darfur, and considered it necessary to invite the Government to take effective and quick measures to bring to an end these practices and to punish those responsible, thus ending the impunity. While noting the positive measures taken by the Government, the Conference Committee expressed the firm hope that the Government's next report would describe the concrete results obtained and recalled that the Government could request technical assistance of the ILO.

United Nations bodies

4. The Committee notes that, in its decision 2004/128 of 23 April 2004 on the situation of human rights in Sudan (E/CN.4/DEC/2004/128), the UN Commission on Human Rights expressed its deep concern about the situation in Sudan, and in particular in Darfur – Western Sudan, and called upon the Government to actively promote and protect human rights and international humanitarian law throughout the country. The Committee also notes a report of the Representative of the Secretary-General on internally displaced persons "Mission to the Sudan – the Darfur crisis" (E/CN.4/2005/8 of 27 September 2004), in which he points out that "what the world is witnessing in Darfur has been occurring in the southern part of the country for almost the entire period of the civil war, including the burning of villages, killings, destruction and looting of property, the use of tribal Arab militias, the massive displacement of people from their land and abduction of children and women" (paragraph 16). The Committee further notes a report of the UN High Commissioner for Human Rights on a situation of human rights in the Darfur region of Sudan (E/CN.4/2005/3), in which he referred to "sexual slavery" and "enforced prostitution" which "constitute crimes against humanity when committed as part of a widespread or systematic attack directed against the civilian population" (paragraph 69). According to the recommendations contained in the report, "violations of human rights and international humanitarian law must be thoroughly and swiftly investigated and perpetrators must be brought to justice" (paragraph 97).

Comments from workers' organizations

5. In the observations of 2004 referred to above, the ICFTU contested the Government's statement to the Conference Committee in June 2004 that "abductions have stopped completely". The ICFTU refers to a report on a situation in Darfur issued by Amnesty International in July 2004, which contained information obtained from eyewitness accounts, concerning cases of abduction of women and children by the Janjaweed militia, including some cases of sexual slavery. Referring to the information received from various sources, including the United States Department of State country report on Sudan, the ICFTU alleges that abductions, which have been documented in previous years, have continued in 2003 and 2004. It also shares the views expressed by the Eminent Persons Group in its report of 2002 that these abductions are "the product of a counter-insurgency strategy" pursued by the Government, which "has failed to acknowledge its own responsibility for acts committed by militias and other forces under its authority".

6. Referring to a statement by the Government representative to the Conference Committee that there was no proof regarding the number of abducted persons and that the estimates confused cases of abduction with other cases of displaced persons, the ICFTU stressed that, according to the Dinka Chiefs Committee (DCC) estimates, there are some 14,000 people who have been abducted, and that this figure has been accepted by the CEAWC. According to the estimates from the CEAWC, DCC and other sources, there are still 10,000 abducted people waiting to be identified and reunited with their families. As regards prosecutions of those responsible for abductions, the ICFTU pointed out that it was not aware of

any prosecutions brought to date and that, according to the Eminent Persons Group report, with regard to slavery and abductions, there had been no prosecution of a criminal case in the Sudanese courts during the past 16 years.

7. While welcoming the positive developments, such as the conclusion of three peace agreements in May 2004, the ICFTU expressed the view that it would not automatically lead to an end of abductions and associated human rights violations, as recent events in Darfur had demonstrated, and called on the Government to state publicly that all these practices are illegal and to give priority to prosecuting all those responsible for new abductions and those who are not cooperating with the CEAWC.

The Government's response

8. In its 2004 report, the Government reiterates its condemnation of all forms of slavery and forced labour and confirms its commitment to cooperate with international organizations to eradicate the phenomenon of abductions. Further to the information on CEAWC field work activities supplied to the ILO in January 2004, the Committee notes from the Government's report received in October 2004 and from the statement of the Government representative to the Conference Committee in June 2004 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 Government also repeats its previous statement that abduction has stopped completely. Referring to the above observations of 2004 by the ICFTU, in which this statement has been contested, the Committee hopes that the Government will respond to these observations and will continue to provide information on the application in practice of Presidential Decree No. 14 of 2002 on the re-establishment of the CEAWC, indicating, in particular, the number of abducted persons identified and released and the number of perpetrators prosecuted.

9. The Committee notes from the Government's report and from the discussion at the Conference Committee that, in May 2004, the Government of Sudan signed three peace protocols, including a protocol on power-sharing, which contains provisions on human rights and fundamental freedoms and refers in this connection to international instruments, including those concerning the rights of the child and abolition of slavery. The Government stated that the implementation of these agreements would lead to the solution of the problems raised.

10. While noting these positive developments and the Government's renewed commitment to resolve the problem, the Committee urges the Government to pursue its efforts with vigour in order to combat the practice of the exaction of forced labour through abduction of women and children, which is conducted on such a massive scale in the country. The Committee observes once again 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. The Committee observes that the situations concerned constitute gross violations of the Convention, since the victims are forced to perform work for which they have not offered themselves voluntarily, under extremely harsh conditions and combined with ill-treatment which may include torture and death. The Committee considers that the scope and gravity of the problem are such that it is necessary to take urgent action that is commensurate in scope and systematic.

Article 25 of the Convention

11. In its earlier comments, the Committee noted that, under article 162 of the Criminal Code, abduction is punishable by ten years' imprisonment, and requested the Government to take measures to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators. However, in its 2002 report the Government expressed the view that any prosecution that may be made against abductors at the present stage would lead to the collapse of the recommendations of tribal conciliation meetings being held among the various tribes concerned by abduction cases in an attempt to eradicate the phenomenon of mutual abduction within a framework of peaceful coexistence among tribes. The Committee notes from the Information Note about the activities of the CEAWC supplied in January 2004, as well as from the statement of the Government representative to the Conference Committee in June 2004, 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.

12. The Committee points out once again that such an approach could have the effect of ensuring impunity for abductors who exploit forced labour. Recalling that, under *Article 25* of the Convention, "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced", the Committee trusts that the necessary measures will be taken in the near future to ensure that legal proceedings are instituted against perpetrators and penal sanctions are imposed on persons convicted of having exacted forced labour, as required by the Convention.

13. The Committee previously noted the Government's indications in its 2002 report concerning the setting up by the Minister of Justice of special courts for the prosecution of abductors of women and children. The Committee hopes that the Government will provide, in its next report, information on the functioning of these courts in practice, indicating the number of courts established and the number of prosecutions made, and supplying sample copies of court decisions.

[The Government is asked to supply full particulars to the Conference at its 93rd Session.]

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1970)

Article 1(a) and (d) of the Convention. In its earlier comments, the Committee noted that 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 under the following provisions of the national legislation falling within the scope of the Convention: sections 112, 119, 120 and 126(2) of the Labour Code of 1997 (compulsory arbitration) and sections 50, 66 and 69 of the Penal Code (committing an act with the intention of destabilizing the constitutional system, publication of false news with the intention of harming the prestige of the State and committing an act intended to disturb the peace).

The Committee referred to the effect that the declaration of emergency and the suspension of the guarantees set forth in the Convention could have on its application. While noting the Government's indication in the report that the declaration of emergency was expected to be lifted after the signature of the Peace Accords, the Committee observes that the declaration of emergency proclaimed in December 1999 has remained in force in 2004.

The Committee takes note of the situation regarding human rights in the Sudan as described in the decision of the UN Commission on Human Rights 2004/128 of 23 April 2004 "Situation of human rights in the Sudan" (E/CN.4/DEC/2004/128), in the Report of the Representative of the Secretary-General on internally displaced persons "Mission to the Sudan – The Darfur crisis" (E/CN.4/2005/8, of 27 September 2004) and in the Report of the UN High Commissioner for Human Rights on a situation of human rights in the Darfur region of the Sudan (E/CN.4/2005/3). In its decision 2004/128 on the situation of human rights in the Sudan referred to above, the UN Commission on Human Rights expressed its deep concern about the situation in the Sudan, and in particular in Darfur – Western Sudan, and called upon the Government to actively promote and protect human rights and international humanitarian law throughout the country.

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 can have on the application of the Convention.

The Committee has 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 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 has also noted the Government's statement that the comments by the ILO supervisory bodies on the application of the Convention had been submitted to a committee in charge of the amendments of the 1997 Labour Code, which finished its deliberations and submitted the new draft Code. The Committee would appreciate it if the Government would supply a copy of the new Code, 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.

Swaziland

Forced Labour Convention, 1930 (No. 29) (ratification: 1978)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(1) and Article 2(1) and (2)(b), (d) and (e) of the Convention. The Committee previously noted the observations on the application of the Convention made in June 1999 and June 2001 by the Swaziland Federation of Trade Unions (SFTU). The SFTU alleged that the new Swazi Administration Order, No. 6 of 1998, which repealed the Swazi Administration Act, No. 79 of 1950, legalized forced labour, slavery and exploitation with gross impunity and gave the Chiefs the right to penalize non-compliance with the Order with fines, imprisonment, demolition without compensation, etc. The SFTU referred, inter alia, to sections 6, 27 and 28 of the 1998 Order, which provide for the duty of Swazis to assist the Ngwenyama and Chiefs; the duty to attend before Ngwenyama, Chiefs and government officers when so directed, under the threat of punishment; and the duty to obey orders requiring participation in compulsory works.

The Committee has noted the Government's view expressed in the report that participation in the national duties is not a form of forced or compulsory labour, since this is not being done for purpose of financial gain and Swazis offer themselves voluntarily for such services.

However, in its earlier comments the Committee noted that the combination of sections 6, 27, 28(1)(p), (q) and (u) and 34 of the new Swazi Administration Order (No. 6 of 1998) provides for orders requiring compulsory cultivation, anti-soil erosion works and the making, maintenance and protection of roads, enforceable with severe penalties for non-compliance. With reference to the comments it has been making for a number of years concerning the abovementioned Swazi Administration Act, No. 79 of 1950, which contained similar provisions, the Committee observed that provisions of this kind are in serious breach of the Convention. Referring also to paragraphs 36, 37 and 74-83 of its General Survey of 1979 on the abolition of forced labour, the Committee pointed out that, in order to be compatible with the Convention, such provisions should be limited in scope to cases of a calamity or threatened calamity endangering the existence or well-being of the population, or (in case of compulsory cultivation) to circumstances of famine or a deficiency of food supplies and always on the condition that the food or produce shall remain the property of the individuals or the community producing it, or (to fall under the exemption made for minor communal services) to cases where work is limited to minor maintenance and its duration is substantially reduced. Since the above provisions of the 1998 Order are not restricted in application to the circumstances contemplated in *Article 2(2)(d) and (e)* of the Convention, such as e.g. cases of emergency (fire, flood, famine, earthquake, violent epidemic or epizootic diseases, etc.) or minor communal services, they are incompatible with the Convention.

The Committee therefore urges the Government to take the necessary measures in order to repeal or amend the above provisions of the Swazi Administration Order, 1998, so as to bring legislation into conformity with the Convention. Pending the adoption of such measures, the Committee again requests the Government to provide information on the manner in which these provisions are being applied in practice.

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)

The Committee has noted the Government's reply to its earlier comments.

Article 1(c) of the Convention. Since many years the Committee has been referring to sections 5, 6 and 7 of the Act for the Prevention of Desertion or Undue Absence from Merchant Ships, B.E. 2466 (1923), which provide for the forcible conveyance of seafarers on board ship to perform their duties. The Committee previously noted the Government's indications that the Act had not been applied during the past decade and requested the Government to bring it into conformity with the Convention and with the indicated practice.

The Government indicates in its 2003 report that measures have been taken to repeal the above sections of the Act, since they seem obsolete and not appropriate to current circumstances. It states that the Royal Thai Police, which is responsible for the Act, agreed with the Ministry of Labour that these provisions should be repealed, and that the Ministry has advised the Office of the Council of State to consider repealing the Act. The Committee has noted this information with interest and expresses the firm hope that the abovementioned provisions will soon be repealed and the legislation brought into conformity with the Convention, as well as with the indicated practice.

In its earlier comments, the Committee referred to sections 131 and 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, even individually, violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18(2), 22(2), 23 to 25, 29(4), or 35(4) of the Labour Relations Act. The Committee pointed out that sections 131 to 133 of the Labour Relations Act were incompatible with the Convention.

The Government indicates in its 2003 report that the Ministry of Labour is planning to conduct research on the effect of law enforcement so as to identify the problems and to find out a possibility of law revision or amendment regarding the above provisions.

The Committee trusts that the necessary measures will at last be taken with a view to bringing the above provisions into conformity with the Convention and that the Government will soon be able to report the progress made in this regard.

Article 1(d). The Committee previously noted that penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes under following provisions of the Labour Relations Act: (i) section 140 read together with section 35(2), if the Minister orders the strikers to return to work as usual, being of the opinion that the strike may cause serious damage to the national economy or hardship to the public or may affect national security or be contrary to public order; (ii) section 139 read together with section 34(4), (5) and (6), if the party required to comply with an arbitrator's award under section 25 has done so, 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 committee under section 24, or if the matter is awaiting the award of labour disputes arbitrators appointed under section 25.

Having noted the Government's indications in its report that the Ministry of Labour is planning to conduct a study on the effect of law enforcement so as to identify the problems and to assess appropriateness of law revision or amendment with a view to bringing the above provisions into conformity with the Convention, the Committee reiterates its hope that these provisions will be limited in scope 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), so as to ensure compliance with the Convention on this point.

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 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. While having noted this statement, as well as the Government's previous indications that this section had never been applied in practice, and referring also to the explanations provided in paragraph 128 of its 1979 General Survey on the abolition of forced labour, the Committee reiterates its hope that the necessary measures will be taken, on the occasion of the next revision of the Criminal Code, in order to amend section 117 so as to remove strikes pursuing economic and social objectives affecting the workers' occupational interests from the scope of sanctions under this section, with a view to bringing this provision into conformity with the Convention and the indicated practice.

The Committee previously 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 that the new State Enterprise Labour Relations Act B.E. 2543 (2000) also 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). The Committee recalled, referring to the explanations provided in paragraph 123 of its 1979 General Survey on the abolition of forced labour, that the imposition of penalties of imprisonment involving compulsory labour on striking employees would be compatible with the Convention only in the case of essential services in the strict sense of the term (i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population), and that a blanket prohibition of strikes in all state-owned enterprises, if enforced with penalties involving compulsory labour, is incompatible with the Convention.

Having noted the Government's indications in its report that the Ministry of Labour is planning to conduct research and an in-depth study to review the effect of such law enforcement, the Committee expresses the firm hope that the necessary measures will at last be taken in order to bring the State Enterprise Labour Relations Act into conformity with the Convention, and that the Government will soon be able to provide information on the progress made in this regard.

Togo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Article 2, paragraph 1, of the Convention. Trafficking in children. In its previous comments, the Committee noted the information concerning Togo contained in the summary report entitled "Combating trafficking in children for labour exploitation in West and Central Africa" (IPEC/ILO, 2001), prepared in the context of the subregional project to combat trafficking in children for labour exploitation in Africa of the International Programme on the Elimination of Child Labour (IPEC). In all nine of the countries in the region covered by the report, trafficking in children constitutes a national and transboundary phenomenon. The report indicates that Togo, which is a country of origin, transit and destination, has been engaged for a certain length of time in combating trafficking in children. The Committee noted in this context several measures taken by the Government: the drafting of a Bill establishing a minimum age for the placement of children and punishing their trafficking; the adoption of a national action plan in March 1999 by the Ministry of Social Affairs which, in January 1998, had issued a directive to the directors of regional social services on trafficking in children recommending concerted action with communities, associations and NGOs, and the establishment of special programmes to combat trafficking in children, including those undertaken in collaboration with the IPEC programme.

The Committee requested the Government to provide information on the results achieved following the adoption of the national action plan and the programmes to combat trafficking in children and on the legal proceedings instituted against those responsible for the trafficking in children and the penalties imposed.

The Committee notes that the Government has not provided information on this subject in its last two reports. However, it indicates that the study-survey on the elimination of obstacles to the application of fundamental labour principles and rights, launched by the Government and undertaken with ILO support, has revealed the existence of certain practices similar to forced labour and that these practices are expected to disappear progressively in view of the action taken in the context of the project to support the implementation of the ILO Declaration (PAMODEC). The Committee notes the indication in the study-survey that a significant number of children from rural areas of Togo are taken to urban centres to perform domestic work, act as porters in major markets, serve in bars (fufu-bars and dance halls) or for their sexual exploitation in Togo or abroad, mostly without an employment contract and against their will. The study also refers to the situation of children from Togo working in plantations in Côte d'Ivoire far from centres of habitation and therefore with no possibility of escaping from their owners. The Committee also notes a preliminary draft of a Bill defining the trafficking of children to be discussed by the Council of Ministers.

The Committee also notes that in its concluding observations on Togo, the United Nations Committee on Economic, Social and Cultural Rights notes with concern that trafficking in persons predominantly concerns children, who are sold as young as two years old for future work on plantations or as house servants. These children are allegedly exploited extensively, poorly fed, crudely clothed and inadequately cared for. While recognizing the efforts made by the Government to address the problem of the trafficking in children, such as conducting public-awareness campaigns and organizing a workshop for border police and other law enforcement officers on child trafficking trends and judicial remedies, the Committee on Economic, Social and Cultural Rights notes that the root causes of these problems have not been adequately addressed (E/C.12/1/Add. 61 of 21 May 2001).

The Committee also notes the recent report of the United Nations Commission on Crime Prevention and Criminal Justice (Report on the Twelfth Session, 13-22 May 2003, E/CN.15/2003/14). In a thematic discussion of "trafficking in human beings, especially women and children", Togo is cited as an example of effective action. The report states that "despite the relative lack of resources, Togo had established and equipped monitoring committees around the country, mounted awareness-raising campaigns and set up programmes to provide school supplies to children and economic support to mothers, aimed at reducing the incidence of trafficking in children."

The Committee recalls that trafficking in persons constitutes a grave violation of the Convention. In view of all the above information, it requests the Government to provide detailed information on the results achieved through the various measures adopted to combat trafficking in children and on any difficulties encountered in their implementation. The

Committee would also be grateful if the Government would indicate whether new legislative measures have been adopted with a view to the repression of trafficking in children and whether legal action has been taken against those responsible for such acts, with an indication of the penalties imposed. The Committee recalls in this respect 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 any Member ratifying the Convention is under the obligation to ensure that such penalties are really adequate and strictly enforced.

Finally, the Committee notes that Togo has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), which provides in Article 3, paragraph (a), 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 draws the Government’s attention to the fact that the protection of children is reinforced by the fact that Convention No. 182 places the obligation on 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 therefore requests the Government to provide the information requested above in its report on the application of Convention No. 182.

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

Trinidad and Tobago

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

Article 1(c) and (d) of the Convention. Sanctions involving compulsory labour for breaches of labour discipline and participation in strikes. For many years the Committee has been referring to sections 157 and 158 of the Shipping Act, 1987, section 8(1) of the Trade Disputes and Protection of Property Ordinance and section 69(1)(d) and (2) of the Industrial Relations Act, Cap. 88.01, under which penalties of imprisonment – involving compulsory labour under the Prisons Rules – may be imposed for various breaches of labour discipline and participation in strikes in circumstances where the life, personal safety or health of persons are not endangered. On several occasions the Government reported that efforts were under way to amend the provisions mentioned above and that no sanctions had been imposed under these provisions in practice.

In its latest report, the Government indicates that no changes have been made to the above provisions and that the relevant ministries under whose authority the acts are administered have not indicated any immediate intention of making amendments to this legislation. The Committee also notes the Government’s view expressed in the report that the work is performed by inmates in accordance with instructions as deemed by the courts, such work being referred to as “hard labour” for which inmates receive a small stipend and must not be construed as “forced” or “compulsory” labour.

While taking due note of these indication and views, the Committee draws the Government’s attention to the explanations given in paragraphs 102-109 of its 1979 General Survey on the abolition of forced labour, where it pointed out that: “in most cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of the Abolition of Forced Labour Convention. On the other hand, if a person is in any way forced to work because he holds or has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by the Convention”. The Committee therefore considered that compulsory labour in any form, including compulsory prison labour, is covered by the Convention in so far as it is exacted in the five cases specified by that Convention.

The Committee trusts that, since the legislative amendments required have been under consideration for many years, the necessary measures will at last be taken in order to bring the abovementioned provisions into conformity with the Convention, and that the Government will soon be in a position to indicate the progress achieved in this regard.

Turkey

Forced Labour Convention, 1930 (No. 29) (ratification: 1998)

The Committee has noted the Government’s reply to its earlier comments, as well as observations made by the Turkish Confederation of Employer Associations (TISK) and the Turkish Confederation of Public Workers’ Associations (TÜRKIYE KAMU-SEN), communicated by the Government with its report. It has also noted a communication received in December 2003 from the International Confederation of Free Trade Unions (ICFTU), which contains observations concerning the application of the Convention by Turkey. It has noted that this communication was sent to the Government in March 2004, for any comments it might wish to make on the matters raised therein. Since no reply has been received from the Government so far, the Committee hopes that the Government’s comments will be supplied with its next report, so as to enable the Committee to examine them at its next session.

Trafficking of women and children for the purpose of commercial sexual exploitation. In the communication referred to above the ICFTU expressed its concern on trafficking of women and children which occurs in Turkey. The ICFTU alleged that Turkey is both a transit and a destination country for trafficked people; most women and girls whose destination is Turkey come from the Russian Federation, Republic of Moldova, Romania, Georgia, Ukraine, Armenia,

Azerbaijan and Uzbekistan; Turkey provides transit mainly for women from Central Asia, Africa, the Middle East and former Yugoslavia to other countries in Europe; most of them saw themselves forced into prostitution and some of them are forced into debt bondage.

Referring to its 2000 general observation concerning trafficking, the Committee asks the Government to respond to the allegations by the ICFTU and to provide, in its next report, information on measures taken or contemplated to prevent, suppress and punish trafficking in persons for the purpose of exploitation and to protect the victims of trafficking.

As regards *trafficking of children*, the Committee notes that Turkey has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Government has already provided its first report on the application of that Convention. 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 trafficking of children for the purpose of exploiting their labour can 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 comments on the application of Convention No. 182.

The Committee is also addressing a direct request to the Government on certain other points.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

The Committee has noted the Government’s reply to its earlier comments, as well as the observations of the Turkish Confederation of Public Worker Associations (Türkiye Kamu-Sen) and the Turkish Confederation of Employer Associations (TISK) communicated by the Government with its report.

Article 1(a) of the Convention. Political coercion and punishment for holding views opposed to the established system. 1. The Committee previously noted that penalties of imprisonment (involving compulsory prison labour, under section 198 of the Regulations pertaining to the Administration of Penitentiaries and to the Execution of Sentences, adopted by decision of the Council of Ministers of 5 July 1967, No. 6/8517, as amended) may be imposed under various provisions of national legislation in circumstances falling within *Article 1(a)* of the Convention, namely:

- (a) section 143 of the Penal Code (participation in foreign associations and institutions without permission of the Government);
- (b) section 159 of the Penal Code (insulting or vilifying, inter alia, “Turkism”, various state authorities, the state laws or the decisions of the National Grand Assembly);
- (c) section 241 of the Penal Code (public censuring, by ministers of religion, of government administration, state laws or government activities);
- (d) sections 266-268 of the Penal Code (insulting public office holders);
- (e) section 312, paragraphs 2 and 3, of the Penal Code (publicly inciting hatred and enmity of the population with reference to distinctions of class, race, religion or region);
- (f) section 526, paragraph 2, of the Penal Code (acting contrary to prohibitions or obligations under Act No. 671 concerning the wearing of headgear and Act No. 1353 concerning the adoption and use of Turkish letters);
- (g) section 536, paragraph 2, of the Penal Code (public affixing of printed, handwritten or drawn papers, posters, etc., inter alia, on any kind of means of transportation or privately owned signs or boards, without the permission of the authorities);
- (h) section 8 of the “Act against terrorism”, No. 3713 of 12 April 1991, as amended on 13 November 1996 (written or oral propaganda, assemblies, manifestations and demonstrations against the indivisibility of the State).

The Committee noted that, while some of the provisions referred to above, in particular under (e) and (h), might appear to be aimed at acts of violence or incitement to the use of violence, armed resistance or an uprising, their actual scope, as shown through their application in practice, is not limited to such acts, but provides for political coercion and the punishment of the peaceful expression of non-violent views that are critical of government policy and the established political system, with penalties involving compulsory labour.

2. The Committee notes with interest that section 159 of the Penal Code referred to above has been amended by Act No. 4771, of 3 August 2002, by adding a new provision according to which the written, oral or visual expression of ideas merely with a view to criticizing the state authorities, without the intention to insult them, shall not involve any punishment. However, the amendment introduced in section 312 of the Penal Code referred to above by Act No. 4744 of 6 February 2002, which makes the inciting of hatred and enmity of the population punishable with imprisonment if such acts constitute a danger to public order, requires further clarification in the light of the above considerations, and the Committee hopes that the Government will supply copies of the court decisions which could define or illustrate the scope of this provision, so as to enable the Committee to ascertain whether it is applied in a manner compatible with the Convention. As regards the amendment of section 8 of the “Act against terrorism”, the Committee notes with interest that, in virtue of Act No. 4744 of 6 February 2002, a penalty of imprisonment in this section was replaced with fines, but requests the Government to provide clarification of the phrase “unless such acts necessitate a heavier penalty” and to

supply copies of the court decisions defining or illustrating the scope of this provision. The Committee also welcomes a decision to stop prosecutions under the old section 8 of the “Act against terrorism” and to release the accused persons, in virtue of a transitional section 10 inserted by Act No. 4928 of 15 July 2003, and requests the Government to provide information on the application of these measures in practice.

3. The Committee notes with interest the Government’s intention expressed in the report to bring the Penal Code into conformity with the international standards, as well as the Government’s indication that a Bill on the new Turkish Penal Code has been prepared and submitted to the Office of the Prime Minister. The Government also indicates that a Bill concerning the Execution of Sentences is now under elaboration and will soon be submitted to the Office of the Prime Minister. The Committee hopes that, as a result of the legislative measures referred to above, the national legislation will be brought into conformity with *Article 1(a)* of the Convention, so that no penalties involving compulsory labour could be imposed for peaceful expression of non-violent views that are critical of government policy and the established political system, and that the Government will soon be able to report the progress made in this regard.

4. In its earlier comments, the Committee referred to certain provisions of the 1965 Act concerning political parties, which prohibited political parties from asserting the existence in Turkey of any minorities based on nationality, culture, religion or language and from attempting to disturb national security by conserving, developing or propagating languages and cultures other than the Turkish language or culture. It noted that penalties of imprisonment (involving compulsory labour) may be imposed under the following provisions of the Political Parties Act (No. 2820, of 22 April 1983) and the Associations Act (No. 2908, of 6 October 1983):

- sections 80, 81 and 82, read in conjunction with section 117, of the Political Parties Act (seeking to alter the principle of the unity of the State, claiming the existence of minorities based on a national or religious culture or on racial or linguistic differences, seeking to form minorities by protecting and promoting languages and cultures other than the Turkish language and culture, using any language other than Turkish in the drafting and publication of parties’ statutes and programmes, advocating regionalism);
- sections 5 and 76 of the Associations Act (attacking the principle of the unity of the State; carrying out activities based on principles of regionalism, social class, religion or sect; claiming the existence of minorities based on a national or religious culture or on racial or linguistic differences, etc.).

The Committee pointed out, referring to the explanations contained in paragraphs 133-140 of its 1979 General Survey on the abolition of forced labour, that prohibitions enforced by penalties involving compulsory labour which affect the constitution or functioning of political parties or associations either generally or where they advocate certain political or ideological views are incompatible with *Article 1(a)* of the Convention.

5. The Committee notes with interest the Government’s indication in the report that changes are to be made in the Political Parties Act No. 2820, in accordance with the Emergency Action Plan published on 3 January 2003, with a view to ensuring that the whole population will be able to participate in the political parties and that it will be made possible to establish equity and justice in representation. The Committee reiterates its hope that the necessary measures will be taken in order to bring the Political Parties Act and the Associations Act into conformity with the Convention and that the Government will soon report on the action taken to this end.

6. In its earlier comments, the Committee also noted certain other provisions of national law which provide for the imposition of penalties involving compulsory labour in circumstances defined in terms which are wide enough to give rise to questions about their application in practice. The Committee is again dealing with these provisions in a request addressed directly to the Government so as to ascertain their compliance with the Convention.

Article 1(b). Use of conscripts for purposes of economic development. 7. The Committee previously noted the provisions of the Council of Ministers resolution No. 87/11945 of 12 July 1987, according to which conscripts in excess of the needs of the military can be obliged to work in public undertakings in lieu of military service, without their consent and under military discipline. It also noted the provisions of section 10 of the Military Service Act, No. 1111, as amended by Act No. 3358, as well as section 5 of the Council of Ministers resolution No. 87/11945 of 12 July 1987, adopted pursuant to section 10 of Act No. 1111, which lay down procedures relating to the surplus reserves, including the procedures concerning the persons liable to military service who are assigned duties in public bodies and institutions. It further noted the Council of Ministers resolution No. 86/10266 of 17 January 1986 containing principles governing the performance of military service duties by the Turkish Armed Forces Surplus Reserves. The Committee noted that, under the above legislation, the persons liable to perform their military service obligations by working in public bodies and institutions are determined by the drawing of lots from among the persons remaining after subtraction of those wishing to pay the exemption sum.

8. In its 2003 report, the Government confirms its previous indication that Act No. 3358, which amended section 10 of the Military Service Act, No. 1111, was no longer applied after 1991, though no action has yet been taken to repeal its provisions. While noting this information, and referring again to the explanations in paragraphs 49 to 54 of its 1979 General Survey on the abolition of forced labour, where it pointed out that “the Conference has 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 with the forced labour Conventions”, the Committee reiterates its hope that the necessary measures will at last be taken with a view to repealing the above provisions in order to bring legislation into conformity with the

Convention and the indicated practice, and that the Government will soon be able to provide information on the progress made in this regard.

Article 1(c) and (d). Disciplinary measures applicable to seafarers. 9. In its earlier comments the Committee noted that:

- (a) under section 1467 of the Commercial Code (Act No. 6762 of 29 June 1956) seafarers may be forcibly conveyed on board ship to perform their duties;
- (b) under section 1469 of the Commercial Code, various breaches of discipline by seafarers are punishable with imprisonment (involving, as previously noted, an obligation to perform labour).

The Committee also noted that the Government had submitted to Parliament a Bill to amend section 1467 of the Commercial Code, which contains a provision limiting the powers of the master under section 1467 to circumstances jeopardizing the safety of the ship or endangering the lives of the passengers and the crew, and expressed the hope that section 1469 of the Commercial Code would likewise be amended to limit its scope to acts endangering the safety of the ship or the lives or health of persons.

10. The Government indicates in its 2003 report that the studies concerning the amendment of the above provisions are being carried out by the Turkish Commercial Code Commission and the Subcommittee on the Maritime Law, under the coordination of the Ministry of Justice. The Committee requests the Government to keep the ILO informed about the progress of these studies and to provide information on the outcome of submission of the above Bill to Parliament. The Committee hopes that sections 1467 and 1469 of the Commercial Code will be brought into conformity with the Convention, and that the Government will soon be in a position to report the progress achieved in this regard.

Article 1(d). Punishment for participation in strikes. 11. The Committee previously noted that Act No. 2822 respecting collective labour agreements, strikes and lockouts, of 5 May 1983, provides in sections 70-73, 75, 77 and 79 for penalties of imprisonment (involving compulsory labour) as a punishment for the participation in unlawful strikes, for disregard of prohibitions to call a strike, for unlawful strikes intended to influence decisions, and for disregard of an order for the suspension of a strike or of restrictions imposed on the number of strike pickets and on the right of peaceful assembly in front of the employer's establishments. The Committee recalled that *Article 1(d)* of the Convention explicitly prohibits the use of sanctions involving any form of compulsory labour "as a punishment for having participated in strikes". The Committee also referred to the explanations contained in paragraphs 120-132 of its 1979 General Survey on the abolition of forced labour, where it has considered that *Article 1(d)* of the Convention is not opposed to the punishment of collective acts aimed at paralysing services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; nor to the enforcement of the observance of normal procedures to be followed in calling and organizing a strike, provided that the provisions governing these matters do not impose restrictions on the right to strike itself. The Committee observed, however, that the abovementioned provisions of Act No. 2822 are not limited in scope to the circumstances thus described.

12. The Government indicates in its 2003 report that a tripartite "Science Board" established with the objective of bringing the Trade Unions Act No. 2821 and Act No. 2822 respecting collective labour agreements, strikes and lockouts into conformity with the international labour Conventions, has completed its work and submitted its report for consideration by the social partners. The Committee would appreciate it if the Government would supply a copy of this report and requests the Government to indicate the measures taken or envisaged in order to bring the above provisions into conformity with the Convention. Referring also to its comments addressed to the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee expresses the firm hope that Act No. 2822 of 1983 will soon be brought into compliance with *Article 1(d)* of the Abolition of Forced Labour Convention, 1957 (No. 105), and that the Government will report on the progress made in this regard.

Uganda

Forced Labour Convention, 1930 (No. 29) (ratification: 1963)

I. *Abolition of slave-like practices.* The Committee previously referred to the alleged activities of the Lords Resistance Army (LRA) abducting children of both sexes and forcing them to provide work and services as guards, soldiers and concubines, these alleged activities being associated with killings, beatings and rape of these children.

According to the Government's indications in its report received in November 2000, abductions were taking place in the northern region of the country, the most affected locations being the districts of Lira, Kitgum, Gulu and Apac. The Committee noted that, according to the UNICEF report of 1998, over 14,000 children had been abducted from districts in the northern Uganda. The Government stated that this large scale of abductions had been one of the most tragic aspects of the northern region conflict, forcing the vulnerable and innocent to become a part of the conflict, either as child soldiers, human shields and hostages or victims of sexual exploitation. The Government indicated that the age group between 10 and 15 years formed the biggest percentage of abducted children, and boys between 8 and 15 years of age were the most targeted.

The Committee previously noted the positive measures taken by the Government to prevent such practices, which included sensitization of communities, political and military authorities in the armed conflict areas about proper handling

of the children; sensitization on peaceful conflict resolution and ensuring the rights of the child; setting up of disaster management committees in all districts of insurgencies; sensitization on issues of disaster preparedness and safety issues. The Government indicated that abducted children who had been retrieved were kept in children centres where counselling services were provided and measures were taken for their reunification with their families and return to primary education; children were rehabilitated and equipped with vocational skills which enabled them to be integrated into society.

In its latest report, the Government indicates that it has ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002. It also indicates that a thematic study has been concluded on child labour and armed conflict in the districts of Gulu, Masindi, Lira and Bundibugyo, its findings will be used to design action programmes or strategies to address the problem of abduction as the worst form of child labour. The Government also intends to be involved, through the collaboration with ILO/IPEC, in the Great Lakes regional programme on child labour and armed conflict.

While noting this information, the Committee is bound to observe once again that the 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 requests the Government to take urgent 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.

II. The Committee observes that the Government's report contains no new information on the following points raised in its previous observation and hopes that the Government will not fail to provide the information requested in its next report:

Article 1(1) and Article 2(1) of the Convention. In comments made for a number of years, the Committee has noted that, under section 2(1) of the Community Farm Settlement Decree, 1975, any unemployed able-bodied person may be settled on any farm settlement and required to render service; and that 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 consent. The Committee noted the Government's indication that the abovementioned Decree had to be repealed under the laws of Uganda revision exercise by the Uganda Law Reform Commission, which was intended to be completed in 2001. The Committee trusts that the Decree will be repealed in the near future and requests the Government to supply a repealing text, as soon as it is adopted.

The Committee previously noted that under section 33 of the Armed Forces (Conditions of Service) (Officers) Regulations, 1969, the Board may permit officers to resign their commission at any stage during their service. The Committee noted the Government's indication that the 1969 Regulations had been replaced by the National Resistance Army (Conditions of Service) (Officers) Regulations No. 6 of 1993, and that section 28(1) of these Regulations contains a provision similar to that of section 33 of the 1969 Regulations referred to above. The Government indicated 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 permission to resign. Referring to the explanations given in paragraphs 67-73 of its 1979 General Survey on the abolition of forced labour, the Committee points 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 hopes that the necessary measures will be taken with a view to amending section 28(1) of Regulation No. 6 of 1993 so as to bring it into conformity with the Convention. Pending such amendment, the Committee 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, and to supply a copy of a complete text of these Regulations.

The Committee previously noted that by virtue of the provisions of section 5(2)(a) and (b) of the Armed Forces (Conditions of Service) (Men) Regulations, 1969, the term of service of persons enrolled below the apparent age of 18 years might extend until they are 30 years old. The Committee noted with interest the Government's indication that this provision had been repealed by the National Resistance Army (Conditions of Service) (Men) Regulations No. 7 of 1993, section 5(4), under which a person below 18 years or above 30 years shall not be employed in the Ugandan army. The Committee would appreciate it if the Government would supply a copy of these Regulations with its next report.

Article 2(2)(c). The Committee has noted the information concerning employment of prisoners provided by the Government. It requests the Government to supply, with its next report, a copy of the provisions of the Prisons Act (Cap. 313) governing this issue.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

Article 1(a), (c) and (d) of the Convention. 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 persons an unlawful society and thus render any speech, publication or activity on behalf of or in support of such combination illegal and punishable with imprisonment (involving an obligation to perform labour);
- (iii) section 16(1)(a) of the Trade Disputes (Arbitration and Settlement) Act, 1964, under which workers employed in “essential services” may be prohibited from terminating their contract of service, even by notice; sections 16, 17 and 20A of the same Act, under which strikes may be prohibited in various services that, while including those generally recognized as essential ones, also extend to other services, and contravention of these prohibitions is punishable with imprisonment (involving an obligation to perform labour).

The Committee notes the Government’s renewed statement in its report that the labour legislation has been revised to enhance the application of the Convention, but the revised legislation is still in the form of a draft Bill. It also notes the Government’s indication that the labour law reform exercise, which has been going on for over ten years, has now reached a point where draft principles of the Bills have been prepared in accordance with the current Government procedure. The Government also indicates that draft Bills were prepared for the four labour laws, including the Trade Disputes (Arbitration and Settlement) Act, and expresses the hope that these Bills will soon be enacted.

While noting these indications, the Committee also requests the Government to indicate the measures taken or envisaged to repeal or amend the above provisions of the Public Order and Security Act, No. 20 of 1967, and of the Penal Code.

The Committee trusts that measures will at last be taken to repeal or revise the abovementioned provisions and that the legislation will be brought into conformity with the Convention. It requests the Government to provide information on the progress made in this regard and to communicate a copy of the revised legislation as soon as it is adopted.

United Kingdom

Gibraltar

Forced Labour Convention, 1930 (No. 29)

The Committee notes with satisfaction that the provisions of the Prison Regulations, 1987, according to which prisoners within the wage-earning scheme may be assigned to perform work for an independent contractor (subregulations (4), (5) and (6) of regulation 61), have been deleted by the Prison (Amendment) Regulations, 2003, and that regulation 59 of the Prison Regulations, as amended, provides that the work of prisoners undergoing a sentence of imprisonment shall not include any services for the private benefit of any person.

United States

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1991)

Further to its previous observation, the Committee has noted the information supplied by the Government in its latest reports, as well as the discussion that took place at the Conference Committee in 2002.

Trafficking in persons

1. In its latest report, the Government draws attention to the Trafficking Victims Protection Act of 2000 (TVPA), which has created new federal crimes, including a “forced labor” crime in a new section 1589 inserted in Title 18 of the United States Code; the Act also has strengthened penalties for trafficking-related offences, afforded new protection and expanded services to trafficking victims. An Interagency Task Force to Monitor and Combat Trafficking in Persons was established in February 2002. According to the Task Force report, “Since the enactment of the TVPA in October 2000, the Department of Justice (DOJ) prosecuted 79 traffickers in FY 2001 and 2002, three times as many as the previous two years, opened 127 investigations of trafficking cases, and conducted the largest ever training for federal prosecutors and agents in October 2002. In a number of these cases, defendants were charged with violating the newly enacted forced labor provisions of Title 18 of the U.S. Code. In addition to domestic efforts at combating trafficking and forced labor, prosecutors stepped up their international efforts, working to build anti-trafficking capabilities and to share best practices with police and prosecutors in Eastern Europe and Latin America.” DOJ also took various measures, including the funding of a number of non-governmental organizations (NGOs), to help trafficking victims to receive benefits and services.

2. The Committee has noted these indications with interest. It also notes, from the documents appended to the Government’s report, the findings of the United States Congress: that “Approximately 50,000 women and children are trafficked into the United States each year”; that “Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market”; and that “To deter international trafficking and bring its perpetrators to justice”, priority is given “to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses”. The Committee hopes that the Government will supply further details of the measures taken to this end, including the outcome of the 79 prosecutions and 127 investigations of fiscal years 2001 and 2002 referred to in its report.

Punishment for participation in a strike

3. In its previous observation, the Committee 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. 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 failure of any inmate to perform such a work assignment may result in disciplinary action. The Committee observed that under *Article 1(d) of the Convention*, ratifying States are obliged to abolish all penalties involving any form of compulsory labour which may be imposed as a punishment for having participated in strikes.

4. In its reply, the Government points out that under North Carolina law, a person without any prior convictions who is convicted for participating in an illegal strike could only be sentenced to community punishment which, in most cases, only requires the payment of a fine or “may simply involve some minor form of probation or community service”. A convicted person with one to four prior convictions can be sentenced to “active punishment”, but not receive a sentence of more than 45 days; in North Carolina, sentences of less than 90 days are served in county jails, without work requirements. It is theoretically possible for a person with five or more previous convictions who is found guilty of participating in an illegal strike to receive a sentence of more than 90 days and be subject to a work requirement. However, in the Government’s view, any such individual would be receiving this more serious sentence “for their recidivism” and “not for mere participation in an illegal strike”. In addition, “research disclosed no history of strikes by public employees in North Carolina and, consequently, no known instances of any convictions under this law”. The Government concludes that North Carolina law and practice is not in violation of *Article 1(d)* of the Convention.

5. The Committee takes due note of these indications. It must however point out that a sentence of community service, in so far as it may involve an obligation to perform work or service, comes under the definition of compulsory labour. Also, the fact that a person has a number of earlier convictions would not remove a prison sentence involving an obligation to work that may be imposed on him or her upon participating in a strike from the scope of the Convention. Noting with interest the Government’s indication that the relevant provisions of North Carolina law appear never to have been applied in practice, the Committee again expresses the hope that the necessary measures will be taken to bring the law into conformity with the Convention.

6. The Committee notes with interest the Government’s indication that a review of state law was undertaken and “disclosed no state that had a law comparable to North Carolina’s, where participation by a public employee in a strike is illegal, and punishable as a crime that could result in forced labor while in prison”. The Committee is raising certain questions in this regard in a request addressed directly to the Government.

Zambia

Forced Labour Convention, 1930 (No. 29) (ratification: 1964)

The Committee has noted a communication received in October 2002 from the International Confederation of Free Trade Unions (ICFTU), which contains observations concerning the application of the Convention by Zambia. The ICFTU alleged that there were reports of the trafficking of women and children to neighbouring countries for the purpose of forced prostitution and of kidnapping Zambians by Angolan combatants who took them to Angola to perform various forms of forced labour. The Committee has noted that this communication was sent to the Government in December 2002 for any comments it might wish to make on the matters raised therein. The Government’s report contains no reference to this communication and the Committee requests the Government to supply its comments on the serious points raised therein in its next report so as to enable the Committee to examine them at its next session.

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 with regard to: **Convention No. 29** (*Algeria, Antigua and Barbuda, Azerbaijan, Belize, Benin, Botswana, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China: Hong Kong Special Administrative Region, Croatia, Cyprus, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Eritrea, Fiji, Georgia, Ghana, Iceland, Islamic Republic of Iran, Ireland, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Liberia, Libyan Arab Jamahiriya, Mauritania, Mauritius, Netherlands, New Zealand, Nicaragua, Oman, Papua New Guinea, Qatar, Russian Federation, Saint Vincent and the Grenadines, San Marino, Serbia and Montenegro, Sierra Leone, Singapore, Solomon Islands, South Africa, Tajikistan, Togo, Trinidad and Tobago, Turkey, United Kingdom: Anguilla, United Kingdom: Montserrat, Uruguay, Yemen, Zambia, Zimbabwe*); **Convention No. 105** (*Afghanistan, Algeria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belize, Bolivia, Botswana, Burundi, Central African Republic, Chad, Chile, Comoros, Cuba,*

Djibouti, Dominica, Dominican Republic, Ecuador, Eritrea, Ethiopia, Fiji, Georgia, Ghana, Grenada, Guatemala, India, Ireland, Italy, Kenya, Latvia, Lebanon, Republic of Moldova, Pakistan, Romania, Rwanda, South Africa, Thailand, Togo, Turkey, United States, Yemen, Zimbabwe).

The Committee noted the information supplied by the following State in answer to a direct request with regard to:
Convention No. 105 (Peru).

Elimination of Child Labour and Protection of Children and Young Persons

General observation

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

The Committee has examined a very large number of detailed reports by States which have recently ratified the Worst Forms of Child Labour Convention, 1999 (No. 182). The great majority of comments are addressed to the governments concerned in the form of direct requests. The Committee expresses deep concern about the size of the trafficking problem which is worrying. Recognizing that poverty often underlies the trafficking problem, the Committee observes that the elimination of poverty is a necessary precondition to eradicating trafficking, but it is not sufficient. There must also exist the commitment of member States to effective action to combat trafficking. In this regard, the Committee has been able to note that many countries have adopted legislation to prohibit and punish the worst forms of child labour and some countries have introduced programmes to eliminate the worst forms of child labour. In this regard, it appears to the Committee that particularly in West Africa the social partners are concerned by the problem of the trafficking of children.

The Committee is encouraged by the fact that nine countries in this region (Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Ghana, Mali, Nigeria and Togo) are participating in the Subregional Programme to Combat the Trafficking of Children in West and Central Africa (LUTRENA), which commenced in July 2001 with the collaboration of ILO/IPEC. The Committee notes that one of the objectives of the LUTRENA Programme is to reinforce national legislation to combat the trafficking of children to achieve harmonization and the effective legislative prohibition of trafficking. It also notes that, since the commencement of the LUTRENA Programme, certain countries have adopted legislation on this subject (including Burkina Faso, Mali and Nigeria), other countries have prepared legislation which is currently being adopted (such as Côte d'Ivoire, Gabon, Ghana and Togo) and other countries, which do not yet have specific legislation prohibiting and repressing the trafficking of children, are making use of penal provisions covering other offences, such as the abduction or removal of young persons under 18 years of age, with a view to penalizing the trafficking of children. In the context of the LUTRENA Programme, there are intensive awareness-raising campaigns among high-risk groups and their communities, and for the general public with the objective of establishing "surveillance" systems. The Committee also notes that certain countries have formulated programmes to raise the school enrolment rate of children, and particularly girls. The Committee notes with interest that certain of the countries concerned have concluded cross-border cooperation agreements to combat the trafficking of children. In relation to these measures, the Committee has requested the governments concerned to provide information on their results and impact on the elimination of the trafficking of young persons under 18 years of age for the purposes of economic or sexual exploitation.

However, the Committee observes that the trafficking of children for the purposes of economic or sexual exploitation is a widespread phenomenon and not confined to West Africa, but occurs in all regions of the world in different forms and to different degrees of intensity. Indeed, it notes that according to the ILO report entitled "Every child counts: New global estimates on child labour" of 2002, about 1.2 million children were found trafficked to and from all regions of the world. It reminds governments that *Article 1 of the Convention* requires member States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, including trafficking for the purposes of economic or sexual exploitation as a matter of urgency. It further recalls that *Article 6* of the Convention provides that Members which have ratified the Convention shall design and implement programmes of action to eliminate as a priority the worst forms of child labour. Under *Article 7* of the Convention, Members have to take effective and time-bound measures to: prevent children from becoming victims of trafficking; remove children from trafficking and assist them by providing for their rehabilitation and access to free basic education; and take account of the special situation of girls. Finally, *Article 8* of the Convention provides that Members shall take appropriate steps to assist one another through enhanced international cooperation, including support for social and economic development.

The Committee requests all governments, in view of the above, to include in their next report on the application of Convention No. 182, information on:

- (1) legislative measures adopted or envisaged that prohibit trafficking of children under 18 years of age for the purposes of economic and sexual exploitation by: (a) making a contravention of the prohibition a criminal offence; and (b) imposing penal and other sanctions to act as an effective deterrent;
- (2) the measures adopted or envisaged to: (a) prevent such trafficking; and (b) formulate and implement programmes of action targeting multiple levels of society (children, parents, local authorities, employers, teachers, etc.);
- (3) the training, collaboration and awareness-raising of public officials (labour inspection, the police forces, immigration service, judiciary, etc.) in combating the trafficking of children;
- (4) statistics on the number of reported contraventions, investigations, prosecutions and convictions relating to trafficking and the text of any court decisions in such cases;
- (5) the effective application of the principle of free and compulsory schooling for children, particularly for girls; and

- (6) the time-bound measures taken to: prevent the engagement of children in trafficking; remove children from trafficking; protect the victims of trafficking; and provide for their rehabilitation and social integration.

The Committee is of the view that it is critical that the monitoring mechanisms referred to in *Article 5* of the Convention are established or clearly designated to monitor the application of the measures designed to prohibit or eliminate trafficking.

The Committee is of the view that international cooperation between law enforcement agencies, particularly the judicial authorities and police forces, is indispensable to prevent and combat the trafficking of children, through the collection and exchange of information, and through assistance to detect and prosecute the individuals involved and to repatriate victims.

The Committee also emphasizes the need to further integrate concerns relating to the trafficking of children into development and poverty reduction strategies. In this context, Poverty Reduction Strategy Papers include programmes addressing the extension of primary education, the creation of economic opportunities and the improvement of government capacities to aid the poor. The Committee is convinced that these programmes contribute to breaking the cycle of poverty, which is essential for the elimination of the worst forms of child labour, and particularly the trafficking of children. The Committee therefore encourages broader international cooperation, which is essential for the mobilization of resources for national programmes to eradicate the trafficking of children. The Committee therefore requests governments to provide information on the measures adopted in relation to these aspects of international cooperation.

Algeria

Minimum Age Convention, 1973 (No. 138) (ratification: 1984)

The Committee notes the very brief information provided by the Government in its report.

Article 1 of the Convention. In its previous comments, the Committee noted the Order of 24 July 1999 creating, within the Ministry of National Solidarity and the Family, a committee to follow-up and evaluate the National Plan of Action for the protection and development of children. Section 2 of the Order provides that the committee is responsible for “contributing to defining the elements for the determination of the national policy on childhood”. The Committee requested the Government to provide information on the activities of the above committee. The Committee notes that the Government’s report does not contain a reply to this comment. It therefore once again requests the Government to provide information on the work undertaken by the above committee, particularly with regard to the measures adopted or envisaged for the determination of the national policy on childhood, as well as any other information related to the national policy to ensure the effective abolition of child labour.

Article 2, paragraph 1. Scope of application. In its previous comments, the Committee noted that, under the terms of section 1, Act No. 90-11 of 21 April 1990 respecting working conditions governs individual and collective employment relations between salaried employees and employers. The Committee noted that, under the terms of this provision, Act No. 90-11 does not apply to labour relations which do not derive from a contract, such as work by young persons on their own account. The Committee notes that, in its latest report, the Government once again indicates that the minimum age for recruitment is 16 years in all economic sectors, both private and public. However, in its previous comments, the Committee noted the information provided by the Government that Act No. 90-11 of 21 April 1990 does not apply to persons working on their own account, who are governed by other regulations, which determine the minimum age for admission to non-wage work. The Committee reminds the Government once again that the Convention applies to all sectors of economic activity and that it covers all forms of employment and work, whether or not there is a contractual employment relationship and whether or not the work is remunerated. The Committee once again requests the Government to provide copies of the texts regulating the minimum age for admission to non-wage work, such as work by young persons on their own account.

Article 3, paragraph 1. Minimum age for admission to types of hazardous work. In its previous comments, the Committee noted that section 15(3) of Act No. 90-11 of 21 April 1990 provides that minor workers may not be employed in work that is hazardous, unhealthy or harmful to their health or prejudicial to their morals. The Committee noted that the national legislation does not contain a precise definition of the term “minor worker”. The Committee requested the Government to indicate the meaning of the expression “minor worker” as contained in section 15(3) of the Act. The Committee notes that the Government’s report does not contain any reply on this subject. The Committee reminds the Government that under the terms of *Article 3, paragraph 1*, of the Convention, the minimum age for admission to types of hazardous work, that is 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 once again requests the Government to indicate the meaning of the expression “minor worker” as contained in Act No. 90-11 of 21 April 1990.

Article 3, paragraph 2. Determination of types of hazardous work. In its previous comments, the Committee noted that section 28 of Act No. 90-11 prohibits the employment of workers under 19 years of age in night work. It noted that the national legislation does not appear to determine other activities that are of a hazardous nature. In its report, the Government indicates that Act No. 88-07 respecting occupational health, safety and medicine provides in section 11 that

the employer shall ensure that work assigned to women, minor workers and workers with disabilities does not require efforts in excess of their strength. While noting this information, the Committee recalls that *Article 3, paragraph 2*, of the Convention provides that the types of employment or work which are hazardous 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 therefore once again requests the Government to indicate whether such a list has been established, after consultation with the organizations of employers and workers, and, if so, to provide a copy.

Part V of the report form. The Committee notes the information provided by the Government that the courts have not handed down any decisions relating to the implementation of the provisions of the Convention. However, it notes the Government's indication that inspections by labour inspectors have sometimes found the employment of workers under 16 years of age, particularly in commerce and services. In this respect, the Committee requests the Government to provide information on the manner in which the Convention is applied in practice, including, for example, statistical data on the employment of children and young persons, extracts from the reports of the inspection services and information on the number and nature of contraventions reported, and on the penalties imposed.

Antigua and Barbuda

Minimum Age Convention, 1973 (No. 138) (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 2, paragraphs 1 and 3, of the Convention. 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 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 of 1975 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 last report the Government refers once again to the draft amendment, without indicating whether it has in practice been adopted. The Committee therefore 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 envisaged in the national legislation into conformity with the minimum age specified by the Government when ratifying the Convention.

Article 4, paragraph 2. The Committee notes 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 organization, nor to a child who is working together with adult members of her or his family on the same work and at the same time and place. It requests the Government to indicate in future reports any changes in law and practice in respect of these categories excluded.

The Committee is drawing the Government's attention to other matters in a direct request.

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

Argentina

Minimum Age Convention, 1973 (No. 138) (ratification: 1996)

Article 2 of the Convention. 1. Scope of application. In its previous comments, the Committee noted that under section 189 of Act No. 20.744 respecting labour contracts, the minimum age for admission to employment or work, whether or not it is remunerated, is 14 years. It also noted that under sections 32 and 187 of Act No. 20.744, young persons between 14 and 18 years of age may, under certain conditions, be party to a labour contract. The Committee noted that the national legislation governing the admission of children to employment or work does not apply to employment relations which are not a result of a contract, such as work carried out by young persons on their own account. In its report, the Government indicates that the labour legislation establishes a minimum age for admission to employment of young persons who perform an activity in the context of a contractual employment relationship and remains silent with regard to children exercising an economic activity on their own account. It also states that the activities undertaken by young persons on a public thoroughfare outside the context of the law are not activities exercised on their own account, but a survival strategy. While noting this information, the Committee reminds 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 there is a contractual employment relationship and whether or not the work is paid. Taking into account the statistical information contained in the document on the child labour situation in Argentina (a summary of the report analysing child labour in Argentina), prepared by ILO/IPEC and the Ministry of Labour in 2000-01, the Committee once again requests the Government to provide information on the measures adopted or envisaged to ensure that the protection afforded by the Convention is secured for children exercising an economic activity on their own account.

2. *Raising the minimum age for admission to employment or work.* Further to its previous comments, the Committee notes that at a meeting between the National Commission for the Elimination of Child Labour (CONAETI), the Coordinating Unit for International Affairs of the Ministry of Labour, Employment and Social Security and the Ministry of Education, Science and Technology the participants agreed on the new wording of section 189 of Act No. 20.744 respecting labour contracts. This new provision should raise the minimum age for admission to employment or work from 14 to 15 years. However, the Committee notes that no draft legislation has yet been adopted for this purpose by the legislative authorities. It requests the Government to provide the Office with any new information in this respect.

Article 7. Light work. In its previous comments, the Committee noted that under the terms of section 189 of Act No. 20.744 respecting labour contracts, young persons under 14 years of age may work in enterprises in which only members of the same family are engaged, on condition that their activities are not hazardous or harmful. It also noted that, in the agricultural sector, section 107 of Act No. 22.248 authorizes young persons under 14 years of age to work in family farms where their work does not prevent their regular attendance at primary education. It further noted the Government's indications that the types of work envisaged in section 107 of Act No. 22.248 may be considered to be light work. In its report, the Government states that the exception contained in section 107 is based on a deep-rooted social practice of an atavistic cultural nature in relation to which the National Agrarian Labour Commission is undertaking awareness activities with a view to the elimination of the scourge of child labour. While noting the information provided by the Government, the Committee notes once again that neither section 189 of Act No. 20.744 respecting labour contracts, nor section 107 of Act No. 22.248 establish an age for admission to light work. It is therefore bound once again to remind the Government that, by virtue of *Article 7, paragraphs 1 and 4*, of the Convention, national laws or regulations may permit the employment of persons of 12 to 14 years of age on light work or the performance by such persons of light work provided that such work is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee urges the Government to take the necessary measures to ensure that effect is given to the Convention by providing that employment on light work may only be authorized for persons from 12 to 14 years of age in accordance with the conditions prescribed by *Article 7, paragraph 1*, of the Convention. It also requests the Government to indicate whether the national legislation includes provisions prescribing the number of hours during which and the conditions in which light work may be undertaken, in accordance with *Article 7, paragraph 3*, of the Convention, and to provide a copy thereof.

Article 8. Artistic performances. The Committee noted that Decree No. 4364/66 establishes the procedure for authorizing the participation of young persons under 18 years of age in artistic performances. In accordance with the Decree, the Ministry of Labour shall, when granting the authorization to work, ascertain that certain conditions are complied with, and particularly that the health, morals and life of children and young persons are not endangered, that the activities are not carried out at night and that the children benefit from a period of rest of at least 14 consecutive hours. The Committee once again requests the Government to provide a copy of Decree No. 4364/66.

Part V of the report form. Application of the Convention in practice. Referring to its general observation of 2003, the Committee noted that the application of the Convention frequently continues to give rise to serious difficulties in practice. The Committee takes note of the document entitled "The situation of child labour in Argentina", summarizing a report analysing child labour in Argentina, prepared by ILO/IPEC and the Ministry of Labour in 2000-01 and containing statistical data for 1997 and 1998. According to this document, the population of children between 5 and 14 years of age in Argentina was 5.7 million in 1997. Of this number, taking into account "children who work outside the home or earn tips or habitually assist in family work or neighbours", some 395,780 children worked in urban areas and 87,022 in rural areas, making a total of 482,803 children. Furthermore, when taking into account "children who work outside the home and earn tips or habitually help with family work or neighbours or do housework when their elders are absent", some 1,232,852 children work in urban areas and 271,074 in rural areas. According to this document, there is a greater incidence of child labour in rural areas, with a child labour rate of 10.4 per cent, compared with 6.7 per cent in urban areas, for the first type of child labour, and 32.4 per cent in rural areas, compared with 20.8 per cent in urban areas for the latter. The Committee notes that the school attendance rate of child workers was 92.2 per cent, with 7.8 per cent no longer attending school, although they had attended it previously. The Committee observes that these statistical data are for 1997 and 1998. It notes that, in its concluding observations concerning the second periodic report of Argentina in October 2002 (CRC/C/15/Add.187, paragraph 58), the Committee on the Rights of the Child noted with deep concern the growing number of children under 14 who are exploited economically, in particular in rural areas, because of the economic crisis.

The Committee however notes that the National Plan for the Prevention and Elimination of Child Labour envisages a National Programme for the Prevention and Elimination of Child Labour in Rural Areas, which applies to children under 14 years of age who work or are at risk of working in rural areas. The Committee also notes that the National Plan envisages a Programme for the Prevention and Elimination of Child Labour in Urban Areas. This latter Programme commenced in 2003 and will be completed in 2008. It applies to boys and girls under 14 years of age who work or are at risk of working in urban areas. The Committee also notes that the Ministry of Labour, Employment and Social Security and ILO/IPEC signed an agreement in 2003 for the preparation of a child labour study, which is due to be completed on 31 December 2004. The objective of the study is to compile, analyse and disseminate quantitative and qualitative information on child labour in Argentina. The study will cover the region of Gran Buenos Aires, which includes the city of

Buenos Aires and the 24 surrounding municipalities, and the region of Cuyo, which consists of the provinces of Mendoza, San Juan and San Luis.

The Committee expresses its deep concern at the situation of children under 14 years of age who are compelled to work in Argentina through personal need. It therefore strongly encourages the Government to renew its efforts to improve this situation progressively. The Committee requests the Government to provide the information gathered by the child labour study prepared by the Ministry of Labour, Employment and Social Security and ILO/IPEC. It also requests the Government to provide information on the implementation of the National Programme for the Prevention and Elimination of Child Labour in Rural Areas and the Programme for the Prevention and Elimination of Child Labour in Urban Areas, and the results achieved.

Azerbaijan

Minimum Age Convention, 1973 (No. 138) (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:

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.

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)

The Committee notes the Government's first and second reports, and the communication of the International Confederation of Free Trade Unions (ICFTU) dated 2 September 2002. Referring to the comments made by the Committee under the Forced Labour Convention, 1930 (No. 29), 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 considers that the issues of trafficking of children and forced labour of children working as domestics may be examined more specifically under this Convention. The Committee requests the Government to supply further information on the following points.

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 a law commission had been set up to review the existing laws and enact new ones to safeguard woman's rights, and eliminate the trafficking of women and children.

In reply to the Committee's observation, the Government reports that the Suppression of Violence against Women and Children Act was enacted in 2000, and the Women and Children Oppression Act of 1995 was consequently repealed. The Committee notes that, by virtue of section 5(1) of the Suppression of Violence against Women and Children Act, a person who "with the intention of engaging in prostitution or illegal or immoral acts, brings in from abroad or sends or traffics a woman abroad or buys or sells or lets on hire or otherwise delivers a woman for the purpose of oppression, or for such other purpose, keeps a woman in his/her possession or custody", commits an offence. Section 6(1) of the Suppression of Violence against Women and Children Act of 2000 further states that a person who "brings in from abroad and sends or traffics abroad any children or buys or sells any children for any unlawful or immoral purpose or takes possession or keeps in his/her custody for the said purpose" commits an offence. The Committee also notes that, by virtue of section 2(k) of that Act, a "child" means a person under 14 years of age and a "woman" refers to all females irrespective of their age. The Committee consequently notes that the sale and trafficking of boys aged 14 years or above is not prohibited. The Committee reminds the Government that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of boys and girls under 18 is prohibited and that, under *Article 1* of the Convention, it is obliged to take immediate and effective measures to prohibit this worst form of child labour. The Committee accordingly requests the Government to take the necessary measures to ensure that the sale and trafficking of all children under 18 years of age is prohibited.

Article 5. Mechanisms to monitor the implementation of the provisions giving effect to this Convention. In its previous comments, the Committee noted that a Child Labour Unit was about to be established within the Ministry of Labour. The Committee notes the Government's indication that an Anti-Child Trafficking Unit was established within the Ministry of Home Affairs. It is responsible for identifying those involved in trafficking, arresting them and promptly rescuing trafficked persons. The Government further indicates that two other units deal with child trafficking issues, one is the BRD and the other is the Criminal Investigation Department (CID), which is part of the police. The Committee

requests the Government to provide information on the activities of the BRD and the CID as well as the number of persons arrested and rescued by of the Anti-Child Trafficking Unit. It also asks the Government to provide information on the interaction between the different units dealing with child trafficking.

Article 6. Programmes of action to eliminate the worst forms of child labour. In its previous observation, the Committee noted that according to the report of the Special Rapporteur of the United Nations Commission on Human Rights (E/CN.4/2001/73/Add.2, 6 February 2001, paragraph 56), there is “extensive trafficking from Bangladesh, primarily to India, Pakistan and destinations within the country, largely for the purpose of forced prostitution, although in some cases for labour servitude”. The report further indicates that there were reported cases of children trafficked to the Middle East to work as camel jockeys. The Committee also noted that the Government itself (“Children in Need of Special Protection” of December 2000 drafted by the Ministry of Women and Child Affairs) was aware of children being trafficked from Bangladesh to India, Pakistan and Gulf countries. The Committee further noted that the Ministry of Women and Children’s Affairs, in collaboration with ILO/IPEC and UNICEF, launched in 2000 a Subregional Programme to Combat the Trafficking in Children for Sexual and Exploitative Employment in Bangladesh, Nepal and Sri Lanka.

The ICFTU, in its communication dated 2 September 2002, indicates 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. Girls are lured into forced labour through promises of marriage and taken to cities such as Calcutta, Mumbai and Karachi where they are forced into prostitution. Boys are more likely to be taken to work as camel jockeys in the United Arab Emirates or other Gulf States.

In reply to the comments made by the Committee, the Government indicates that continuous programmes are being adopted in order to raise people’s awareness (organization of workshops, conferences, radio or TV programmes) and to prevent the trafficking of children. In 2001, for instance, the Centre for Ethnic Children implemented a pilot project entitled “Theatre for awareness raising of the communities in preventing trafficking of children”. The Centre for Ethnic Children directly reached 110,000 persons in Panchagarh, Thakurgaon and Dinajpur. The Committee also notes that the two-year Subregional Programme to Combat the Trafficking in Children for Sexual and Exploitative Employment in Bangladesh, Nepal and Sri Lanka was renewed in 2002 and expanded to Pakistan, Thailand and Indonesia. Under the second phase of the programme, the following activities will be undertaken within Bangladesh: (i) the establishment of a database on trafficking; (ii) the adoption of the necessary measures to provide 5,000 children with non-formal education; (iii) the taking of measures to provide support to improve economic opportunities of about 300 families; and (iv) the rescuing and rehabilitation of 100 child victims of trafficking.

The Committee observes that despite the adoption of a subregional programme to combat child trafficking, this issue remains a matter of concern in Bangladesh. The Committee accordingly requests the Government to redouble its efforts to eliminate the trafficking of children for sexual and labour exploitation. It also requests the Government to provide detailed information on the concrete measures taken pursuant to the adoption of the second phase of the subregional Programme to Combat the Trafficking in Children for Sexual and Exploitative Employment, and the results achieved.

Article 7, paragraph 1. Sanctions. The Committee noted previously that the Special Rapporteur to the United Nations Commission on Human Rights (E/CN.4/2001/73/Add.2, 6 February 2001, paragraph 63) stated that “though the law provides severe penalties for trafficking, few perpetrators are punished”.

The Committee notes that, by virtue of section 6(1) of the Suppression of Violence against Women and Children Act, a person who brings in from abroad and sends or traffics abroad a child under 14 years of age or buys or sells a child under 14 years of age for any unlawful or immoral purpose or takes possession or keeps in his/her custody for the said purpose, commits an offence and shall be punished by death penalty or life imprisonment and a fine. If the victim of trafficking for labour or sexual exploitation is a woman (irrespective of her age), the trafficker is liable to the death penalty, imprisonment for life or rigorous imprisonment for ten to 20 years and a fine (section 5(1) of the Suppression of Violence against Women and Children Act). According to section 6(1) of the aforementioned Act, a person who violates the prohibition to traffic children under 14 years of age for unlawful or immoral purposes, shall be punished with death or rigorous imprisonment for life and liable to a fine. The Committee requests the Government to provide information on the reported number of infringements, investigations, prosecutions, convictions and the penalties imposed with regard to child trafficking.

Article 7, paragraph 2. Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Child domestic workers. In its previous comments, the Committee noted that, according to the World Confederation of Labour, child domestics work in conditions that resemble servitude. It also noted the “National Report on Follow-up to the World Summit” prepared by the Ministry of Women and Children Affairs in December 2000 according to which children and adolescents were exploited in the country and that in Dhaka City there were an estimated 300,000 child domestic workers.

In reply to the comments made by the World Confederation of Labour, the Government states that forced labour is prohibited by virtue of article 34 of the Constitution and that child domestics are usually well-treated. The Government also indicates that child domestic work is a long-standing practice, prevailing due to the overall economic and social conditions of the country. It stresses, however, that child domestic workers are not the subject of forced or bonded labour.

The Government considers that this practice has both demerits and merits. Thus, the negative aspects of child domestic work are that child domestic workers rarely have access to education. The Government further states that some child domestic workers do not get wages or proper food and clothing, and that, in exceptional cases they are sexually or physically abused. According to the Government, the merits to child domestic work are that it prevents children from being engaged in more hazardous work, or from being trafficked or sexually exploited. The Government further indicates that several programmes are in progress, including a programme on the eradication of hazardous child labour; a project entitled “Informal sector task force for the prevention and elimination of child labour in urban areas”; a US/DOL project for preventing and eliminating the worst forms of child labour in selected sectors; and a *Time-Bound Programme (TBP)* adopted in June 2004 by the Government and ILO/IPEC for the elimination of the worst forms of child labour. These programmes are aimed at eliminating the worst forms of child labour. The Committee asks the Government to provide information on the impact of the abovementioned technical cooperation projects with regard to protecting child domestic workers under 18 from hazardous labour and providing for their rehabilitation and social integration.

Article 8. International cooperation. The Committee noted previously that the border between Bangladesh and India is porous, especially around Jessore and Benapole, making illegal border crossing and consequently, child trafficking, easier (E/CN.4/2001/73/Add.2, 6 February 2001, paragraph 56). According to the same report of the Special Rapporteur of the United Nations Commission on Human Rights (paragraph 14), 10,000 to 15,000 girls and women are trafficked each year across the border to India. The Committee accordingly asks the Government to provide information on any cooperation measures between Bangladesh and India, as well with other countries known for hosting Bangladeshi child victims of trafficking, to eliminate child trafficking.

The Committee is also addressing a request directly to the Government concerning other detailed points.

Bolivia

Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1973)

The Committee notes the information provided by the Government and the attached legislation. It also notes the discussion in the Conference Committee in 2004. With reference to its previous comments, the Government wishes to draw attention to the following points:

1. The Committee notes with great interest the progress achieved by the Government, i.e. the recent adoption of certain regulations on work by young persons, namely the regulations issued under the Code on Boys, Girls and Young Persons by Supreme Decree No. 27443, of 8 April 2004; Decision No. 001 of 11 May 2004 issued by the Ministries of Labour and of Health and Sports; Joint Ministerial Decision No. 299/04 of 4 June 2004; and Ministerial Decision No. 301/04 of 7 June 2004 approving the report form for compliance with fundamental labour rights. The Committee also notes the Government Plan for the Progressive Elimination of Child Labour 2000-10.

2. *Article 2, paragraph 1, of the Convention. Medical examination for fitness for employment.* The Committee notes 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 notes 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 reminds 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 notes 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 requests the Government to provide information on the progress achieved in this connection and, on the establishment of thorough medical examination before admission to employment.

3. *Article 2, paragraphs 2 and 3. Medical examination to be carried out by a qualified physician approved by the competent authority and the document certifying fitness for employment.* The Committee notes with satisfaction section 1 of Decision No. 001 of 11 May 2004, issued by the Ministers of Labour and of Health and Sports, and Ministerial Decision No. 301/04 of 7 June 2004, on the report form for compliance with fundamental labour rights, which give effect, respectively, to *Article 2, paragraphs 2 and 3*, of the Convention.

4. *Article 5. Free medical examinations.* The Committee also notes with satisfaction section 1 of Decision No. 001 of 11 May 2004, issued by the Ministers of Labour and of Health and Sports, which provides, inter alia, in accordance

with the Convention, that medical examinations for fitness for employment of boys, girls and young workers shall not involve the young persons or their parents in any expense.

5. Finally, 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 notes the Government's indication that these subjects have not yet been covered. Nevertheless, the Government indicates that these and other matters envisaged by the Convention will 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 requests the Government to supply a copy of these regulations as soon as it is adopted.

6. *Part V of the report form. Application in practice.* The Committee notes 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 is 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 notes the Government's statement with interest and requests it to continue providing information on the progress achieved in the application of the Convention in practice in the country. Finally, the Committee 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.

7. *Work by young persons in agriculture.* Even though the Convention does not cover agricultural work, the Committee notes 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 considers 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 notes 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 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*).

Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

The Committee notes with interest the adoption of the Decree on wage work in the agricultural sector, which applies to work done by children aged from 14 to 18 years.

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 with or without pay. According to section 28 of the Act, an apprenticeship contract is a contract under which the employer undertakes to ensure that apprentices receive practical instruction in a trade or craft which the employer or some other person dispenses using the work of apprentices, whether or not remunerated, for a fixed period which may not exceed two years. The provision includes apprenticeships in commerce and activities involving the use of engine-driven machinery. Section 58 of the Act prohibits work by children under 14 years of age other than in apprenticeships.

The Committee notes that, according to the Government, apprenticeship is covered by special legislation on work done by girls, boys and adolescents, namely the Children's and Adolescents' Code, 1999. In this regard, the Committee observes that sections 137 and 138 of the 1999 Code deal with apprenticeship. Section 137 provides for an apprenticeship system, and section 138 defines apprenticeship as vocational training provided through an educational process and a specific trade, in accordance with a programme, under the management of an official and carried out in a suitable environment. The Committee observes that sections 137 and 138 on apprenticeship specify no minimum age for admission to apprenticeship. It reminds the Government that *Article 6* of the Convention allows work by persons of at least 14 years of age in undertakings, where such work is part of an apprenticeship course. The Committee requests the Government to provide information on the measures taken or envisaged to ensure that no one under the age of 14 years is engaged in an apprenticeship. It again requests the Government to provide information on the practical implementation of apprenticeship programmes.

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

Brazil

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee takes note of the Government's first and second reports. It also takes note of the comments provided by the Government, dated 19 October 2004, in reply to the questions raised by the Gaúcha Association of Labour Inspectors (AGITRA) in a communication dated 4 February 2004. It requests the Government to supply further information on the following points.

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. In its comments, AGITRA indicates that the Government has not respected the provisions of Convention No. 138. This lack of commitment is characterized by the relaxation in maintaining the programmes designated to the elimination of child labour which were established a long time ago and not implemented due to the non-existence of a national policy which ensures the effective elimination of child labour.

The Committee notes with interest that the Government has taken many measures to abolish child labour. It notes, in particular, that the National Forum for the Prevention and Elimination of Child Labour (FNPETI) was set up in 1994 with the support of the ILO and UNICEF. The FNPETI is composed of 40 governmental organizations, as well as representatives of employers and workers and NGOs. The FNPETI constitutes a democratic space for dialogue and discussion of issues relating to child labour, initiating requests to the Government in the form of proposals for action and public policies. It was from this practice that there emerged the "*Programa de Ação Integrada-PAI*". This "Integrated Action Programme" was launched in 1996 in the Mato Grosso do Sul mines and plantations, covering 1,200 children. In January 1997, it was extended to 29 municipalities in the mining area of Pernambuco state. In July 1997, it was extended to the sisal-growing region of Bahia state, covering 13 municipalities. The objective of FNPETI was to combine the efforts of government at federal, state and municipal levels and society in pursuit of a single goal: the removal of children from work and their admission to school. Among its initiatives was the granting of a subsidy to families which had children involved in child labour, seeking by means of a grant to supplement family income to allow the child to stop work and return to school full time. The Committee asks the Government to provide information on the impact of the aforementioned Integrated Action Programme with regard to the abolition of child labour in the area covered by the Programme.

The Committee notes that the National Council for Children's and Young Persons' Rights (CONANDA) was set up by Decree No. 8.242 of 12 October 1992. The competencies of CONANDA were established by Decree No. 5.089 of 20 May 2004. According to section 2 of Decree No. 5.089/2004, CONANDA's role includes, among others: preparation of general principles of national policy on the protection of children's and young persons' rights (clause I); overseeing the implementation of the national policy on the protection of children and young persons (clause II); assessing state and municipal policies and the performance of the state and municipal councils for children's and young persons' rights (clause III); supporting educational campaigns on promotion of children's and young persons' rights (clause V); managing the National Fund for Children's and Young Persons' Rights (clause VIII). The Committee also notes the Government's indication that the Programme for the Elimination of Child Labour (PETI) was established under the Ministry of Social Assistance. PETI, as a government programme and activity, is the main instrument of public policy for the prevention and eradication of child labour. In 1996, PETI was introduced as a pilot scheme and is now established in all the 27 federal states. According to the Government's information, in 2000, PETI touched a population of 394,969 children and young persons across the country. In 2001, 749,353 children and young persons benefited from PETI and in 2003, the number was 809,148. The Government also indicates that, for the current year, PETI reached more than 116,000 children and young persons than expected. PETI is a conditional income transfer programme which consists of a monthly grant (*Bolsa Criança-Cidadã*) to families with per capita income up to half the minimum wage and who have children aged 7-15 years who work and who undertake to remove them from work and ensure that they attend school and extra-curricular activities where children and young persons receive extra tuition and engage in sporting, cultural, artistic and leisure activities.

Moreover, the Committee notes the Government's indication that the National Council for the Elimination of Child Labour (CONAETI) was set up by the Ministry of Labour and Employment, Order No. 365 of 12 September 2002, and reformed under Order No. 952 of 8 July 2003. The Committee notes with interest the information provided by the Government that the CONAETI has drawn up a National Plan for the Prevention and Eradication of Child Labour which had been approved by the CONANDA. The Plan will be developed around ten areas of work: (i) analysis, studies and research integration and systematization of data on all forms of child labour; (ii) review of legal provisions related to all forms of child labour; (iii) monitoring, evaluation, control and inspection activities aimed at preventing and eradicating child labour; (iv) ensuring a universal and public education to all children and adolescents; (v) integrated health actions; (vi) integrated communication actions; (vii) promotion and strengthening of the family unit; (viii) equity and diversity considerations; (ix) work in specific sectors; and (x) promotion of quadripartite institutional linkages. The Plan will integrate all actions related to child labour, involving even more governmental agents and orchestrating the activities of all the different social actors involved, such as organizations of employers and workers and NGOs. It will be in the centre of the PETI's activities. The Committee requests the Government to provide a copy of the abovementioned Plan and the results achieved through its implementation.

Finally, according to the information available at the Office, the Government is currently developing a National Plan of Action for the Elimination of Child Labour with clear time-bound targets and measures. The ***Time-Bound Programme (TBP)*** which was launched in October 2003 for a period of 39 months will provide assistance to develop key programmes and activities to create the necessary conditions to make possible the elimination of child labour in Brazil. At the national level, the project will focus on the creation of an enabling environment by executing activities in the following areas: knowledge generation and communication; awareness raising; education; and capacity building. The project will also develop action programmes targeting: hazardous agricultural activities (particularly household agricultural activities); work in the informal economy; and child domestic labour. A total of 4,000 girls and boys will be targeted for withdrawal and prevention from exploitative and/or hazardous work through the provision of educational services following direct action from the project. The ILO/IPEC estimates that 2,666 boys and girls will be withdrawn from work and 1,334 will be prevented from being engaged in child labour. The Committee requests the Government to provide information on the *TBP* particularly as regards actions taken against child labour, and on the results achieved through its implementation.

Part V of the report form. Practical application of the Convention. In its comments, AGITRA indicates that, after a period of stabilization and even of regression in Brazil, child labour has considerably increased in the last few months. According to data provided by the Brazilian Institute of Geography and Statistics (IBGE), the number of children from 10 to 14 years of age working in the six principal metropolitan regions (São Paulo, Rio de Janeiro, Recife, Salvador, Porto Alegre and Belo Horizonte) has risen from 88,000 to 132,000 in September 2003. AGITRA further states that the number of child workers from 14 to 16 years of age has also increased.

In its previous general observation of 2003, the Committee had indicated that in order to assist the Committee in evaluating the application of the Convention in practice, it had requested governments to provide the fullest possible statistical information in their next report on the nature, extent and trends of work by children and young persons under the minimum age specified by States when ratifying the Convention, extracts of the reports of the inspection services and information on the number and nature of the violations reported and on the penalties imposed. Where possible, the information provided should be classified by sex.

In this respect, the Committee notes that, according to the information available at the Office, indications are that child labour has fallen throughout the 1990s in Brazil. For the year 2000 the ILO projected that there would be 2,450,000 economically active children, 886,000 girls and 1,563,000 boys between the ages of 10 and 14, representing 14.43 per cent of this age group. According to data provided by the National Household Sample Survey (PNAD) for the period 1999-2001, the tendency is that child labour is decreasing in Brazil. Whereas, in 1999, of a total of 43.8 million children between the ages of 5 and 17 years, 6.6 million were working, in 2001, of 43.1 million children in that age bracket, 5.4 million were working. Moreover, according to the IBGE National Household Survey, for the period 1992-2001, in 1992 of a total of 16.8 million children aged 5-9 years, 516,520 were working; in 2001, of 16.2 million children in that age bracket, 296,705 were working. This illustrates that in the 5-9 years age group, the percentage reduction over the period 1992-2001 was some 50 per cent (falling from 3.67 per cent to 1.84 per cent). In the 10-14 years age group, the percentage reduction was 56.7 per cent (from 20.45 per cent to 11.61 per cent). In the 15-17 years age group, the percentage decline was 52.544 per cent (from 47.02 per cent to 24.66 per cent).

The Committee observes that, while the abovementioned statistics illustrate that child labour has been decreasing between 1992-2001, the application of the legislation on child labour appears to encounter difficulties and child labour is a problem in practice. The Committee is seriously concerned over the situation of children under 16 years of age who are compelled to work. It strongly encourages the Government to renew its efforts to progressively improve the situation. It invites the Government to indicate the precise measures taken since 2002 or envisaged to harmonize progressively the de facto situation and the law. It accordingly asks the Government to continue to provide detailed information on the practical application of the Convention, such as statistical data on the employment of children and young persons since 2002, and extracts from labour inspection reports.

The Committee is also addressing a direct request to the Government concerning other detailed points.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes the Government's first and second reports. Referring to its comments under the Forced Labour Convention, 1930 (No. 29), in so far as *Article 3(b)* of the Worst Forms of Child Labour Convention, 1999 (No. 182), provides that the worst forms of child labour include "the use, procuring or offering of a child for prostitution", the Committee is of the view that the issue of child prostitution can be examined more specifically under this Convention. It requests the Government to supply further information on the following points.

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution. In its previous observation under Convention No. 29, the Committee requested the Government to provide information on the comments made by the International Confederation of Free Trade Unions (ICFTU) in October 1999 concerning the debt bondage of young persons forced to engage in prostitution in the state of Rondonia. The Committee once again requests the Government to provide information on the allegations made by the ICFTU.

The Committee notes that under the terms of section 228 of the Penal Code, it is an offence, punishable by a penalty of imprisonment of two to five years, to induce, facilitate or promote the prostitution of any person. It also notes that section 228(1) carries a penalty of imprisonment of three to eight years, if the victim is above the age of 14 and under 18.

Section 228(2) of the Penal Code lays down that if the offence is perpetrated with the use of violence or threats, the perpetrator is liable to a penalty of imprisonment of four to ten years. Moreover, by virtue of section 228(3), a fine will also apply if the crime is committed for commercial purposes. The Committee notes that section 244-A of the Child and Adolescent Act No. 8.069 of 13 July 1990, introduced by Act No. 9.975 of 23 June 2000, prohibits child prostitution. According to this provision, any person who subjects a child or adolescent to prostitution or to sexual exploitation is liable to a penalty of imprisonment of four to ten years and a fine. Moreover, by virtue of section 244-A(2), the owner, manager or person responsible for the premises where the child or adolescent has been subjected to prostitution or to sexual exploitation is liable to the same penalty. In the event of conviction, the establishment's licence must be revoked immediately.

The Committee notes that according to the report entitled "Good practices in action against child labour: Ten years of IPEC in Brazil", published by ILO/IPEC Brazil in 2003, the sexual exploitation of children and adolescents is an increasing phenomenon. It is estimated that around 500,000 children between 9 and 17 years of age are sexually exploited in Brazil. The Committee recalls that by virtue of *Article 3(b)* of the Convention, the use, procuring or offering of children under the age of 18 years for prostitution is considered to be one of the worst forms of child labour, and that under the terms of *Article 1* of the Convention, each Member which ratifies the Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee expresses its serious concern about the actual number of children in Brazil who are sexually exploited for commercial purposes. It strongly encourages the Government to increase its efforts to improve the situation and to take the necessary measures to secure the prohibition and elimination of the use, procuring or offering of a child less than 18 years of age for sexual exploitation. Moreover, it asks the Government to provide information on the practical application of the penalties.

Article 5. Mechanisms to monitor the implementation of the provisions giving effect to the Convention. The Committee notes the Government's indication that it is currently studying the establishment of a permanent national commission for the elimination of child labour, which would be responsible for continuously overseeing the application of ILO Conventions on child labour. The Committee requests the Government to provide information on its efforts to establish the permanent national commission for the elimination of child labour and on the concrete measures taken by this or other bodies to prohibit the use, procuring or offering of children under 18 years of age for prostitution, and the results achieved.

Article 6, paragraph 1. Programmes of action to eliminate the worst forms of child labour. The Committee notes that in June 2000, the National Council on the Rights of Children (CONANDA) approved the National Plan to Combat Sexual Violence against Children and Adolescents. It also notes that in its report to the Committee on the Rights of the Child in September 2004 (CRC/C/3/Add.65, para. 658), the Government states that as part of these actions, the Sentinel Programme was established to provide children, adolescents and their relatives involved in situations of sexual violence with expert social services. Today it covers 315 Brazilian municipalities. These municipalities include the state capitals, metropolitan regions, tourist centres, port cities, trade centres, highway junctions, mining areas and border regions. Every month in 2002, the Programme took care of over 34,000 people, including children, adolescents and their relatives, thus doubling its initial forecast. In addition to this measure, from 1998 to 2002, several public campaigns were carried out to combat sexual violence against children and adolescents. Noteworthy initiatives in this context include the campaigns carried out together with the Brazilian Tourism Institute (EMBRATUR) against sexual tourism and the creation of a telephone hotline for the nationwide registration of denunciations. Both of these actions were also supported by the Brazilian Children's and Adolescents' Support Association (ABRAPIA). In this regard, the Committee notes the Government's information that EMBRATUR, under the auspices of the Ministry of Sport and Tourism, coordinates, implements and enforces the National Tourism Policy. Moreover, in partnership with ABRAPIA and with the Ministry of Justice, EMBRATUR launched in 1997 a campaign to combat sex tourism involving children by establishing a free telephone hotline solely to receive complaints about sex tourism. During the course of 2002, this campaign was bolstered by the launching of a film to raise awareness of the measures to combat sex tourism. It was publicized by the federal police, embassies and consulates, together with international organizations and NGOs, and the film was shown on television throughout the country. The Committee requests the Government to provide a copy of the National Plan to Combat Sexual Violence against Children and Adolescents and to provide information on the results achieved through its implementation. It also requests the Government to continue providing information on the functioning of the Sentinel Programme.

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. The Committee notes with interest that since September 2003, the Government has been implementing the ILO/IPEC **Time-Bound Programme (TBP)** on the worst forms of child labour. It notes that the activities and strategies foreseen by the TBP are supposed to represent a pilot of the National Plan of Action for the Elimination of Child Labour in five selected states (Maranhão, Paraíba, Rio de Janeiro, São Paulo and Rio Grande do Sul). One of the forms of child labour targeted by the TBP is the commercial sexual exploitation of children in both rural and urban areas. The TBP will provide assistance to develop key programmes and activities to create the necessary conditions to make possible the elimination of child labour in Brazil, particularly its worst forms. The Committee also notes that in 2001, ILO/IPEC launched a project entitled "Programme to prevent and

eliminate the commercial sexual exploitation of children and adolescents in Argentina, Brazil and Paraguay". For Brazil, the Programme has implemented actions in Foz do Iguazu city. The project will be finished at the end of November 2004. According to the information available at the Office, one of the objectives of the project is to reduce the involvement of 1,000 girls, boys and adolescents in commercial sexual exploitation and integrate them into school. This is achieved notably through the granting of a subsidy to families which had children involved in commercial sexual exploitation, seeking by means of a grant to supplement family income sources to allow the child to stop work and return to school full time. The Committee requests the Government to provide information on the achievements of the TBP and the Programme to prevent and eliminate the commercial sexual exploitation of children and adolescents in Argentina, Brazil and Paraguay, and their impact with regard to removing children under 18 years of age from commercial sexual exploitation and providing for their rehabilitation and social integration.

Parts III and V of the report form. Practical application of the Convention. The Committee notes that, in relation to the sexual exploitation of children and adolescents on 24 June 2004, the Public Prosecution Service of the State of Minas Gerais brought criminal charges against 37 people for the sexual exploitation of over 30 children and adolescents in the city of São Francisco-MG, of whom 23 victims were under the age of 14. The Public Prosecution Service also requested that some of those involved be remanded in custody. On 5 July 2004, nine persons who were accused were remanded in custody. Moreover, the Committee notes that the federal police have released the final results of the Tamar Operation, which was carried out on 18 June 2004, in cooperation with the Joint Parliamentary Commission of Inquiry on Violence and Sexual Exploitation against Children and Adolescents. Nine people were arrested *in flagrante delicto*, ten investigations were started and over 300 establishments were inspected.

The Committee nevertheless notes that the Government does not give an overview of the extent of the worst forms of child labour in the country. Consequently, the Committee requests the Government to give a general appreciation of the manner in which the Convention is applied in Brazil and any practical difficulties encountered in the application of the Convention, and also to supply copies or extracts from official documents including inspection reports, studies and inquiries and, where such statistics exist, 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, investigations, prosecutions, convictions and penal sanctions. As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location.

The Committee is also addressing a request directly to the Government concerning other detailed points.

Burkina Faso

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the Government's first and second reports. With reference to its comments under the Forced Labour Convention, 1930 (No. 29), and *Article 3(a)* of the Worst Forms of Child Labour Convention, 1999 (No. 182), which provides that the term "the worst forms of child labour" comprises all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, the Committee considers that the problem of the sale and trafficking of children for the purposes of sexual and economic exploitation may be examined more specifically in the context of Convention No. 182. It requests the Government to provide information on the following points.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. In its previous comments, the Committee noted concordant information from various sources that the cases of the trafficking of persons for the exploitation of their labour concern a significant number of children in Burkina Faso with the objective of utilizing child labour, particularly in agriculture. It noted that, according to the information contained in the ILO's Global Report "Stop forced labour" of 2001 (paragraph 57), children from Burkina Faso are obliged to work in plantations in Côte d'Ivoire and that Burkina Faso is, at the same time, a provider, a receiving country and a transit country. It noted that intermediaries, who operate from Côte d'Ivoire, have children delivered to them by other intermediaries operating in Burkina Faso (summary report of the subregional project of the International Programme on the Elimination of Child Labour (ILO/IPEC, 2001) "Combating child trafficking for labour exploitation in West and Central Africa", page 9).

The Committee notes that Act No. 038-2003/AN, defining and repressing the trafficking of children, was adopted on 27 May 2003. It notes that section 1 of the Act provides that a child is any human being aged under 18 years. Section 3 provides that the trafficking of children shall be deemed to be any act through which a child is procured, transported, removed, lodged or received within or outside the territory of Burkina Faso by one or more traffickers through threats and intimidation, force or other forms of constraint, deception, subterfuge or deceit, abuse of power, or exploitation of the situation of vulnerability of a child or, through offering or receiving of remuneration to obtain the consent of a person exercising control over the child for the purposes of economic or sexual exploitation, unlawful adoption, premature or forced matrimony or any other purpose prejudicial to the health, physical and mental development and well-being of the child. The Committee notes that the same penalties are applicable to any person who, having knowledge of a case of the trafficking of a child or children or having discovered a person under 18 years of age under the above conditions, has not

immediately notified the administrative or judiciary authorities or any person capable of preventing it from occurring. The Committee requests the Government to provide information on the application of the above provisions in practice.

Article 5. Mechanisms to monitor the implementation of the provisions giving effect to the Convention. The Committee notes the Government's indication that vigilance and supervision committees have been established by the Ministry of Social Action and National Solidarity. It further notes that these committees also include state officials, namely the police, the gendarmerie, customs, social workers, labour inspectors and representatives of civil society. The Committee requests the Government to provide information on the activities of these vigilance and supervision committees, particularly by providing extracts of reports or documents and indicating the results achieved by these committees in terms of preventing the trafficking of young persons under 18 years of age for economic exploitation.

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee notes that Burkina Faso is participating in the ILO/IPEC LUTRENA (Combating the trafficking in children for labour exploitation in West and Central Africa) programme, which covers nine countries: Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Ghana, Mali, Nigeria and Togo. It notes, according to the information available, that the Government, with other actors who are essential to combat the trafficking of children, has prepared a draft National Plan of Action against the Trafficking of Children. It appears that this Plan is due to be approved in the coming months. The Committee requests the Government to provide information on the adoption and implementation of this National Plan of Action.

The Committee also notes that the ILO/IPEC Red Card Programme for the promotion of information and awareness-raising action at the national level at the various matches of the championship has been introduced in Burkina Faso. The Committee further notes that ILO/IPEC has launched a new initiative based on education and social mobilization, namely "SCREAM (Supporting Children's Rights through Education, the Arts and the Media) Stop Child Labour!" with a view to helping educators worldwide promote understanding and awareness among child labour among young people. This initiative is also intended to raise awareness of school children and strengthen their capacity to educate and inform their peers and families so as to have an impact on their own communities. The Committee requests the Government to continue providing information on the implementation of these programmes of action.

Article 7, paragraph 1. Measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention. The Committee notes that section 398 of the Penal Code establishes a penalty of between five and ten years of imprisonment for any person who, through violence, threats or fraud, abducts or causes to be abducted a young person, or removes, misleads or transfers, or causes said person to be removed, misled or transferred from wherever she or he had been placed by the authority or directorate to which she or he had been submitted or entrusted. It also notes that section 4 of the Act of 31 July 2003 defining and repressing the trafficking of children, establishes a penalty of imprisonment of from one to five years and a fine of from 300,000 to 1,500,000 CFA francs, or one of these two penalties, for any person who is engaged in the trafficking of children, wherever the crime is committed. Section 4(2) provides that the same penalties shall be applicable to any person who, having knowledge of a case of the trafficking of children or discovered a young person under 18 years of age under the above conditions, has not immediately notified the administrative or judicial authorities, or any person capable of preventing it from occurring. The Committee also notes with interest that section 5 of the same Act imposes a penalty of imprisonment of from five to ten years on any individual found guilty of the trafficking of children involving circumstances in which the victim is exposed to hazardous or arduous forms of work or the worst forms of child labour. The Committee requests the Government to provide information on the application of these penalties in practice.

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Removing of children from the worst forms of child labour and securing their rehabilitation and social integration. The Committee notes from the information contained in the ILO/IPEC synthesis report of 2000 for the LUTRENA programme against trafficking (page 22), that studies have shown that children from Burkina Faso are transferred to Benin through Togo. The Committee notes that, according to the same report (page 9), the police intercepted five children leaving for Côte d'Ivoire in 1996; the same services discovered eight children from Burkina Faso in Divo in Côte d'Ivoire in 1999, 12 in Germany who were leaving for Italy and two children sent to Ghana. It also notes that 27 abductions of children have been reported, ten of whom were found in Nigeria and 17 in Côte d'Ivoire. It further observes that in March 2000 a convoy was intercepted leaving for Côte d'Ivoire with 22 young persons aged between 14 and 20 years. The Committee notes that, according to the same summary report, 116 children working in the informal economy were interviewed and that they work as itinerant traders, domestic workers and in agriculture and prostitution. Many of them are girls, aged between 12 and 17 years; 45 per cent of these young persons are illiterate, 49 per cent of them had reached the level of primary school and only 6 per cent had entered secondary school. It notes that in July 2004, five children from Burkina Faso, victims of trafficking for economic exploitation in cotton plantations, were repatriated to their families by the vigilance and supervision committee. The Committee notes that 250 children have been withdrawn from trafficking and rehabilitated in Burkina Faso since the beginning of the LUTRENA programme. It further notes that the LUTRENA programme has coordinated the organization of training modules for the security forces (particularly the police) on measures to combat the trafficking of children. The Committee requests the Government to provide information on the impact of the LUTRENA programme in removing children from trafficking and providing for their rehabilitation and social integration.

Article 8. Enhanced international cooperation and/or assistance. 1. International cooperation. The Committee notes that Burkina Faso 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 notes that Burkina Faso ratified the Convention on the Rights of the Child in August 1990 and that it signed the Optional Protocol on the sale of children, child prostitution and child pornography in November 2001. It further notes the Government's indication in the report submitted to the Committee on the Rights of the Child in 2002 (CRC/C/65/Add.18, paragraph 482) that the principle of extraterritoriality is the subject of judicial agreements between Burkina Faso and France, and between Burkina Faso and 11 African countries.

2. *Regional cooperation.* The Committee notes that a cooperation agreement was signed on 25 June 2004 between the Republic of Mali and Burkina Faso concerning the transboundary trafficking of children. This agreement was made possible through the assistance of the LUTRENA programme, UNICEF and Save the Children Canada. The Committee requests the Government to provide information on the implementation of this agreement and on the results achieved in relation to the trafficking of children between Burkina Faso and Mali.

3. *Poverty elimination.* The Committee notes that a Poverty Reduction Strategy Paper was formulated in June 2000 and that, according to this Paper, Burkina Faso is one of the poorest countries in the world. The plan of action envisaged in the Paper is focussed on three areas: health, education and rural development. Noting 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 impact of this development aid on the elimination of the worst forms of child labour, with particular reference to the trafficking of children.

The Committee encourages the Government to cooperate with other countries and requests it to provide detailed information on enhanced international cooperation and assistance, including support for social and economic development, poverty eradication programmes and universal education.

Part III of the report form. Court decisions. The Committee notes three decisions by the High Court in Fada N'Gourma (Nos. 152, 153 and 165), dated 13 June 2001 and 29 May 2002. It notes that in these cases individuals were intercepted when they were transporting young persons and planned to make them work in their plantation in Benin, without the agreement of their parents. In these three cases, the Committee notes that the Court reclassified the charges to the abduction of minors, which constitutes an offence under section 402 of the Penal Code and is punishable by a sentence of imprisonment of from one to five years and a fine of from 300,000 to 1,500,000 CFA francs. However, the Committee notes that the existence of attenuating circumstances allowed the Court to apply the provisions of section 81(2) of the Penal Code in the three cases in its ruling of June 2001 and only to convict the defendants in one case to one month of imprisonment and the two other defendants to suspended sentences of six months of imprisonment and a fine of 50,000 CFA francs in May 2002. The Committee requests the Government to indicate the nature of the attenuating circumstances accepted by the Court, to indicate whether these sentences have been served by those who committed the offence and whether court decisions have since been made under the new Act of 27 May 2003 on the trafficking of children. If so, the Committee requests the Government to provide copies of these decisions.

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

Cameroon

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1970)

The Committee notes that the Government has not yet adopted the necessary measures for the application of the Convention to children and young persons engaged in own-account activities. It notes the Government's repeated indication that medical examinations of young persons should be extended, among others, to those engaged in own-account activities in the informal economy. In this respect, the municipal authorities in Cameroon have begun to extend medical examinations to a category of workers in the informal economy. However, in view of the complexity of the informal economy, the Government envisages seeking the technical and financial support of the Office with a view to identifying employers in the informal economy, through statistical surveys, for the purposes of regulation and protection. In view of the fact that the Government has on several occasions expressed its intention of resolving this problem, the Committee trusts that it will take the necessary measures on an urgent basis with ILO technical assistance to ensure the application of the Convention, in both law and practice, to all young workers covered by the Convention, including those working in the informal economy. Finally, the Committee is bound to hope that the Government's next report will provide information on the progress achieved in this respect.

[The Government is asked to report in detail in 2005.]

Costa Rica

Minimum Age Convention, 1973 (No. 138) (ratification: 1976)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation, which read as follows:

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. In its previous observation, the Committee noted the comments made by the Trade Union of Employees of the Ministry of Finance (SINDHAC), the Transport Workers' Union of Costa Rica (SICOTRA) and the Rerum Novarum Confederation of Workers (CTRN), according to which, in violation of the provisions of the national legislation and the Convention, children between 5 and 11 years of age work for an average of seven hours a week and that children between 12 and 14 work for an average of 24 hours a week. The majority of child workers are found in the urban informal sector, the traditional rural sector (seasonal work in the coffee and sugar cane harvests) and domestic work. The Committee notes the Government's reply, in which, on the one hand, it indicates that it "is aware of the dimensions of the problem" and, on the other, describes the various measures adopted and projects formulated with a view to eliminating child labour in the country. These measures include the adoption of the Agenda for Children and Adolescents, Objectives and Undertakings, 2000-10, which includes in its long-term objectives "ensuring that boys and girls under 15 years of age, and young persons between 15 and 18 years of age, are enrolled in and remain in the formal education system", and the Memorandum of Understanding with the ILO/IPEC, in which the Government undertakes to make significant efforts for the progressive elimination of child labour. The Committee welcomes the efforts made by the Government, but is bound to express its concern at the situation described by the trade union organizations and urges the Government to continue taking the necessary measures to ensure that the legislative provisions on the minimum age for admission to employment are effectively enforced.

Article 2, paragraph 1. Minimum age for admission to employment or work. With regard to the contradiction that exists between, on the one hand, section 89 of the Labour Code, which provides for 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 sets the minimum age at 15 years, the Committee had previously noted the Government's indication that the provisions in the latter Code derogate implicitly the earlier legislative provisions which are contrary to it. Nevertheless, with a view to ensuring the protection of young workers and as the employment of young persons under 15 years of age in various economic sectors is encountered in practice, the Committee once again urges the Government to adopt the necessary measures to amend the Labour Code to bring its provisions into line with the Code of Children and Young Persons and requests it to provide information on any progress achieved in this respect.

Article 3, paragraph 2. Determination of the types of hazardous work. The Committee had previously requested the Government to take the necessary measures to determine, in accordance with the requirements of *Article 3, paragraph 2*, the types of hazardous employment or work prohibited for persons under 18 years of age. In this respect, the Committee notes with satisfaction that, after consulting workers' and employers' organizations and NGOs, the Government has finally adopted the Regulations respecting the recruitment and occupational health conditions of young persons (Decree No. 29220 of 30 October 2000), which enumerates in detail the types of work that are absolutely prohibited for persons under 18 years of age and the types of work permitted under certain restrictions. The Committee requests the Government to provide full particulars on the effect given to the above Regulations.

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 takes note of the Government's first report, and of the communication of the International Confederation of Free Trade Unions (ICFTU) dated 5 October 2001. It also takes note of the Government's reply to the ICFTU in its communication dated 7 December 2001. Referring to the comments made by the Committee under the Forced Labour Convention, 1930 (No. 29), 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 issues of trafficking of children and commercial sexual exploitation of children can be examined more specifically under this Convention. The Committee requests the Government to supply further information on the following points.

Article 3 of the Convention. The worst forms of child labour. Clause (a). Slavery and practices similar to slavery. The sale and trafficking of children. The Committee had noted, in its previous comments, 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. According to the ICFTU, Czech children are also trafficked to Western Europe, though precise figures are unknown. The Committee had noted the Government's reply that a National Plan Against the Commercial Sexual Exploitation of Children was adopted in 2000. One of the objectives of this Plan is to eliminate the trafficking of children for sexual exploitation.

The Committee notes that section 216(a) of the Penal Code read in conjunction with section 216(b) provides that whoever entrusts a child under 18 years of age, for remuneration, to another person for the purpose of adoption, child labour or for some other purpose commits an offence. Section 246 of the Penal Code states that a person who entices, hires or transports a woman abroad with the intent to have her used there for sexual relations with another commits an offence. Penalties will be increased if the offence is committed against a woman under 18 years of age. The Committee notes the Government's indication that section 246 of the Penal Code was amended by Act No. 134/2002 to extend the crime of trafficking to boys and young men. The Government adds that legal protection was extended to foreigners by making it possible to prosecute persons who commit criminal behaviour from another country. It further indicates that a new provision will be included under section 146 of the Penal Code to expressly prohibit the trafficking in persons under 18 years of age (i) for sexual exploitation, (ii) for the removal of tissue or an organ of that person, (iii) for slavery or servitude, or (iv) for forced labour or other forms of labour exploitation. The Committee asks the Government to supply a copy of Act No. 134/2002 as well as a copy of the amended provisions of the Penal Code relating to the sale and trafficking of children as soon as they are adopted.

Clause (b). The use, procuring or offering of a child for prostitution. The Committee had noted, in its previous comments, the ICFTU's indication that the forced prostitution of children is a serious and increasing problem in the country.

The Committee notes that, by virtue of section 204(1) of the Penal Code, a person who procures, or seduces another for the purpose of involving that person in prostitution, or who exploits the prostitution operated by another person, commits an offence. The Committee notes the Government's indication that a new section 217(b) was introduced in the Penal Code by Act No. 218/2003 to provide for the imposition of penalties on a person who offers, promises or provides payment to a child under 18 years of age in return for sexual intercourse. The Committee requests the Government to supply a copy of Act No. 218/2003 as well as information on the practical application of the abovementioned provisions.

Article 5. Monitoring mechanisms. The police. The Committee notes the Government's indication that, by virtue of section 2 of Act No. 283/1991, the police is responsible for combating crimes. It also notes the Government's indication that data on child victims of commercial sexual exploitation shall be included in police statistics and that conditions shall be created to investigate criminal offences related to the publishing of child pornography. The Committee further notes that one of the objectives of the National Plan Against the Commercial Sexual Exploitation of Children is to increase the effectiveness of prosecution of criminal acts related to the sexual exploitation of children. Thus, specific instruction will be given to the police to facilitate active investigations as well as effective and appropriate treatment of child victims of sexual exploitation. The Committee also observes that a system of cooperation between the police and non-governmental organizations will be created to disclose cases of commercial sexual exploitation of children and assistance to victims. The Committee requests the Government to provide information on the activities of the police and on the findings with regard to the extent and nature of violations detected concerning the sale and trafficking of children for labour or sexual exploitation and the commercial sexual exploitation of children. It also asks the Government to provide information on the impact of the abovementioned National Plan on increasing police effectiveness in combating the commercial sexual exploitation of children.

Article 6. Programmes of action to eliminate the worst forms of child labour. The National Plan Against the Commercial Sexual Exploitation of Children. In its previous comments, the Committee had noted the ICFTU's indication that the forced prostitution of children was a serious problem in the country. The Committee had also taken note of the Government's reply that the number of crimes connected to child prostitution has recently decreased. The Government had also indicated 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 notes that the National Plan Against the Commercial Sexual Exploitation of Children was extended in 2002. It also notes the Government's indication that the phenomenon of offering, promising or providing payment to a person under the age of 18 years in return for sexual intercourse has become widespread in the country in recent years. The Government adds that this conduct generally leads to the corruption of the morals of affected children and disruption of their system of values. The Committee also notes that, according to the Government's indication to the Committee on the Rights of the Child (CRC/C/83/Add.4, 17 June 2002, paragraph 343), there is a growing trend of commercial sexual abuse of boys, particularly prostitution. The Government indicates that in order to address this problem it established a Programme for the Implementation of Measures to Eliminate the Worst Forms of Child Labour in June 2003. According to studies conducted under this Programme, the number of victims of moral criminal offences aged under 15 years decreased from 1,149 in 1999 to 921 in 2001, and the number of victims aged 16 to 18 dropped from 164 to 133.

The Committee notes that, within the framework of the National Plan Against the Commercial Sexual Exploitation of Children, the Government initiates and supports effective forms of social work in the localities where children are the most likely to be sexually exploited. Under the framework of the National Plan, measures are also taken to ensure that child victims of sexual exploitation benefit from long-term therapy. The Committee requests the Government to continue to provide information on the impact of the abovementioned measures on the elimination of the commercial sexual exploitation of children under 18, particularly prostitution.

Article 7, paragraph 1. Penalties. The Committee notes that section 216(a) read in conjunction with section 216(b) of the Penal Code provides that whoever entrusts a child under 18 years of age, for remuneration, to another person for the purpose of adoption, child labour or for some other purpose is liable to a maximum of three years' imprisonment or a fine. Section 246 of the Penal Code states that a person who entices, hires or transports a woman under 18 years of age abroad with the intent to have her used there for sexual relations with another is liable to three to eight years' imprisonment. Section 204(1) and (3)(c) of the Penal Code states that a person who procures, or seduces another person under 18 for the purpose of involving him/her in prostitution, or who exploits prostitution operated by another person is liable to two to eight years' imprisonment. The penalty will be increased if the victim is under 15 years of age (section 204(4) of the Penal Code). The Committee asks the Government to provide information on the penalties imposed 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 notes that within the framework of the National Plan Against the Commercial Sexual Exploitation of Children which was launched in 2000 and extended in 2002, research shall be undertaken to identify and analyse the causes leading to the commercial sexual exploitation of children as well as the typology of victims. Pursuant to the National Plan, measures will be taken to increase public awareness of this phenomenon, record detailed information on the victims (in particular their ages and gender), and inform children, through

educative programmes in school, about this phenomenon. The Committee asks the Government to provide information on the impact of the abovementioned National Plan on 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 notes 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 Minister of Health shall support long-term therapeutic work with child victims of criminal offences and their families and ensure the protection of victims and witnesses from further victimization in the course of investigation and court cases. The Committee also notes that the Ministry of Education, Youth and Physical Education shall establish a system of facilities for children in need. The system consists of educational counsellors, psychologists, educational care centres, and a network of non-profit organizations which will provide basic crisis intervention and subsequent care to victims. The Committee requests the Government to provide further information on the impact of the abovementioned measures on removing children from commercial sexual exploitation and providing for their rehabilitation and social integration.

Article 8. 1. International cooperation. The Committee notes that the Czech Republic is a member of Interpol which helps cooperation between countries in the different regions especially in the fight against trafficking of children. It also notes that the Government ratified the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1993. It further notes that, according to the Programme for the Implementation of Measures for the Abolition of the Worst Forms of Child Labour, a non-profit organization named “La Strada CZ” cooperates with the International Organization for Migration to establish educational programmes and draft material for the prevention of trafficking in women and children for the purpose of labour exploitation and prostitution, and to spread information on this subject among specialists and professionals working with children. The Committee notes that one of the objectives of the National Plan Against the Commercial Sexual Exploitation of Children is to strengthen international and regional police cooperation. The Committee requests the Government to supply information on any notable impact of the abovementioned measures to eliminate the trafficking of children for labour and sexual exploitation.

2. Regional cooperation. The Committee notes that according to the report of the Special Rapporteur on children, child prostitution and child pornography (E/CN.4/2003/79, 6 January 2003, paragraph 37), the procurement of children for prostitution is particularly problematic in large urban areas in the Czech Republic and in the regions bordering Germany and Austria. The Committee also notes that the Committee on the Rights of the Child, in its concluding observation (CRC/C15/Add.201, 18 March 2003, paragraph 60), welcomed the establishment in spring 2002 of a trilateral Czech-German-Polish working group to address the issue of trafficking in human beings, in particular the sexual exploitation of children for prostitution. The Committee requests the Government to provide information on any notable impact of this measure to eliminate the trafficking of children for sexual exploitation between the Czech Republic, Germany and Poland.

The Committee is also addressing a direct request to the Government concerning other detailed points.

Dominica

Minimum Age Convention, 1973 (No. 138) (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 recalls that the Government has been asked to give effect to several provisions of the Convention since its ratification. The Committee pointed out in particular that the minimum age for admission to employment or work, which was specified to be 15 years when Dominica ratified the Convention, has not been ensured in the national legislation.

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 recalls 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 points 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 would nevertheless point out that the Government has an obligation to give effect to the provisions of the Convention in law and practice and therefore asks the Government to take 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 practical application. In its previous comments the Committee noted the ICFTU's assertion that, although 14 years is the minimum age for admission to employment or work and that education is compulsory up to this age, child labour is nonetheless a major problem in practice. Owing to high unemployment and poverty, particularly among the Haitian community, children join the labour market at a young age and work in the informal sector or in agriculture. Moreover, the number of Haitian children working on sugar plantations alongside their parents is increasing.

In reply to the ICFTU's observations, the Government indicated that the Dominican Republic is very poor. However, the national inspection service had not reported any such cases and given that labour in sugar plantations had been mechanized, there had been no reported cases of child labour in this sector of economic activity. The Government also said that it could not deny that children enter the labour market at a very young age. However, with the support of the ILO/IPEC programme, it is making efforts to improve the situation. Thus, the Secretary of State for Labour, in collaboration with the National Committee to combat child labour and with the employers and the workers, removed more than 2,000 children from work in the agricultural sector. These children were later reintegrated into school. The Government also pointed out that, in collaboration with the Secretary of State for Education, awareness-raising activities for children and the general population had been organized. The Committee notes the information sent by the Government that with technical assistance from ILO/IPEC, it is pursuing the measures to eliminate child labour. Thus, children working in agriculture are being withdrawn from their activities and campaigns are being organized to alert the population about the problem of child labour.

The Committee notes that according to the statistics in the "Report on the results of the national study on child labour in the Dominican Republic", published in 2004 by ILO/IPEC, SIMPOC and the Secretariat of State for Labour, some 436,000 children aged from 5 to 17 years were working in the Dominican Republic in 2000. Of these, 21 per cent were aged from 5 to 9 years and 44 per cent from 10 to 14 years. The sectors of economic activity most affected by child labour are services in urban areas and agriculture in rural areas. Furthermore, the commercial and industrial sectors likewise have many child workers. The Committee notes that according to the abovementioned statistics, the legislation on child labour appears difficult to apply and child labour constitutes a problem in practice in the Dominican Republic. The Committee expresses its deep concern at the situation of children under the age of 14 years who are compelled to work in the Dominican Republic. It therefore strongly encourages the Government to step up its efforts gradually to improve this situation. Furthermore, referring to its general observation of 2003, the Committee invites the Government to continue to provide detailed information on the manner in which the Convention is applied in practice including, for example, the fullest possible statistics on the nature, extent and trends of labour among children and adolescents of an age lower than the minimum specified by the Government upon ratification, extracts of reports by the inspection services, data as to the number and nature of the infringements reported and the penalties applied, particularly in services, agriculture, commerce and industry.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes the Government's first and second reports. With reference to its previous observation, the Committee also notes the comments forwarded by the Government in reply to the matters raised in the communication of the International Confederation of Free Trade Unions (ICFTU), dated 30 September 2002.

Article 1 of the Convention. Measures taken to secure the prohibition and elimination of the worst forms of child labour. The Committee notes with interest that the Dominican Republic will participate in the ILO/IPEC **Time-Bound Programme (TBP)** on the worst forms of child labour. It also notes with interest that the Government has formulated a National Plan of Action for the elimination of the worst forms of child labour in the Dominican Republic. The Committee requests the Government to continue its efforts to secure the prohibition and elimination of the worst forms of child labour. The Committee also requests the Government to provide information on the implementation of the National Plan of Action referred to above and to provide a copy of it.

Article 3. Worst forms of child labour. Clause (a). Slavery and similar practices. Sale and trafficking of children for the purposes of prostitution. In its comments, the ICFTU indicates that the trafficking of human beings, including children, for prostitution is a serious problem in the Dominican Republic. The sex tourism industry involves a large number of children. The ICFTU adds 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 widespread.

The Committee notes the information provided by the Government that there are cases of children being offered for prostitution in the Dominican Republic. The Committee also notes the Government's indication that the national legislation prohibits the sale and trafficking of children for prostitution. Section 25 of the Code for the Protection of the Rights of Boys, Girls and Young Persons, of 2003, prohibits the sale and prostitution of boys, girls and young persons. Under the terms of section 25(1) of the Code of 2003, the expression "the sale of boys, girls and young persons" means any act or transaction through which a boy, girl or young person is ceded by an individual or group of individuals in exchange for payment or any other form of remuneration. For this purpose, the offering, removal or receipt of a boy, girl or young person for the purposes of sexual exploitation, forced labour or any other occupation which is prejudicial to their personal integrity shall be penalized. Under the terms of section 25(2) of the Code of 2003, the expression "prostitution of boys, girls and young persons" means the use of these persons for sexual activities in exchange for a payment or any other form of remuneration. Furthermore, the Committee notes that, under the terms of section 3 of the Act No. 137-03 respecting the smuggling of migrants and the trafficking of persons, among other reasons for sexual exploitation, is prohibited, even with the consent of the victim. This provision also establishes sentences of imprisonment of from 15 to 20 years and a fine of 175 minimum wages. Moreover, sections 5 and 6 of Act No. 137-03 cover the attempted trafficking of persons and complicity in the trafficking of persons. The penalties established are the same as those to which those guilty of the trafficking of persons are liable. Under section 7(e) of Act No. 137-03, it is an aggravating circumstance if the victim of the trafficking of persons, attempted trafficking or complicity in the crime is under 18 years of age. In such cases, the sentence of imprisonment is increased by five years.

The Committee also notes 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. The Committee further notes that, in its concluding observations on the initial report of the Dominican Republic in October 2001 (CRC/C/15/Add.150, paragraphs 47 and 48), the Committee on the Rights of the Child expressed concern at the absence of data and a comprehensive study on the issue of sexual commercial exploitation and the lack of implementation of the National Plan of Action to address this issue. It also expressed deep concern at the increase in the number of children in the Dominican Republic suffering from commercial sexual exploitation, apparently often related to sex tourism. The Committee on the Rights of the Child recommended the Government to undertake studies with a view to strengthening current policies, and measures, including care and rehabilitation policies, to prevent and combat the phenomenon. It also recommended the Government to take into account the recommendations formulated in the Agenda for Action adopted at the 1996 Stockholm World Congress against Commercial Sexual Exploitation of Children.

The Committee reminds the Government that, under the terms of *Article 3(a)* of the Convention, the sale and trafficking of children for sexual exploitation, including prostitution, are considered to be one of the worst forms of child labour, and that, in accordance with *Article 1* of the Convention, each Member which ratifies it has to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. While the legislation is in conformity with the Convention on this point, the Committee notes that the sale and trafficking of young persons for the purposes of sexual exploitation is a problem in practice. The Committee requests the Government to renew its efforts to secure the effective application of the legislation on the protection of children against sale and trafficking for the purposes of sexual exploitation, including prostitution. The Committee further requests the Government to provide information on the application of sanctions in practice, including, for example, reports on the number of convictions.

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee notes that the Government has established the Inter-Institutional Commission against the Abuse and Commercial Sexual Exploitation of Boys, Girls and Young Persons. The Inter-Institutional Commission is composed of various institutions, including the

National Council for Childhood and Adolescence, the Ministry of the Interior, the National Police, the Tourist Police, the General Directorate of Migration, UNICEF and the ILO. One of the functions of the Inter-Institutional Commission is to take action to combat and prevent the commercial sexual exploitation of boys, girls and young persons in the country. In 2002, the Inter-Institutional Commission formulated a Plan of Action on the abuse and commercial sexual exploitation of boys, girls and young persons in the Dominican Republic. The objectives of the Plan of Action are to support the family as the fundamental core for the development of children; the strengthening of social responsibility and general awareness of the problem of the abuse and sexual exploitation of children; the improvement of national legislation, policies, programmes and basic and protection services; and the strengthening of the judicial system so as to improve the prosecution of persons engaged in the abuse of children or their sexual exploitation. The Committee requests the Government to provide information on the programmes of action established in the context of the above Plan of Action and the results achieved.

Article 7, paragraph 2. Effective and time-bound measures. The Committee notes with interest that the ILO/IPEC Time-Bound Programme (TBP) on the worst forms of child labour will directly benefit around 2,600 young workers under 18 years of age, and will indirectly benefit other children at risk under 18 years of age and around 1,424 families. The TBP will focus on the following provinces: the capital, Duarte, La Vega, María Trinidad Sanchez, Mons. Nouel, Puerto Plata, Sanchez-Ramirez and Samaná. Furthermore, it concerns three of the worst forms of child labour in respect of which the Government has to take measures as a priority, namely the commercial sexual exploitation of children, hazardous work in the urban informal economy and hazardous work in agriculture.

Clause (a). Preventing the engagement of children in the worst forms of child labour. The Committee notes that, in the context of the TBP, 200 children are considered to be at risk of commercial sexual exploitation. The Committee requests the Government to provide information on the measures taken in the context of the TBP to protect these children. It also requests the Government to provide statistical data on the number of children who will in practice be prevented from being engaged in commercial sexual exploitation as a result of the implementation of the TBP.

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 notes that the total number of children working in the commercial sexual exploitation sector is unknown. It also notes that, of the 2,600 children targeted by the TBP, 200 work in the commercial sexual exploitation sector. The Committee further notes that the TBP envisages economic alternatives for the families of children who are removed from the worst forms of child labour. Provision is made for rehabilitation and social integration of children removed from the activities concerned. The Committee requests the Government to provide information on economic alternatives and on the measures adopted to ensure the rehabilitation and social integration of children. It also requests the Government to provide statistical data on the number of children who are in practice removed from sexual exploitation in the context of the TBP.

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

Ecuador

Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1975)

The Committee takes note of the Government's report and of the information supplied in answer to its previous observation. The Committee notes with regret that 29 years after the ratification and despite repeated requests formulated by the Committee and especially in 1995 and 2001, the Government has not as yet adopted legislative measures to give effect to the provisions of the Convention. The Committee hopes that the Government will shortly adopt legislative measures to give effect to the following provisions of the Convention.

1. *Article 1 of the Convention. Scope.* Further to its previous comments, the Committee notes that the adoption or reform of standards requires legislative approval and that, consequently, it has not been possible to introduce provisions in the national legislation that reflect the definition of the legal term "industrial undertaking", as the Convention requires. In view of the fact that for several years the Government has expressed its intention of drafting a standard to reflect the definition of "industrial undertaking" proposed by the Convention, the Committee hopes that the Government will take the necessary steps to this end in the near future.

2. *Article 2 (medical examination for admission to employment), Article 3 (repetition of medical examinations in the course of employment), Article 4 (medical examinations and re-examinations for fitness for employment until the age of 21 years where the work involves high risks) and Article 5 (medical examinations to be free of charge).* The Committee notes that the Government intends to take steps to ensure that the necessary legislative measures are adopted to ensure that all young people of 18 years of age are required to undergo medical examinations to determine their fitness for work before being admitted to employment (*Article 2*), that such examinations are carried out periodically (*Article 3*), that the examinations are ensured until the age of 21 years for work involving high risks (*Article 4*) and that these examinations shall not involve the young persons or their parents in any expense (*Article 5*). The Committee requests the Government to consider adopting the abovementioned provisions as part of the planned legislative reform. It expresses the hope that the Government will take such measures promptly and asks it to provide information on any progress made in this regard.

3. *Article 6. Measures for vocational guidance and physical and vocational rehabilitation of children and young persons found by medical examination to be unsuited or to have handicaps.* The Committee hopes that the Government will adopt the necessary measures to include this provision in reforming the legislation.

4. *Article 7, paragraph 1. Certificates of fitness for employment to be filed and kept available to labour inspectors.* The Committee notes that, according to the Government, a provision is to be included in the legislative reform requiring employers to file and keep available to labour inspectors medical certificates of minors' fitness for employment or the work permits showing that there are no medical objections to the employment. In view of the importance of adopting such a provision in terms of facilitating supervision of the application of the legislation, the Committee hopes that the Government will take the necessary measures to this end in the near future.

Lastly, the Committee hopes that in the context of the legislative reform, the abovementioned provisions will be adopted and that they will reflect the Committee's comments, so that full effect can be given to the provisions of the Convention. The Committee requests the Government to keep it informed on this matter and to provide copies of the provisions as soon as they are adopted.

[The Government is asked to supply full particulars to the Conference at its 93rd Session, and to reply in detail to the present comments in 2005.]

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1975)

The Committee notes the information provided by the Government in reply to its previous comments. It wishes to draw the Government's attention to the following points.

1. *Articles 1, 2, 3, 4, 5 and 6 of the Convention.* The Committee invites the Government to refer to its comments relating to Convention No. 77.

2. *Article 7, paragraph 1.* With reference to its previous comments, in which the Committee noted the lack of a legal provision requiring the employer to file and keep available for labour inspectors either the medical certificate for fitness for employment or the work permit, as provided for in *Article 7, paragraph 1* of the Convention, the Government indicates that it undertakes to bring this matter before the competent authorities so that the necessary measures can be taken to include a provision to this effect in the national legislation. In the meantime, the Ministry of Labour and Human Resources, through its labour inspectors, will ensure that this procedure is gradually implemented. The Committee notes this information. It hopes that the legislative process will be set in motion in the near future for the adoption of a provision requiring the employer to file and keep available for labour inspectors either the medical certificate for fitness for employment or the workbook showing that there are no medical objections to employment, so as to give full effect to this Article of the Convention.

Article 7, paragraph 2(a). With regard to the medical examinations of young persons engaged either on their own account or on account of their parents in itinerant trading, the Committee notes that the measures that are currently being taken by the Government include the initiative to encourage young persons engaged on their own account to undergo prior medical examinations for fitness for employment. The Committee notes these indications. It trusts that the Government will adopt appropriate legislative measures in the near future to give effect to *Article 7, paragraph 2(a)*, of the Convention. In this respect, the Committee, noting that section 163 of the Code for Young Persons, which provides for the granting of a workbook by the municipality in coordination with the juvenile court for young persons engaged on their own account, giving them entitlement to obtain certain benefits, asks the Government to consider the possibility of including a provision in the Code for Young Persons containing the measures referred to in this Article.

[The Government is asked to supply full particulars to the Conference at its 93rd Session, and to reply in detail to the present comments in 2005.]

El Salvador

Minimum Age Convention, 1973 (No. 138) (ratification: 1996)

The Committee notes the communications from the Inter-Union Commission of El Salvador (CATS-CTD-CGT-CTS-CSTS-CUTS), dated 13 September 2002, and the International Confederation of Free Trade Unions (ICFTU), dated 3 February 2003. The Committee also takes note of the Government's observations in response to the questions raised in these communications.

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. In its communication, the CATS-CTD-CGT-CTS-CSTS-CUTS indicates that the Government of El Salvador has not adopted a plan of action for the abolition of child labour. The situation in El Salvador shows that girls and boys are on the labour market at ever younger ages.

In its replies, the Government indicates that several forms of measures have been taken to eliminate child labour. These include the signing of a Memorandum of Understanding (MOU) with ILO/IPEC in 1996, which was renewed on 25 November 2002. The MOU is intended to protect girls and boys against economic exploitation and to withdraw them

from any form of hazardous work or work which may interfere with their education or prejudice their health and their physical and moral development. The Government also reports that several activities have been implemented with the technical assistance of ILO/IPEC, with a view to promoting the prohibition and regulation of child labour in several sectors, including the harvesting of shellfish on the island of Espiritu Santo, the harvest of coffee beans and work in the markets of Santa Ana. The Government has also established the National Committee for the Progressive Elimination of Child Labour, the responsibilities of which include the formulation of projects to combat child labour.

The Committee takes due note of the Government's efforts to abolish child labour. It requests the Government to provide information on the implementation of projects to ensure the effective abolition of child labour and the results achieved.

Article 2, paragraph 1. Minimum age for admission to employment or work. In its communication, the CATS-CTD-CGT-CTS-CSTS-CUTS indicates that children between the ages of 12 and 14 years are engaged in work. In its communication, the ICFTU states that the minimum age for admission to employment or work is 14 years. Child labour is not generally to be found in export processing zones (EPZs) or in the formal private sector. However, it is very widespread in the unregulated rural and urban economy.

The Committee notes that section 114 of the Labour Code sets the minimum age for admission to employment or work at 14 years. It notes the report entitled "Understanding child labour in El Salvador", published by ILO/IPEC in 2003 in collaboration with the Statistical Information and Monitoring Programme on Child Labour (SIMPOC). According to the statistics contained in this report, the total number of child workers aged between 5 and 14 years is 109,000. Some 222,479 children aged 5 to 17 years work, of whom 49.1 per cent are engaged in the agriculture stock-raising, fishing and forestry sectors; 23 per cent in the trading and hotels and catering sectors; 16 per cent in manufacturing; 4.8 per cent in domestic service; 2.4 per cent in construction; 2.1 per cent in transport, storage and communications; 1.9 per cent in community services; and 0.7 per cent in other activities. The report also shows that the percentage of working children rises with age. Under 2 per cent of all children aged 5-9 years work, compared with around 13 per cent of those aged 10-14 years. Furthermore, more than one child in every two aged between 5 and 9 years works in the agricultural sector.

The Committee notes that, according to the statistical data referred to above, difficulties appear to be encountered in the application of the legislation on child labour regulations and that, as indicated by the CATS-CTD-CGT-CTS-CSTS-CUTS and the ICFTU, child labour constitutes a problem in practice. The Committee expresses its deep concern at the situation of children under the age of 14 years who are obliged to work in El Salvador. It therefore encourages the Government to renew its efforts to improve this situation progressively. With reference to its general observation of 2003, the Committee calls upon the Government to continue providing detailed information on the manner in which the Convention is applied in practice, including, for example, the fullest possible statistical information on the nature, extent and trends of work by children and young persons under the minimum age specified by the Government when ratifying the Convention, extracts of the reports of the inspection services and information on the number and nature of the violations reported and on the penalties imposed, particularly in the agricultural, trading, hotel and catering, manufacturing and domestic service sectors.

Article 2, paragraph 3. Compulsory schooling. In its communication, the ICFTU indicates that education is compulsory and, in theory, free of charge up to the age of 14 years. However, there are additional fees to be paid, which prevent the children of poor families from attending school. The great majority of children who work do so to the detriment of their school attendance. The ICFTU concludes that the authorities should facilitate the access to education of the children of poor families, who are prevented by educational costs from attending school.

In its report, the Government indicates that the legislation does not set a specific age for the completion of compulsory schooling. However, by virtue of section 114 of the Labour Code, it may be inferred that the age of completion of compulsory schooling is 14 years. The Committee notes that section 114 of the Labour Code prohibits children of under 14 years who are still subject to compulsory schooling from working in any occupation. It also notes that, according to the information contained in the report entitled "Understanding child labour in El Salvador", the Ministry of Education (MINED) has shown its determination over the past ten years, to improve the situation with regard to education in El Salvador by undertaking several reforms in this field. These reforms have led to significant progress, particularly in relation to access to education in rural areas.

The Committee notes the Government's efforts to improve access to education. It encourages the Government to pursue its efforts in this field and requests it to provide additional information on the measures that it intends to take to facilitate the access of children to school. The Committee also requests the Government to provide statistical data on the school attendance rate in El Salvador.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee takes note of the observations made by the Inter-Union Commission of El Salvador (CATS-CTD-CGT-CTS-CSTS-CUTS), dated 13 September 2002, and the International Confederation of Free Trade Unions (ICFTU), dated 3 February 2003. The Committee also notes the comments provided by the Government in reply to the questions raised in these communications. It requests the Government to provide information on the following points.

Article 1 of the Convention. Measures taken to secure the prohibition and elimination of the worst forms of child labour. In its observation, the CATS-CTD-CGT-CTS-CSTS-CUTS indicates that the number of children engaged in the worst forms of child labour is on the increase in El Salvador. It adds that no policy has been drawn up to improve knowledge of the worst forms of child labour and eliminate them, and that the trade union organizations have not been consulted for this purpose.

In its responses, the Government indicates that several forms of action have been taken with the view to eliminating child labour, and particularly the worst forms of child labour. In this respect, El Salvador is one of the three first countries to participate in the *Time-Bound Programme (TBP)* on the worst forms of child labour. Moreover, following the ratification of the present Convention, the Government established a National Committee for the Elimination of Child Labour, which has prepared a National Plan for the Elimination of the Worst Forms of Child Labour in the framework of the ILO/IPEC TBP on the worst forms of child labour (2002-05). The plan of action includes a series of activities intended to strengthen the capacities of institutions in the country so that they can address the problem and improve the living conditions of children engaged in the worst forms of child labour. These include the preparation of six rapid assessment studies in various sectors and activities, namely domestic work, street work, hazardous work in the fishing sector, public rubbish dumps, sugar cane plantations and commercial sexual exploitation. Similar studies had also previously been undertaken in the firework production and coffee plantation sectors. Following these studies, the Government determined five of the worst forms of child labour for which it would take priority action: the firework industry, the fishing sector, rubbish dumps, sugar cane and sexual exploitation. The Committee notes that, according to the document entitled "Combating the worst forms of child labour in El Salvador (2002-05)", the TBP will be implemented in collaboration with the various members of the Government, employers' and workers' organizations, bilateral and international donors, the media, community organizations and other civil society organizations. The Committee requests the Government to provide information on the implementation and impact of the TBP.

Article 3. Worst forms of child labour. Clause (a). Sale and trafficking of children for the purposes of sexual exploitation. In its observation, the CATS-CTD-CGT-CTS-CSTS-CUTS indicates that an ever increasing number of boys and girls are sexually exploited. In its observation, the ICFTU states that the trafficking of persons for the purposes of sexual exploitation, including through networks of forced prostitution involving children, is a major problem in El Salvador. The child victims of trafficking come from Mexico, Guatemala and other countries in the region for the purposes of prostitution. There is also a network for the internal trafficking of persons.

The Committee notes that the Government adopted Decree No. 210 on 25 November 2003, which amends several provisions of the Penal Code respecting sexual exploitation. The Committee notes in this respect that section 169 of the Penal Code provides that any person who incites, facilitates, encourages, finances or organizes, in any manner whatsoever, the use of persons under 18 years of age in acts of a sexual or erotic nature, individually or in groups, in public or in private, shall be liable to a sentence of between three and eight years' imprisonment. The Committee also notes that section 170 of the Penal Code provides that any person who causes, through coercion or by abusing a situation of need, the prostitution of a person or their maintenance in this situation, shall be liable to a sentence of between six and 18 years of imprisonment. If the victim is a person under 18 years of age, the sentence may be increased by three-quarters of the maximum sentence. Furthermore, section 367-B of the Penal Code provides that any person who, for her or himself or as a member of an international organization and with the intention of obtaining economic benefit, transports, removes, accepts or receives persons, both within and outside the national territory, for the purposes of sexual exploitation, is liable to a sentence of between four and eight years of imprisonment. If the victim is a person under 18 years of age, the sentence may be increased by three quarters of the maximum penalty.

The Committee reminds the Government that, under *Article 3(a)* of the Convention, the sale and trafficking of children for the purposes of sexual exploitation, and particularly prostitution, is considered to be one of the worst forms of child labour and that, in accordance with *Article 1* of the Convention, each Member which ratifies it shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Although the legislation appears to be in conformity with the Convention on this matter, the Committee notes that the sale and trafficking of children for the purposes of sexual exploitation constitutes a problem in practice. The Committee requests the Government to renew its efforts to secure the effective implementation of the legislation protecting children against their sale and trafficking for the purposes of sexual exploitation, including prostitution. It also requests the Government to provide information on the penalties imposed in practice by providing, among other information, reports on the number of convictions.

Article 5. Mechanisms to monitor the implementation of the provisions of the Convention. In its communication, the ICFTU states that, despite the ILO/IPEC activities in the country to eliminate the worst forms of child labour, the low level of resources available to the Ministry of Labour is resulting in the unregulated sector of the economy being subject to little monitoring. The ICFTU concludes by emphasizing that economic activities by children in the worst forms of child labour are very widespread in the unregulated rural and urban economies. These economies remain outside the scope of the inspection services, even though they account for the largest number of working children.

The Committee notes that the National Committee for the Elimination of Child Labour is responsible for proposing action and policies to give effect to the Convention, and for ensuring the rehabilitation and social integration of the children concerned and the needs of their families. It is composed of the Ministry of Labour and Social Insurance, the

Ministry of Education, the Ministry of Public Health and Social Assistance, the Ministry of Governance, the Ministry of Agriculture and Stock-raising, representatives of employers' and workers' organizations, the El Salvador Institute for the Protection of Young Persons (ISPM), the National Family Council and representatives of NGOs (the EXDO Foundation and Save the Children US). The Committee requests the Government to provide information on the functioning of the National Committee for the Elimination of Child Labour and to indicate whether it has established appropriate mechanisms to monitor the implementation of the Convention, particularly with regard to the sale and trafficking of children for the purposes of sexual exploitation.

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee notes that, in its concluding observations on the Government's second periodic report in June 2004 (CRC/C/15/Add.232, paragraphs 63 and 64), the Committee on the Rights of the Child expressed concern about the extent of sexual exploitation and trafficking in El Salvador and the lack of effective programmes to address the problem. The Committee on the Rights of the Child also regretted the lack of information on assistance and reintegration programmes for children who have been victims of sexual exploitation and trafficking. The recommendations of the Committee on the Rights of the Child to the Government include: strengthening measures and adopting multidisciplinary and multisectoral approaches to combat the sexual exploitation of children and adolescents; conducting a comprehensive study to assess the causes, nature and extent of trafficking and commercial sexual exploitation of children; ensuring that trafficked children and children who have been subjected to sexual exploitation are always treated as victims; ensuring that the perpetrators are prosecuted; and providing programmes of assistance and reintegration for sexually exploited and trafficked children in accordance with the Declaration and Agenda for Action adopted at the 1996 and 2001 World Congresses Against Commercial Sexual Exploitation of Children.

The Committee notes that, according to the information available to the Office, a National Plan of Action against the commercial sexual exploitation of girls, boys and young persons (ESCNNA) (2001-04) has been developed with the assistance of ECPAT (an international NGO combating child prostitution, child pornography and the trafficking of children). The Committee requests the Government to provide information on the implementation of the National Plan of Action and its impact on the commercial sexual exploitation of girls, boys and young persons, and particularly on the rehabilitation and social integration of child victims of trafficking for the purposes of prostitution.

Article 7, paragraph 2. Effective and time-bound measures. The Committee notes that the TBP will be of direct benefit to around 9,300 children, to 16,780 of their brothers and sisters under 18 years of age and to 5,050 families in the selected regions of the country. According to the information contained in the document "Combating the worst forms of child labour in El Salvador (2002-05)", economic alternatives are provided for the families of children engaged in the worst forms of child labour so as to remove them from their work. Furthermore, educational measures are provided for children who are removed from the worst forms of child labour concerned and measures taken for their rehabilitation and social integration.

Clause (a). Preventing the engagement of children in the worst forms of child labour. The Committee notes that the above document does not provide any figures for the number of girls, boys and young persons who will be covered by the programme of action on commercial sexual exploitation. It also notes that one of the activities targeted by the TBP is the sexual exploitation of children. The Committee requests the Government to indicate the number of children who will be prevented by the TBP from being engaged in the commercial sexual exploitation sector.

Clause (c). Access to free basic education. In its communication, the ICFTU indicates that education is compulsory and, in theory, free up to the age of 14 years. However, additional fees are required, preventing children from poor families from attending school. The vast majority of children who work do so to the detriment of their school attendance.

The Committee notes that, in the context of the TBP on the worst forms of child labour, educational measures are provided for children removed from the worst forms of child labour concerned. Young persons under 14 years of age will be placed in primary schools, receive psychological and educational support and tutorial and educational assistance to help them succeed at school. Those of 14 and 15 years of age will undergo transitional education, where necessary, and will receive pre-vocational training. Young persons aged between 16 and 17 years will benefit from vocational training and assistance in finding a job.

The Committee notes that, under section 5 of the General Education Act, nursery and basic education is free. Under section 20 of the Act, basic education includes nine years of schooling, from the first to the ninth year, normally beginning at the age of seven. According to the information provided by the Government, the age of completion of compulsory schooling is 14 years. The Committee notes that the Act of 1996 respecting vocational training established the INSFORP, the body responsible for managing and coordinating the system of vocational training and apprenticeship. The Committee takes due note of the Government's efforts to improve the access to education of children removed from work. It requests the Government to provide information on the number of children who, after being removed from work, are in practice reintegrated into basic education or follow pre-vocational or vocational training.

Clause (d). Children at special risk. In its communication, the CATS-CTD-CGT-CTS-CSTS-CUTS indicates that an ever increasing number of girls and boys are the victims of hazardous working conditions. Street work exposes them to various abuses and to accidents. Moreover, 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 for long hours without adequate remuneration and without attending school.

The Committee takes note of the Rapid Assessment Study on domestic work by children published by ILO/IPEC in February 2002. According to this study, 93.6 per cent of children working in domestic service are girls. Moreover, this is the activity which has the most impact on the school attendance of children. Around 30.9 per cent of child domestic workers attend school. Of this number, 26.5 per cent of girls do so on an irregular basis, attending school between two and three times a week. The Committee notes that, according to the latest information provided by the Government, the ILO/IPEC programmes of action have benefited children in the coffee industry and domestic work. In the coffee sector, of the 8,074 children targeted, 1,972 have been removed from work, 2,437 have been prevented from working and 3,665 have benefited indirectly from the programme. With regard to domestic work, of the 900 children targeted, 500 have been prevented from working and 400 have benefited from the programme.

The Committee notes that domestic work, as well as street work and work in coffee plantations, will be the next sectors taken into account by the Government in the context of the TBP on the worst forms of child labour. The Committee expresses concern at the situation of child domestic workers in El Salvador. It therefore requests the Government to pursue its efforts and to take the necessary measures to intervene rapidly in this sector.

Clause (e). Special situation of girls. The Committee notes the figures contained in the document “Combating the worst forms of child labour in El Salvador (2002-05)” concerning the number of girls engaged in the worst forms of child labour covered by the TBP. With regard to the commercial sexual exploitation sector, 66 per cent of the children exploited are girls, with 34 per cent being boys. The Committee notes that the percentage of girls engaged in the worst forms of child labour covered by the TBP is considerable. The Committee therefore requests the Government to indicate the manner in which it intends to pay special attention to these girls and remove them from the worst forms of child labour.

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

France

Minimum Age Convention, 1973 (No. 138) (ratification: 1990)

Further to its previous comments, the Committee notes with satisfaction the information communicated by the Government in its report. It notes with interest the adoption of Decree No. 2003-812 of 26 August 2003, which defines the arrangements for work placements for pupils under 16 years of age in general education and for pupils following a sandwich system or vocational education. The Committee also notes the amendment to section L.212-13 of the Labour Code by the adoption of the Ordinance of 4 May 2004 amending the maximum daily hours of work for young people below the age of 18 from seven to eight hours, without changing the maximum weekly hours of work from 35 hours, in order to meet practical concerns noted in enterprises. It notes moreover that the eight-hour maximum length of working day also conforms to the requirements of European Council Directive 94/33/EC on the protection of young people at work.

Article 2, paragraph 3, of the Convention. Minimum age in the maritime sector. Further to its previous comments, the Committee notes with interest the detailed information communicated by the Government concerning the minimum age in the maritime sector. The decree provided for by section 117 of the Maritime Labour Code to adapt the provisions of the Labour Code on apprenticeships to the maritime sector, with regard to the application of Chapter II of the Maritime Labour Code concerning the “provisions applicable to seafarers under 18 years of age”, is being prepared. The Committee also notes that Ordinance No. 2004-691 of 12 July 2004 “concerning various provisions for the adaptation of Community law in the field of transport” supplements certain provisions of Chapter II of the Maritime Labour Code. The Committee notes in particular that the conditions for the training of young people are enhanced, whatever their status aboard ship (Articles of Agreement or young trainees), and their hours of rest, in particular weekly hours of rest, are increased. The Committee notes with satisfaction that although the minimum age of young seafarers was already subject to regulation, the legislative and regulatory amendments in progress are bound to enhance the protection of young people employed in the maritime sector, in particular by stipulating their conditions of work and employment aboard ship.

Article 8, paragraphs 1 and 2. Enterprises involving artistic performances and modelling agencies. The Committee noted previously that the conditions and hours of work of child models working for agencies holding a licence, as defined by regulations, are protective. The Committee asked the Government to provide information concerning the practical application of these provisions. Further to its previous comments, the Committee notes with satisfaction the Government’s statement in its report that the inspection services observed no infringements with regard to the employment of child models for 2003. It also notes with interest that the Act of 2 January 2004 concerning arrangements and protection for children has stiffened the penalties incurred for contraventions of the rules governing the work of children in itinerant professions and the hours of work in modelling. In particular, penalties have been made more stringent for the unauthorized employment of a child in an enterprise involving artistic performances or in modelling, or for the concealed employment of a young person under the age of 16 years. In the event of a contravention, employers are liable to five years’ imprisonment and a 75,000 euro fine.

Gabon

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the Government's first report. With reference to its comments concerning the Forced Labour Convention, 1930 (No. 29), and in so far as *Article 3(a) of the Convention* provides that the term "the worst forms of child labour" comprises "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 considers that the problem of the trafficking of children for the purposes of exploitation may be examined more specifically under the present Convention. It therefore requests the Government to provide information on the following points.

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. The sale and trafficking of children. The Committee notes that Gabon has undertaken to carry out the work of harmonizing the legislation prohibiting the trafficking of children, in the context of the Subregional Project to combat the trafficking of children for the exploitation of their labour in West and Central Africa (IPEC/LUTRENA), which commenced in July 2001. The Committee notes that the Penal Code was amended in 2001 to prohibit and penalize the sale of persons (section 275) and the trafficking of children (section 278bis). As a result, section 278bis of the Penal Code prohibits organizing or facilitating the trafficking of children, or participating therein, among other means by the transport, entry onto the national territory, reception, accommodation, sale or illicit employment of such children. The Committee also notes that a Bill on the prevention and repression of the trafficking of children for labour exploitation is before Parliament for examination. The Committee requests the Government to indicate the age up to which a person is considered to be a child under the terms of section 278bis of the Penal Code. It also requests the Government to provide a copy of the Act on the prevention and repression of the trafficking of children for labour exploitation when it has been adopted.

Article 5. Mechanisms to monitor the implementation of the provisions giving effect to the Convention. The Committee notes that, in the context of the Subregional Project to combat the trafficking of children for labour exploitation in West and Central Africa (IPEC/LUTRENA), a Project Steering and Evaluation Committee was established in 2003. The Government adds that the role of this committee remains limited due to the lack of adequate human and material resources and the shortcomings of the technical training of its members. The Committee of Experts encourages the Government to take the necessary measures to ensure the operation of the IPEC/LUTRENA Project Steering and Evaluation Committee.

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee notes that, according to a survey carried out by ILO/IPEC in 1999-2000 in nine countries in the West and Central African subregion (Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Ghana, Mali, Nigeria and Togo), the trafficking of children in this region is on the increase. Children from Togo, Mali, Burkina Faso and Ghana are the victims of trafficking to Nigeria, Côte d'Ivoire, Cameroon and Gabon.

The Committee notes that Gabon is participating in the second phase of the IPEC/LUTRENA project, the objective of which is to improve understanding of the problem of the trafficking of children, particularly through the availability of recent statistical data on this subject. It also notes that, according to the information provided by the Government to the Committee on the Rights of the Child (GAB/1, 13 July 2001, page 14), the Ministry of Social Affairs is currently establishing, in collaboration with the European Union, a project with the principal objective of combating the trafficking of children. Non-governmental organizations, embassies of the countries of origin of the child victims of trafficking and the Ministries of Health, National Education, People's Education, Foreign Affairs, Justice and the Interior are participating in the project. Noting that the second phase of the IPEC/LUTRENA project was completed in February 2004, the Committee requests the Government to provide information, including statistical data, on the trafficking of children. It also requests the Government to provide information on the practical measures taken, in the context of the collaboration between Gabon and the European Union, to combat the trafficking of children.

Article 7, paragraph 1. Sanctions. The Committee notes that the Ordinance of the Council of Ministers of 13 August 2001 amended the Penal Code by adding new section 278bis-1 which penalizes persons who have organized, facilitated or participated in the trafficking of children, among other means through the transport, entry onto the territory, reception, accommodation, sale, illicit employment of children, or who have drawn any gain therefrom whatsoever, making them liable to a sentence of criminal detention and a fine of between 10 and 20 million francs. It also notes that new section 252 of the Penal Code, as amended in 2001, provides that any person who has organized the sale of persons or participated therein shall be liable to a sentence of imprisonment of between five and ten years and a fine of from 1 to 10 million francs. The sentence is increased where the victim is a child under 16 years of age. The Committee requests the Government to provide information on the application of these sanctions in practice.

Article 8. International cooperation. The Committee notes the Government's indications that a system of dialogue is in operation between Gabon and sending countries of child workers with a view to the elimination of the trafficking of children. It also notes that a Joint Benin-Gabon Commission was established in March 1999 in the context of bilateral cooperation and is responsible, among other matters, for proposing practical measures to combat the trafficking and labour of children from Benin to Gabon (CRC/C/41/Add.10, paragraphs 266-268). The Committee requests the Government to provide additional information on the system of dialogue established between Gabon and the countries of origin of child victims of trafficking, and particularly on whether exchanges of information have led to the identification and cessation of

networks of child traffickers. It also requests the Government to provide information on the results achieved by the Joint Benin-Gabon Commission.

Part V of the report form. The Committee notes that, according to the Government's report to the Committee on the Rights of the Child (GAB/1, 13 July 2001, page 12), 25,000 children work in Gabon, of which between 17,000 and 20,000 are the victims of trafficking. The report adds that 95 per cent of these children are used in the informal economy, 40 per cent are under 12 years of age and 71 per cent work in the tertiary sector, particularly as domestic workers. Furthermore, the Government indicates that, according to a UNICEF study, 582 girls were street hawkers in Libreville in March 1998; 54 per cent of them were nationals of Benin and 46 per cent of Togo. The Committee notes that, according to the information available in the report of the Working Group on Contemporary Forms of Slavery of the Sub-Commission on the Promotion and Protection of Human Rights of the Commission on Human Rights (E/CN.4/Sub.2/2001/30, July 2001, paragraphs 35-38), 86 per cent of the children sent to Gabon in 1999 were girls to be employed as domestic workers, while the boys were employed in agriculture. Moreover, the Committee notes the case of *The Etireno*, a vessel on board which around 40 children were discovered in April 2001 who were being brought to Gabon.

The Committee expresses concern at the situation described above and requests the Government to report in detail on the measures adopted and those that it envisages taking to bring the situation in practice into compliance with the law.

A request on other matters is also being addressed directly to the Government.

Guatemala

Minimum Age Convention, 1973 (No. 138) (ratification: 1990)

The Committee notes with interest that the Government adopted the Act concerning the full protection of children and adolescents in 2003. It requests it to provide information on the following points.

Article 1 of the Convention. National policy. The Committee notes the National Plan relating to the prevention and elimination of child labour and the protection of working adolescents (2001-04), which was drawn up further to consultations which were held between 1999 and 2001 between the Government and civil society. The National Plan is principally concerned with ten departments of the country, namely Quiché, Huehuetenango, Alta Verapaz, Totonicapán, Sololá, San Marcos, Izabal, Zacapa, Petén and Jalapa. The principal goal of the National Plan is the prevention and elimination of child labour. Its specific objectives are education, health, promotion of adult employment, protection, research, social mobilization, assistance and evaluation. The Committee also notes that, according to the document entitled "Public policy and national action plan for children (2004-15)", the Government plans to reduce work done by boys and girls under 13 years of age by 15 per cent by 2007, by 30 per cent by 2011 and by 50 per cent by 2015. The Committee requests the Government to provide information on the implementation of the National Plan relating to the prevention and elimination of child labour and the protection of working adolescents (2001-04) and of the "Public policy and national action plan for children (2004-15)" and on the results obtained with regard to the elimination of child labour.

Article 2, paragraphs 1 and 4, and Part V of the report form. Minimum age for admission to employment or work and application in practice. In its previous comments, the Committee had noted the statement by the ICFTU that child labour is very widespread in Guatemala. The ICFTU had referred to government statistics which indicate that about 821,875 children between 7 and 14 years of age are economically active, most of them in agriculture or in informal urban activities such as shining shoes or street entertainment. The Committee notes the information communicated by the Government to the effect that the study entitled "Understanding child labour in Guatemala" carried out in 2000 by the National Institute of Statistics (INE), in connection with the National Survey on Living Conditions (ENCOVI), establishes that approximately 507,000 boys and girls between 7 and 14 years of age are working in Guatemala, which represents 20 per cent of this population group. Of the 507,000 children who are working, 66 per cent are boys and 34 per cent are girls. Eight per cent of children are only working, while 12 per cent are both working and attending school. In addition, the total number of hours worked by children who are solely working is 58 per week, while the total number of hours worked by children who are both working and attending school is 40. The sector of economic activity in which the most children between 7 and 14 years of age work (62 per cent) is agriculture, followed by commerce (16.1 per cent), manufacturing (10.7 per cent), services (6.1 per cent), construction (3.1 per cent) and others (1.2 per cent).

The Committee notes that, under section 148(e) of the Labour Code, the work of minors under 14 years of age is prohibited. It also notes that, under section 66 of the Act concerning the full protection of children and adolescents of 2003, the work of adolescents under 14 years of age is prohibited in any activity, including the informal sector. The Committee notes, however, that, according to the statistics mentioned above, it appears difficult to apply the legislation on child labour in practice and child labour is very widespread in Guatemala. The Committee expresses its deep concern at the situation of children under 14 years of age compelled to work in Guatemala. It therefore strongly encourages the Government to renew its efforts to improve this situation gradually. Hence, referring to its general observation made at its 2003 session, the Committee invites the Government to continue to provide detailed information on the manner in which the Convention is applied in practice, including, for example, the fullest possible statistical data on the nature, extent and trends of child and adolescent labour below the minimum age specified by the Government at the time of ratification, extracts from the reports of inspection services, information on the number and nature of infringements reported and on penalties applied, particularly in the agricultural, commercial, manufacturing, services and construction sectors.

Article 3, paragraphs 1 and 2. Hazardous work and determination of types of hazardous employment or work. In its previous comments, the Committee had noted the statement by the ICFTU that child workers are often exploited and work in the worst conditions. Health and safety legislation is non-existent and many children work in highly dangerous activities, such as manufacturing fireworks or in quarries. The ICFTU had emphasized that work in the fireworks industry is particularly dangerous and children are often seriously injured. In addition, according to the ICFTU, although most of these activities take place in family-run workshops, about 10 per cent of the children work in factories, where they perform the most dangerous tasks, such as measuring out explosives.

The Committee notes with interest the information provided by the Government to the effect that, further to multi-sectoral consultations, the Government has drawn up a detailed list of 29 types of hazardous work. It notes in particular that this list includes the fireworks industry and the construction industry, including activities which entail working with stone. As regards the fireworks industry, the Committee notes the 2004 document entitled “Census of children withdrawn from the fireworks industry”. According to this document, 4,521 children under 13 years of age have been withdrawn from their work. Of this total, 72 benefited from an alternative activity, 923 from a credit granted to the families and 3,526 received a “peace allowance”.

The Committee notes that section 148(a) of the Labour Code prohibits the work of minors in unhealthy and dangerous places. It also notes that section 51 of the Act concerning the full protection of children and adolescents of 2003 states that boys, girls and adolescents (persons between 0 and 18 years of age – section 2) have the right to be protected against economic exploitation and the performance of any work which is likely to be harmful to their physical and mental health or interfere with their school attendance. The Committee notes the Government’s efforts to prohibit the work of boys, girls and adolescents in the fireworks industry. The Committee observes, however, that, according to the information contained in the 2004 document entitled “Census of children withdrawn from the fireworks industry”, only children under 13 years of age have been withdrawn from their employment in the fireworks industry. It reminds the Government that, under *Article 3, paragraph 1*, of the Convention, no person under 18 years of age may perform any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize his health, safety or morals. The Committee encourages the Government to continue its efforts in this field and requests it to adopt the necessary measures to guarantee that no person under 18 years of age will be employed in the fireworks industry. It also requests the Government to continue to provide information on the number of children withdrawn from this sector of economic activity.

In addition, a request regarding certain other points is being addressed directly to the Government.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the Government’s first and second reports. It also notes the comments of the International Confederation of Free Trade Unions (ICFTU), dated 10 January 2002, and those of the Trade Union Confederation of Guatemala (UNSI TRAGUA), dated 25 August 2003 and 25 August 2004. Furthermore, the Committee notes the Government’s reply to the matters raised by UNSI TRAGUA in its comments of 25 August 2003. It requests the Government to provide information on the issues raised by UNSI TRAGUA in its comments of 25 August 2004.

With reference to its comments made under the Forced Labour Convention, 1930 (No. 29), and in so far as *Article 3(a)* of the Worst Forms of Child Labour Convention, 1999 (No. 182), provides that the term “the worst forms of child labour” comprises “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 considers that the problem of the sale and trafficking of children for sexual exploitation, including prostitution, may be examined more specifically in the context of Convention No. 182.

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children for prostitution. In its comments, the ICFTU reports the existence of the trafficking of persons, especially children, for the purposes of prostitution. The majority of children who are victims of such trafficking are from neighbouring countries or other parts of Guatemala, and particularly the border areas with Mexico and El Salvador. In its communication, UNSI TRAGUA also indicates that many boys and girls who are victims of trafficking are from neighbouring countries and are used for the purposes of sexual exploitation, including prostitution. This practice is facilitated by the non-existence of adequate controls resulting from the lack of regulations.

In its reply to the comments made by UNSI TRAGUA, the Government indicates that section 56 of the Act respecting the integral protection of childhood and adolescence of 2003 provides that boys, girls and young persons are entitled to be protected against any form of sexual exploitation and abuse including: (a) incitation or pressure to engage in any form of sexual activity whatsoever; (b) being used for the purposes of prostitution and in pornographic performances or the production of pornography; and (c) sexual promiscuity. The Government adds that the national legislation includes provisions prohibiting and penalizing prostitution and the corruption of young persons, including sections 188, 189 and 190 of the Penal Code.

The Committee notes that sections 188 and 190 of the Penal Code establish penalties for persons found guilty of causing the prostitution and corruption of young persons. The Committee also notes that section 194 of the Penal Code establishes a penalty of imprisonment for between one and three years and a fine of between Quetzales 500 and 3,000 for any person found guilty of facilitating, encouraging or causing, in any manner whatsoever, the entry or departure from the

country of women and men for the purposes of prostitution. The Committee notes, however, that in her report of January 2000 (E/CN.4/2000/73/Add.2, paragraphs 46 and 47), the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography indicates that several cases of the sale of children for prostitution were reported to her in Tecúm Umán. One case involved seven minors engaged in prostitution, two of whom had been sold. They had been between 14 and 16 years of age when they started. The couple who had forced them into prostitution received sentences of 13 and six years in prison, respectively, but on appeal the charges were reduced to soliciting and pimping and the couple were merely fined and then released. The Rapporteur also indicated that many of these children are sold to pimps. State officials also informed her that there are children from El Salvador, Honduras, Mexico and Nicaragua who are engaged in prostitution in Guatemala, and that Guatemalan children go to those countries for the same reason.

The Committee reminds the Government that, under the terms of *Article 3(a)* of the Convention, the sale and trafficking of children for sexual exploitation, including prostitution, is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, each Member which ratifies it must 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 renew its efforts to protect children against sale and trafficking for the purposes of sexual exploitation, including prostitution. It also requests the Government to provide information on the application of penalties in practice, including through the provision of reports on the number of reported infringements, investigations, prosecutions and convictions.

Article 6. Programmes of action to eliminate the worst forms of child labour. In its reply to UNSITRAGUA's comments, the Government indicates that, with regard to children, specific policies for the elimination of the worst forms of child labour exist, inter alia, in the "National Plan of Action against the commercial sexual exploitation of girls, boys and young persons in Guatemala". The Government adds that ILO/IPEC has undertaken a series of rapid assessments in several sectors of economic activity, including prostitution. According to the Government, these rapid assessments have made it possible to identify the existence of the worst forms of child labour in certain departments in the country. For example, children are reported to be used for prostitution in the department of San Marcos, on the border with Mexico, in Suchitépéquez and Escuintla.

The Committee notes that, in its concluding observations on the Government's second periodic report in July 2001 (CRC/C/15/Add.154, paragraphs 52 and 53), the Committee on the Rights of the Child indicated that, while noting the elaboration of the National Plan of Action against commercial sexual exploitation was in its final stage, it expressed its deep concern that, with regard to the increasing phenomenon of the commercial sexual exploitation of children, in particular girls, there are no data available, legislation is inadequate, cases involving sexually exploited children are often not investigated and prosecuted and no rehabilitation programmes are available. The Committee on the Rights of the Child recommended the Government to expedite the adoption of the National Plan against commercial sexual exploitation, taking into account the Agenda for Action adopted by the Stockholm World Congress against commercial sexual exploitation, and to undertake a study on this issue in order to understand its scope and causes, to enable effective monitoring of the problem and to develop all necessary measures and programmes to prevent, combat and eliminate it. The Committee on the Rights of the Child also invited the Government to seek international cooperation.

The Committee further notes the report entitled "The commercial sexual exploitation of boys, girls and young persons in Guatemala", published by ILO/IPEC in March 2003. This report indicates that the situation is very serious and that very few institutions are addressing the problem of sexual exploitation, including prostitution, on an urgent basis. Despite the formulation by the Secretariat for Social Welfare of the "National Plan of Action against the commercial sexual exploitation of girls, boys and young persons", the measures necessary to prevent, penalize and protect children have not been adopted. The Committee notes the document entitled "Public policy and National Plan of Action for Childhood (2004-2015)". According to this document, the Government intends to adopt measures in 2005 at the national and international levels and 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. Furthermore, in 2007, the Government envisages: establishing a national database system on the sexual exploitation of children; developing a system to prevent the sexual exploitation of children; and implementing specialized support programmes for children affected by commercial sexual exploitation, including programmes of assistance for their rehabilitation and social, educational and family integration.

The Committee requests the Government to provide information on the implementation and impact of the "National Plan of Action against the commercial sexual exploitation of girls, boys and young persons in Guatemala" and the "Public Policy and National Plan of Action for Childhood (2004-2015)", particularly in relation to the rehabilitation and social integration of child victims of trafficking for prostitution.

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

Honduras

Minimum Age Convention, 1973 (No. 138) (ratification: 1980)

Article 2, paragraph 1, of the Convention. Scope of application. In its previous comments, the Committee noted that it would be necessary to amend section 2(1) of the Labour Code, which excludes from its scope agricultural and

stockbreeding 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 agriculture and stockbreeding. However, the Committee noted that although section 284 of the 1996 Code concerning Children and Young Persons repealed certain provisions of the Labour Code, section 2(1) of the Labour Code concerning the exclusion of agricultural and stockbreeding undertakings not permanently employing more than ten workers is still in force. The Committee also indicated that, by virtue of sections 4 to 6, the 2001 Child Labour Regulations only apply to contractual labour relations.

The Committee notes the Government's statement that the planned revision of the Labour Code is intended to bring it into line with the international Conventions ratified by Honduras and to harmonize the provisions of the Labour Code and the 2001 Child Labour Regulations with those of the 1996 Code concerning Children and Young Persons, so as to apply the provisions concerning the minimum age for admission to employment or work to all children, whether working under a contract of employment or on their own account. The Committee also notes the Government's statement that young persons performing an economic activity in agriculture start working at about 16 years of age. However, it notes that the statistics in the national report on child labour in Honduras, undertaken by the National Institute of Statistics and ILO/IPEC and published in September 2003, indicate that 54.3 per cent of children between 5 and 9 years of age and 59.8 per cent of those between 10 and 14 years of age work in agriculture, forestry, hunting and fisheries. In addition, according to these statistics, 6.2 per cent of children between 5 and 17 years of age in urban areas and 7 per cent in rural areas work on their own account. In view of these worrying statistics, the Committee expresses its firm hope that the draft revision of the Labour Code will be adopted in the near future and that it will take account of the comments made above.

Article 2, paragraph 4. Minimum age for admission to employment or work. The Committee noted previously that, under section 119 of the 1996 Code concerning Children and Young Persons, work by children is subject to authorization by the Departments of Labour and Social Security of the Secretariat of State. Under section 120(2) of the Code concerning Children and Young Persons, a minor under 14 years of age may not under any circumstances be permitted to work. The Committee also noted that under section 32(1) of the Labour Code, young persons under 14 years of age 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 for ensuring their subsistence or that of their parents or brothers and sisters, and provided that it does not prevent them from completing their compulsory schooling. The Government indicated that cultural practices in the country make child labour legitimate at an age that is well below the minimum age for admission to employment or to work specified when the Convention was ratified, namely 14 years.

The Committee notes the Government's statement that the Honduran Council for Private Enterprise and the chambers of commerce have indicated to their members that they must not employ boys or girls under 14 years of age. Furthermore, they must not allow children access to the workplace, even with their parents. The Committee notes the declaration of the Honduran Council for Private Enterprise relating to entrepreneurs and their fight against child labour. Under this declaration, certain enterprises have adopted internal guidelines in order to prohibit the work of children under 17 or 18 years of age and ban access to the workplace in the *maquiladoras*, melon, sugar, tobacco, powder, fisheries and bus conducting sectors. It notes, however, that the statistics contained in the national report on child labour in Honduras undertaken by the National Institute of Statistics and ILO/IPEC indicate that 35.5 per cent of children between 5 and 9 years of age and 27.3 per cent of those between 10 and 14 years of age work in shops, hotels and restaurants; that 8.5 per cent of children between 5 and 9 years of age and 6.9 per cent of those between 10 and 14 years of age work in manufacturing industries; and that 1.5 per cent of children between 5 and 9 years of age and 1.4 per cent of those between 10 and 14 years of age work in the construction industry. The Committee notes that these sectors of economic activity are not covered by the declaration of the Honduran Council for Private Enterprise. The Committee requests the Government to provide information on the measures adopted or envisaged to ensure the application of the Convention by providing that no authorization shall be granted to any person under 14 years of age to work in any sector of economic activity, including those sectors not covered by the declaration of the Honduran Council for Private Enterprise.

Article 3, paragraphs 1 and 2. Prohibition of the types of hazardous work for persons under 18 years of age. Further to its previous comments, the Committee notes with interest that section 122 of the 1996 Code concerning Children and Young Persons sets out a list of substances and environments establishing the types of hazardous work that must be prohibited for young persons under 18 years of age. It also notes that the prohibition on the performance of hazardous work applies to activities carried out in the context of an apprenticeship or vocational training programme.

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 1996 Code concerning Children and Young Persons, young persons between 16 and 18 years of age may be permitted to perform types of hazardous work, as listed in section 122(2) of the Code, if approved 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. The Committee notes the Government's statement 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 taken in order to minimize the dangers to their health and safety. The Committee requests the Government to provide statistical information on the number of work permits granted by the Department of Labour and Social Security to young persons between 16 and 18 years of age.

Article 9, paragraph 3. Employers' registers. Further to its previous comments, the Committee notes the Government's statement that the visits made in 2002 and 2003 by the inspectors of the Programme on the Gradual and Progressive Elimination of Child Labour revealed that employers occupying young persons who are permitted to work do not have a register, as provided for by section 126 of the 1996 Code concerning Children and Young Persons. The inspectors were therefore obliged to encourage human resources managers to keep such registers for the inspectors. The Committee requests the Government to indicate whether, on their subsequent visits, the inspectors were able to observe that their recommendations had been followed and that employers recruiting young persons are keeping a register containing certain information, such as the age, name and home address of such persons.

Part V of the report form. Application of the Convention in practice. Referring to its general observation of 2003, in which it noted that the application of the Convention was still frequently experiencing serious difficulties in practice, the Committee notes the statistical information communicated by the Government in its report, which are taken from the national report on child labour in Honduras undertaken by the National Institute of Statistics and ILO/IPEC. According to the statistical information in this report for the period May-July 2002, a total of 367,405 boys and girls between 5 and 17 years of age were working or looking for work. Of these, a total of 356,241 – of whom 73.6 per cent were boys and 26.4 per cent were girls – were engaged in an economic activity. According to the report, child labour predominates in rural areas, where 69.2 per cent of boys and girls between 5 and 17 years of age work, while 30.8 per cent of girls and boys in the same age group in urban areas work. Still according to the study, 2 per cent of children between 5 and 9 years of age were working; 16.9 per cent of those between 10 and 14 years of age were working; and 40.5 per cent of young persons between 14 and 17 years of age were working. In addition, 56.2 per cent of children between 5 and 17 years of age work in agriculture, forestry, hunting and fisheries; 24.4 per cent in shops, hotels and restaurants; 8.2 per cent in manufacturing; and 11.2 per cent in mines and quarries, electricity, gas and water, construction, transport, finance and services. According to statistical data for 2003, a total of 255,972 children between 5 and 17 years of age were working, i.e. 9.9 per cent of the child population. Child labour for the same age group in rural areas had decreased slightly, with 65.4 per cent performing an economic activity, while the percentage of child workers in urban areas had increased to 34.6 per cent.

The Committee notes that the National Committee on the Gradual and Progressive Elimination of Child Labour is composed of 21 bodies, including representatives of governments, employers' and workers' organizations and civil society, such as the NGOs *Save the Children* and *Casa Alianza*. In addition, ILO/IPEC and UNICEF may participate in the meetings of the National Committee. The Committee also notes the general report concerning the National Action Plan on the gradual and progressive elimination of child labour, which is being revised by the National Committee. The Committee observes moreover that the Memorandum of Understanding (MOU) signed with ILO/IPEC in 2002 provides for promoting the systematic incorporation of measures relating to the prevention and progressive elimination of child labour and to the protection of young people in the national action programmes and policies adopted by the Government. Finally, the Committee notes the project concerning the elimination of child labour at traffic lights and takeaway food outlets on the boulevards of Tegucigalpa and Comayagua. According to National Committee report No. 7-2003 on this project, of 300 child workers, 150 boys and girls have been integrated into the regular education system and 150 have had access facilitated to the education system.

The Committee notes that the Government is working intensively on the elimination of child labour. However, the Committee is once again deeply concerned by the situation of children under the age of 14 years in Honduras who are compelled to work out of personal necessity. Indeed, in the light of the statistical data quoted above, the application of the legislation on child labour appears difficult to achieve in practice. It therefore strongly encourages the Government to renew its efforts to make progressive improvements to the situation.

Indonesia

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. In its previous comments, the Committee had noted the communication of the International Confederation of Free trade Unions (ICFTU) dated 25 June 2003, containing comments on the application of the Convention by Indonesia. The ICFTU alleged that child labour is widespread in Indonesia and that most child labour takes place in informal unregulated activities, such as street vending, agricultural and domestic sectors. According to the ICFTU, however, child labour is pervasive also in formal activities, such as construction, factory employment, mining and fishing. In reply to the comments made by the ICFTU, the Government indicated that for developing countries like Indonesia, eliminating or reducing child labour is not an easy task since the problem of working children is closely related to other issues such as poverty, cultural aspects and community awareness.

In its previous observation, the Committee had noted the various efforts undertaken by the Government in order to eliminate or at least reduce child labour, in particular those made in collaboration with ILO/IPEC. It had invited the Government to increase its efforts in this regard in order to make substantial progress and to provide precise information on the measures taken to combat child labour in practice.

The Committee observes that the Government in its report on the Worst Forms of Child Labour Convention, 1999 (No. 182), indicates that an Indonesian Tripartite Action Plan for Decent Work was adopted on 29 October 2002 at the

Tripartite Consultative Group Meeting at the ILO, Jakarta Office. This action plan focuses on providing a strategic framework for the Government, the organizations of employers and workers, together with the ILO, to work in partnership towards the goal of decent work in Indonesia. Particular issues in pursuing decent work objectives include the elimination of child labour, including its worst forms, the reduction of poverty, the creation of employment opportunities, and collecting data on the situation of workers in the country. The plan provides for the launching of awareness campaigns on child labour, as well as for specific programmes to be established concerning child domestic workers, child labour in hazardous occupations such as mining, fishing and agriculture. Further actions include advisory support on labour law reforms.

Furthermore, the Committee notes, with interest, the National Action Plan to prevent and eliminate the worst forms of child labour, which was launched in 2003, with the support of ILO/IPEC. This National Action Plan calls for a National Action programme to be developed in order to achieve the objectives of the National Action Plan. This national action programme is the *Time-Bound Programme (TBP)* framework in Indonesia, which is supported by the ILO/IPEC and will run from 2003 to 2007. The ILO/IPEC support to the National Action Plan will consist of a two-part strategy. The first part will focus on promoting change in policy concerning child labour. The second part will involve targeted interventions in five sectors identified by the National Action Plan as priority areas for the elimination of child labour. The Committee notes that a total of 26,350 children will be prevented from being engaged in child labour, and 5,100 children will be withdrawn from work. In addition some 7,500 families will benefit from socio-economic opportunities provided by the project, as will many communities in the area. The Committee further notes that a special project within the National Action Plan targeting children working on fishing platforms is under way. This project aims at reducing the number of children less than 18 years of age working on fishing platforms from 7,000 to 1,000 in five years' time.

In addition, the Committee notes the Government's indication that it has taken a number of measures to prevent the engagement of children in child labour. These include: (a) an ILO programme, which was launched in 2002, to identify effective ways of addressing child domestic workers who are often exploited; (b) an ILO/IPEC project, launched in 1999, which is aimed at preventing children from engaging in hazardous work in the footwear industry; and (c) an ILO/IPEC programme, launched in 2003, that aims at preventing children from working in mines. The latter project aims at ensuring that children below the age of 15 years remain in school instead of working in mines, and the project will therefore also support actions aimed at increasing the number of schools and teachers. As alternative income for parents also appears to be essential to keep children out of mines, the project will explore other feasible income-generating activities such as agriculture and farming.

Finally, the Committee notes that the Government, in collaboration with ILO/IPEC, has promoted direct assistance for the removal of children from child labour. The Committee observes that, since 1999, ILO/IPEC has been implementing a project aimed at eliminating child labour in footwear workshops. At the end of the project in July 2004, almost all child labourers in this sector will be withdrawn.

The Committee notes the Government's statement to the Committee on the Rights of the Child (CRC/C/65/Add.23, additional report, 2 January 2004, pages 113-114) that Indonesia counts 60,000 to 70,000 street children. The Government also states that it has adopted a social safety net programme for street children, which includes shelters, education, vocational skills training and entrepreneurship. The Government also introduced, in 2004, a free street children programme in Bandung Raya (West Java), where it is expected that with the provision of shelters, street children will reduce their time spent on the street.

The Committee proposes to examine more specifically the implementation of all the above-mentioned projects as well as results achieved, under the Worst Forms of Child Labour Convention, 1999 (No. 182).

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 takes note of the Government's first and second reports, and of the communication of the International Confederation of Free Trade Unions (ICFTU) dated 25 June 2003. Referring to the comments made by the Committee under the Forced Labour Convention, 1930 (No. 29), and taking into account that *Article 3(a) of the Convention* 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 issues of trafficking of children and forced labour of children on fishing platforms should be examined more specifically under this Convention. The Committee requests the Government to supply further information on the following points.

Article 3 of the Convention. The worst forms of child labour. Clause (a). Slavery and practices similar to slavery. The sale and trafficking of children. The Committee notes the ICFTU's indication that the trafficking of persons, including for the purpose of prostitution, is widespread. The ICFTU also states that as many as 20 per cent of the 5 million migrant workers, who leave Indonesia to work in other countries, are victims of trafficking. The ICFTU further indicates that there are reports of the sale of children in exchange for promises of work and money.

In reply to the comments made by the ICFTU, the Government states that the elimination of trafficking is not an easy task since it relates to cross-border crimes. The Government also indicates that a draft Bill on trafficking is under preparation.

The Committee notes that section 68(2) of Law No. 23/2002 on Child Protection, prohibits the kidnapping, selling and trafficking of children under 18 years of age. Section 83 of that law imposes penalties on anyone who trades, sells or kidnaps children for personal or pecuniary gain. It notes that the term “trafficking” is not defined and that there appears to be no penalty for the offence of trafficking. The Committee hopes that the new Bill on trafficking will be adopted soon and will: (i) provide for a clear definition of the term “trafficking”; (ii) prohibit the trafficking of children under 18 years of age for labour or sexual exploitation; and (iii) provide for appropriately dissuasive penal sanctions. The Committee also requests the Government to provide information on progress made towards the adoption of the new Bill, and to provide a copy of it as soon as it is adopted.

Article 5. Mechanisms to monitor the implementation of the provisions giving effect to this Convention. 1. *The police.* The Committee notes the Government’s statement that the competency and capability of the officers responsible for combating trafficking will be continued and improved. The Committee observes that the police work in cooperation and collaboration with the Ministry of Social Welfare, the Ministry for Women’s Affairs, the Ministry of Education, the Ministry of Foreign Affairs and other related ministries since January 2003. The police are also carrying out investigations in prostitution areas in different provinces which sometimes result in the arrest of the perpetrators of the trafficking and the finding and returning of victims to their places of origin. The Committee observes that a two-year police training project was launched, in August 2003, with the support of ILO-IPEC. The Committee accordingly asks the Government to provide information on the concrete measures taken to train the police on the worst forms of child labour, especially the trafficking of children under 18, and the results achieved.

2. *Labour inspectorate.* The Committee notes that labour inspectors guarantee the implementation of labour laws and regulations (section 176 of the Manpower Act). Labour inspectors can be granted special authorization to act as civil servants. Hence, they have the authority to investigate individuals suspected of having committed a labour crime, to confiscate items found, to examine documents connected with labour crimes, and to request the assistance of experts. The Committee also notes the Government’s indication that training sessions were conducted in several provinces to provide labour inspectors with the necessary knowledge to combat child trafficking. The Committee requests the Government to provide information on the inspections carried out by labour inspectors in order to combat the trafficking of children for sexual and labour exploitation, and the results achieved.

Article 6. Programmes of action to eliminate the worst forms of child labour. 1. *National Action Plan.* The Committee notes, with interest, that a five-year National Action Plan for Abolishing Woman and Child Trafficking was endorsed through Presidential Decree No. 88/2002 dated 30 December 2002. It notes that the National Action Plan provides for an overview of the situation of trafficking in children in Indonesia. According to an ILO assessment (“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”, 2003 (pages 48 and 50)), 21,500 children were victims of trafficking for the purpose of prostitution in Java, in 2003. The trafficking of children for prostitution occurs mainly in Jakarta, West Java, Central Java, Yogyakarta and East Java. These locations have therefore been identified for primary interventions. The trafficking of children for the purpose of sexual exploitation also occurs at the international level; receiving countries include Malaysia (mainly Kuala Lumpur and Serawak), Brunei Darussalam, Hong Kong (China), Taiwan (China) and Australia (abovementioned ILO report, page 107). The Plan’s objectives are to reduce by half the number of child victims of trafficking by 2013. The National Action Plan aims at: (a) ensuring the existence of legal norms and actions against traffickers of women and children; (b) guaranteeing the social rehabilitation and reintegration of victims of trafficking; (c) preventing all forms of trafficking; and (d) developing cooperation and coordination between institutions at the national and international levels that deal with the trafficking of women and children. The Committee also notes that one of the targets of the National Action Plan is to increase the number of crisis service centres for the rehabilitation and social reintegration of child victims of trafficking. It takes note of the Government’s indication that 200 special centres for combating trafficking were established. A second target of the National Action Plan is to obtain a situational map of problems and criminal cases on trafficking in women and children. The Committee asks the Government to continue to provide information on the number of victims of trafficking who are under 18, the destination countries as well as the purpose of trafficking. The Committee also requests the Government to provide information on the achievements of the National Plan of Action for the Elimination of Trafficking in Women and Children, and its impact with regard to removing child victims of trafficking from labour or sexual exploitation and providing for their rehabilitation and social integration.

2. *Task force responsible for the implementation of the National Action Plan.* The Committee notes the Government’s indication to the Committee on the Rights of the Child (CRC/C/65/Add.23, 7 July 2003, additional report, pages 110 and 112) regarding the establishment of a task force to serve as one of the focal points for the implementation of the National Plan of Action for the Elimination of Trafficking in Women and Children. The Committee requests the Government to provide information on the results achieved by the task force with regard to the implementation of the abovementioned National Action Plan. It also requests the Government to increase its efforts to attain sustainable results in reducing child trafficking.

3. *ILO/IPEC TICSА Project on combating child trafficking for sexual and labour exploitation.* The Committee notes from the information provided by the ILO’s Jakarta Office that the subregional ILO/IPEC TICSА Project was adopted in June 2003 to complement the ILO/IPEC Project of Support to the Indonesian National Action Plan for the

Elimination of the Worst Forms of Child Labour. The TICSAs Project aims to contribute to the progressive elimination of trafficking in child labour and sexual exploitation in Indonesia. This will be done by: (i) assisting children and families in high-risk sending areas to reduce children's vulnerability to trafficking; and (ii) improving the capacity of social partners to provide services to rehabilitate and reintegrate child victims of trafficking. The project will provide inputs, good practices and lessons learned that will be up-scaled under the ILO/IPEC *Time-Bound Programme (TBP)*, launched in 2003, to combat the worst forms of child labour, including the trafficking of persons for sexual and labour exploitation. The Committee asks the Government to provide information on the impact of the ILO/IPEC TICSAs Project on combating the sexual and labour exploitation of children under 18 years of age.

Article 7, paragraph 2. Time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Children on fishing platforms. The ICFTU indicates that forced labour is prohibited by law, but continues to exist in practice. According to the ICFTU, the forced labour of children is widespread and occurs in different activities, including prostitution, drug trafficking, domestic servitude and fishing. The ICFTU accepts that actions taken by the Government and the ILO have helped to reduce the number of children forced to work on remote fishing platforms. It contends, however, that the practice continues to exist.

In reply to the ICFTU's comments, the Government states that, for developing countries such as Indonesia, eliminating or reducing child labour is not an easy task since the problem of working children is closely related to other issues such as poverty, culture and community awareness, including the role of parents. The Government nevertheless points to its efforts and serious intention to eliminate the worst forms of child labour. Hence, a National Action Plan for the Elimination of the Worst Forms of Child Labour was launched, in 2003, with the support of the ILO-IPEC. This National Action Plan (mentioned under *Article 6*) calls for a National Action Programme to be developed to achieve the objectives of the National Action Plan. This National Action Programme is the Time-Bound Measure Programme (TBP) framework which is supported by ILO/IPEC and will run from 2003 to 2007. ILO/IPEC support for the National Action Plan will consist of a two-part strategy. The first part will focus on promoting change in policy and the enabling environment. The second part will involve direct-targeted interventions in five sectors identified as priority areas for the elimination of child labour. A total of 31,450 children will be targeted for prevention and withdrawal from exploitative and hazardous work through the provision of educational and non-educational services following direct action from the project. Of this total, 26,350 will be prevented from being engaged in child labour, and 5,100 children will be withdrawn from work. In addition some 7,500 families will benefit from socio-economic opportunities provided by the project, as will many communities in the target area. One of the key objectives of the TBP is to develop and implement a programme on the elimination of child labour in the diving and offshore sector.

The Committee notes that the ILO estimates that more than 7,000 children are engaged in deep-sea fishing in north Sumatra ("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", page 50). It also notes the indication of the Government representative to the Conference Committee on the Application of Standards at its June 2004 session that a project was launched in 2000 and extended in April 2004. The project's objectives are to prevent the employment of children on fishing platforms, to raise awareness on the danger of working on a fishing platform, and to provide for direct assistance and the removal of children from this type of work. The Committee observes that the project aims at reducing the number of children under 18 working on fishing platforms from 7,000 to 1,000 in five years' time. The Committee also notes the Government's indication that ILO/IPEC technical assistance has contributed to the withdrawal of 344 children from fishing platforms and that 2,111 children were prevented from working in "jermas" since 2000. The Committee requests the Government to increase its efforts to attain sustainable results in eliminating the forced labour of children on fishing platforms. It also asks the Government to continue to provide information on the impact of the TBP on the elimination of forced labour of children on fishing platforms and the results achieved.

Article 8. 1. Extradition agreements for trafficking offences. The Committee notes that Indonesia is a member of Interpol which helps cooperation between countries in the different regions especially in the fight against trafficking of children. It also observes that the Government signed in 2003 the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crimes. The Committee further notes that Indonesia has extradition agreements with several countries, including Australia, Hong Kong (China), Malaysia, the Philippines and Thailand. According to Law No. 1/1979, a person engaged in the trafficking of Indonesian persons (in Indonesia or abroad) can be extradited and tried in Indonesia as long as those countries have extradition agreements with Indonesia. Traffickers found in Indonesia who have committed a crime of trafficking in another country could also be extradited to this country where an extradition agreement exists. The Committee asks the Government to provide a copy of Law No. 1/1979 as well as information on the extraditions that have occurred with regard to child trafficking offences.

2. Elimination of poverty. The Committee notes from the information provided by the ILO's Jakarta Office that Indonesia is finalizing, with the support of the ILO, a Poverty Reduction Strategy Paper (PRSP) which will be funded by the World Bank and the IMF. The PRSP's objectives are to promote growth and reduce poverty. Noting that poverty reduction programmes contribute to breaking the cycle of poverty which is essential for the elimination of the worst forms of child labour, the Committee asks the Government to supply information on any notable impact of the PRSP towards eliminating the worst forms of child labour, in particular the trafficking of children for sexual and labour exploitation.

The Committee is also addressing a direct request to the Government concerning other detailed points.

Malawi

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. Further to its previous observation, the Committee notes the information supplied by the Government in the Malawi Child Labour Survey 2002 (MCLS), carried out in collaboration with the ILO. The Committee observes that the focus of the existing programmes on combating child labour has been on the elimination of child labour, including its worst forms, capacity building in litigation on child labour, maintenance of child labour registers, inspection of child labour, rapid assessment of domestic child labour and executing the national study programme on child labour (which includes Children in Commercial Sexual Exploitation Study, the Street Kids' Study and the National Child Labour Household Sample Survey). Existing governmental child labour intervention programmes have included the involvement of the organizations of employers and employees, i.e. the Employers' Consultative Association of Malawi (ECAM), the Malawi Congress of Trade Unions (MCTU) and other affiliates.

The Committee notes that action programmes carried out by the government institutions have included: capacity building of the field labour officers on how to handle child labour issues; the rapid assessment on the previous hunger crisis' impact on child labour for the period between November and December in 2002; public awareness seminars and implementation of the national study programme on child labour. Moreover, the Committee observes that mainstreaming of child labour elimination activities are taking root in certain ministries, for example – the Ministry of Education, Science and Technology; Ministry of Agriculture and Irrigation, Ministry of Gender and Community Services; Ministry of Labour and Vocational Training – and in various non-governmental organizations in the form of awareness campaigns, rehabilitation of the children who no longer are engaged in child labour activities, impact studies, policy and programme formulation and implementation. The Committee further notes that the media are being used to disseminate awareness campaigns against child labour.

In addition to the action programmes undertaken by the Government, the Committee observes that with the financial assistance of the Norwegian Agency for Development (NORAD), UNICEF, in conjunction with a number of non-governmental organizations, has been able to implement several programmes on the elimination of child labour. For example, the organization *Plan International* is implementing agricultural and food security and food rationing programmes in a number of rural areas to help keep children stay in school. Another programme is being implemented by the Chisomo Club, which is focusing on the rehabilitation of street kids. There is also a programme dealing with the elimination of child labour in tobacco companies, a programme implemented by the association called Tobacco Exporter Companies (TECs). The TECs are intensifying public awareness on child labour and its elimination and has, for example, set up schools in the tobacco-growing areas.

The Committee observes that some nine districts, deliberately chosen in the country to pilot the elimination of the worst forms of child labour and also to undertake surveillance of the trends on the other forms of child labour, have benefited from the NORAD assistance. The UNICEF and the coordinating unit against child labour in the Ministry of Labour and Vocational Training (MoLVT) are now implementing the scheme which includes the registering of child labour law violations, capacity building on child labour issues and setting up communication facilities within the districts.

The Committee further notes that the institutional framework on child labour has been strengthened. The MoLVT is coordinating activities through the labour relations department's unit on child labour elimination. Furthermore, the various national steering and technical committee structures that have been established discuss pertinent issues on various programmes on the elimination of child labour. These structures were originally established to implement the ILO/IPEC child labour study programme. The Committee notes that the national child labour study programme is now completed and that it has established a database on child labour which the country will deploy to monitor the trends, character, and structure of child labour and the impact of various development programmes on the elimination of child labour.

The Committee observes that the local chiefs at the highest level of the traditional authority are now in the forefront in the advocacy activities that are spreading the message of restraining child labour use in general and also the complete elimination of the worst forms of child labour. This was due to public awareness seminars organized for local authorities on the elimination of child labour in the country.

The Committee notes with interest the detailed information on the measures taken to combat child labour but it observes once again that the Government has not provided information on the results attained.

The Committee is seriously concerned by the situation of the considerable number of children under 14 years of age who are compelled to work (according to the Malawi Child Labour Survey of 2002, more than 1 million children work, of whom approximately half are less than 9 years of age). The Committee strongly encourages the Government to renew its efforts to progressively improve this situation.

The Committee requests the Government to continue providing detailed information on the development of national policies designed to ensure the effective abolition of child labour, and on the results attained.

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

Mauritania

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes the Government's first report and the communication from the International Confederation of Free Trade Unions (ICFTU), dated 9 September 2002. It also notes with interest the adoption of Act No. 2004-015 establishing the Labour Code. The Committee requests the Government to provide information on the following points.

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. In its communication, the ICFTU indicates that the Ministry of Labour authorizes, without exception, children of 13 and 14 years of age to work in both the agricultural and non-agricultural sectors. The ICFTU also indicates that, according to UNICEF statistical data for 2000, the total number of child workers between 10 and 14 years of age was 68,000, a slight decrease compared to previous years. Many children who are unable to complete their education for various reasons end up on the labour market at a very early age. The ICFTU also indicates that children are working in agriculture, fisheries, guarding of livestock and in activities of the unstructured urban sector. Some children also work as apprentices in small undertakings. However, very little information is available regarding the conditions of work and opportunities for training. The ICFTU concludes that, even though there has been a reduction of child labour in Mauritania the problem still exists. Most children work in rural areas or in unstructured urban activities.

The Committee notes the Government's information to the effect that no reliable statistical data on the employment of children and adolescents and the number and nature of contraventions is available. It indicates, however, that an information campaign conducted by labour inspectors and certain NGOs has shown that child labour is virtually non-existent in Mauritania. The Committee notes, however, that the Government, in its initial report submitted to the Committee on the Rights of the Child in January 2000 (CRC/C/8/Add.42, paragraphs 327 and 328), stated that in the rural sector child labour is often a gradual initiation into parents' activities in the areas of stock rearing, agriculture and domestic work. These child workers are primarily home helps. Children working in rural families are often sheltered from abuses and benefit from the protection and care of parents and members of the extended family. The Government indicates, however, that excessive demands are sometimes made on the children's physical capabilities, and their general state of health is affected. In the absence of objective data on the number of children working and on their needs, most experts agree that it is in rural areas, especially in the agricultural sector, that this phenomenon is encountered the most. The Government also indicated that it is in the unstructured urban sector, which is rarely the subject of statistics, that children are employed. During slack periods, rural inhabitants without occupation or income go to the towns and cities in search of employment and means of subsistence. In its concluding observations on the Government's initial report in November 2001 (CRC/C/15/Add.159, paragraphs 18, 49 and 50), the Committee on the Rights of the Child expressed its concern at the high number of children who are working, particularly in agriculture and the unstructured sector. In view of the absence of data enabling evaluation and monitoring of progress made and assessment of the impact of measures adopted for children, the Committee on the Rights of the Child recommended the Government to develop a system of data collection which would include in particular working children. The Committee also recommended that the necessary measures be taken to prevent and combat all forms of economic exploitation of children.

The Committee notes that Mauritania, at the time of ratification of the Convention, specified 14 years as the minimum age for admission to employment or work, in accordance with *Article 2, paragraph 4*, of the Convention. It also notes that, under section 153 of the new Labour Code, children may not be employed in any enterprise, even as apprentices, before the age of 14 years, or above that age if they are still subject to compulsory education. It reminds the Government that, under *Article 2, paragraphs 1 and 4*, of the Convention, no person below the age specified at the time of ratification, namely 14 years in the case of Mauritania, may be admitted to employment or work in any occupation. The Committee expresses its deep concern at the situation of children under the age of 14 years who are compelled to work in Mauritania. It therefore strongly encourages the Government to renew its efforts to make gradual improvements to the situation. Hence the Committee, referring to its general observation made at its 2003 session, requests the Government to provide detailed information on the manner in which the Convention is applied in practice, for example by giving the fullest possible statistical data on the nature, extent and trends of the work performed by children and adolescents below the minimum age specified by the Government at the time of ratification, extracts from reports of the inspection services, and information on the number and nature of contraventions reported and on the sanctions applied. To the extent possible, all information provided should be disaggregated by sex.

The Committee also raises other points in a request addressed directly to the Government.

Mexico

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

With reference to its previous observation, the Committee notes the comments provided by the Government in reply to the matters raised in the communication of the International Confederation of Free Trade Unions (ICFTU) dated 13 March 2002. With reference to its comments under the Forced Labour Convention, 1930 (No. 29), relating to the sale and trafficking of children for sexual exploitation, including prostitution, and as *Article 3(a)* of the Worst Forms of Child Labour Convention, 1999 (No. 182), provides that the term "the worst forms of child labour" comprises "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 considers that the problem of the sale and trafficking of children for sexual exploitation, including prostitution, may be examined more specifically in the context of Convention No. 182. It requests the Government to provide information on the following points.

Article 1 of the Convention. Measures taken to secure the prohibition and elimination of the worst forms of child labour. The Committee notes that the elimination of the worst forms of child labour is one of the Government’s priorities. It notes that it is taking various measures, both at the legislative level and through technical cooperation, to eliminate the worst forms of child labour. It notes in particular that at the end of 1998 the Government established an inter-institutional commission composed of 30 government organizations and civil society with a view to adopting a National Action Plan to prevent and eliminate the commercial sexual exploitation of children. In November 2001, the Government developed a mechanism for national coordination in relation to the prevention, protection and elimination of the commercial sexual exploitation of children (ESCI). The Committee also notes the Government’s indication that an analysis of the legal framework covering the commercial sexual exploitation of children was undertaken in 2002. Based on this analysis, a Bill has been formulated. Furthermore, it notes that the possibility of adopting legislation on the use of young persons for prostitution and pornography was envisaged in 2003. Finally, since the ratification of the Convention, the Government has undertaken national campaigns to raise the awareness of the population, particularly in relation to child pornography and prostitution (“OPEN YOUR EYES” and “OPEN YOUR EYES, BUT DON’T STAY SILENT”) and the trafficking of children. The Committee requests the Government to provide information on any progress achieved in relation to the adoption of the above Bill.

Article 3. Worst forms of child labour. Clause (a). Sale and trafficking of children for prostitution. In its observations under Convention No. 29, the Committee noted the comments of the International Confederation of Free Trade Unions (ICFTU) reporting the trafficking of women and young girls within the country and abroad for the purposes of forced prostitution. The Committee noted the Government’s indication that there is no other information supporting the generalizations made by the ICFTU and that it is not therefore possible to ascertain their truth.

The Committee noted that, according to a study carried out in six cities with the support of UNICEF, around 16,000 boys and girls are victims of commercial sexual exploitation. The objective of the study was to identify the role, scope and operational methods of networks of organized crime in the procuring, trafficking and exploitation of boys and girls. The Committee also noted the report submitted by the Special Rapporteur to the United Nations Commission on Human Rights (E/CN.4/2003/85/Add.2, of 30 October 2002) following an official mission carried out in Mexico. In this report, the Rapporteur expressed concern at the “corruption closely linked to transnational organized crime, and in particular gangs engaged in the trafficking and smuggling of persons”. The Rapporteur also referred to the General Population Act under which sentences of imprisonment of up to ten years may be imposed and which can also be applied to victims of trafficking and smuggling. The Committee notes that, in its concluding observations on the second periodic report of Mexico in November 1999 (CRC/C/15/Add.112, paragraphs 30 and 32), the Committee on the Rights of the Child, while being aware of the measures taken by the Government concerning “repatriated children” (*menores fronterizos*), remained particularly concerned that a great number of these children are victims of trafficking networks which use them for sexual or economic exploitation. It also expressed concern about the increasing number of cases of the trafficking and sale of children from neighbouring countries who are brought to Mexico to be engaged in prostitution. In this respect, it recommended that the Government continue taking effective measures on an urgent basis to protect Mexican migrant children, to strengthen law enforcement and to implement its national programme of prevention. In an effort to combat effectively the inter-country trafficking and sale of children, the Committee on the Rights of the Child suggested that the Government increase its efforts in the area of bilateral and regional agreements with neighbouring countries to facilitate the repatriation of trafficked children and encourage their rehabilitation. It also endorsed the recommendations made by the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/1998/101/Add.2) with regard to the situation of children living in border areas.

The Committee notes that section 205 of the Federal Penal Code provides for a sentence of imprisonment of from five to 12 years and a fine of from 100 to 1,000 days for any person who encourages, misleads or procures a person to be engaged in prostitution within or outside the national territory. Under section 366III of the Federal Penal Code, any person who deprives a young person under 16 years of age of her or his freedom with a view to removing her or him outside the national territory and obtaining gain from her or his sale or session shall be liable to a sentence of imprisonment of between 25 and 50 years and a fine of between 4,000 and 8,000 days. It also notes that, under section 366ter of the Federal Penal Code, any person who, with the consent of an ascendant exercising parental authority or an individual responsible for bringing up a young person, transfers illicitly the young person to a third party with a view to undue economic gain shall be liable to a sentence of imprisonment of between two and nine years and a fine of from 200 to 500 days. The Committee further notes that section 2V of the Federal Act against organized crime provides that, in cases where three or more persons agree or organize themselves to commit, permanently or repeatedly, acts for the purpose or with the result of the commission of the offences set out in section 366 (abduction) and section 366ter (trafficking of persons) of the Federal Penal Code shall be penalized as members of an organized group. Section 29 of the Federal Labour Act prohibits the use of young persons under 18 years of age for the provision of services outside the Republic.

The Committee draws the Government's attention to the fact that, under the terms of *Article 1* of the Convention, each Member which ratifies the Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour in respect of persons under the age of 18 years. The Committee notes that section 366III of the Federal Penal Code covers young persons under 16 years of age. It also notes the Government's indication that, with regard to section 366ter of the Federal Penal Code, the term "young person" means a person under 16 years of age. The Committee notes that, although the Government has adopted several measures to combat the sale and trafficking of children, particularly for sexual exploitation, the problem persists. Indeed, there is abundant information reporting the trafficking of persons, including persons under 18 years of age, for sexual exploitation. The Committee therefore requests the Government to increase its efforts to secure the protection of children against sale and trafficking for sexual exploitation, including prostitution. It also asks the Government to take the necessary measures to extend the prohibition of the sale and trafficking of young persons to all girls and boys under 18 years of age. It further requests the Government to provide information on the imposition of penalties in practice, by providing, among other information, reports on the number of convictions.

Clause (c). Use, procuring or offering of a child for illicit activities. In its communication, the ICFTU indicated that certain children are engaged in begging. The Committee recalls that, under *Article 3(c)* of the Convention, the use, procuring or offering of a person under 18 years of age for illicit activities, including begging, is considered to be one of the worst forms of child labour. The Committee notes that section 201 of the Federal Penal Code provides for a sentence of imprisonment of between three and five years and a fine of between 50 and 200 days for any person who compels or encourages another person to engage in begging. It requests the Government to provide information on the application in practice of section 201 of the Penal Code.

Clause (d). Types of hazardous work. In its communication, the ICFTU indicated that most working children are engaged in agriculture or in informal urban activities, such as trading. The Committee notes the study of the national system for the integral development of the family (DIF) undertaken in 100 cities in Mexico. This study shows that 114,497 young persons under 17 years of age work and live in the streets. It is estimated that, solely in the city of Mexico, a city which is not covered by the study, there are 140,000 young persons working in the streets. The study adds that 90 per cent of the girls, boys and young persons working in the streets, markets, transport terminals, squares, parks and kiosks work on their own account and provide for the subsistence of their families.

The Committee notes that, in its concluding observations on the second periodic report of Mexico in November 1999 (CRC/C/15/Add.112, paragraphs 30 and 32), the Committee on the Rights of the Child, while welcoming the fact that measures have been taken for the elimination of child labour, noted with concern that economic exploitation remains one of the major problems affecting Mexican children. It expressed particular concern that only "street children" are categorized as "working children". It considered that this misconception affected the scope and perception of this social phenomenon. In this regard, it expressed particular concern that a large number of children are still involved in labour activities, especially in the informal economy and in agriculture, as well as at the insufficient law enforcement and the lack of adequate monitoring mechanisms. The Committee on the Rights of the Child recommended that the Government reconsider its position regarding the issue of child labour. The situation of children involved in hazardous labour, especially in the informal sector, deserves special attention. It also recommended that the legislation on child labour should be enforced, the labour inspectorate strengthened and penalties imposed in cases of violation.

The Committee notes likewise that, under the terms of sections 7, 8 and 20, among others, of the Federal Labour Act, the Act only applies to relations between employers and workers. The Committee considers that children working on their own account, such as street children, could be at special risk. It is very concerned at the number of working children in the agricultural sector, in informal urban activities, such as trading, and those working on their own account. It therefore requests the Government to provide information on the measures taken or envisaged to ensure that young persons under 18 years of age working on their own account, such as street children, are not engaged in types of work which, by their nature or the circumstances in which they are carried out, are likely to harm their health, safety or morals. It also requests the Government to provide a copy of the study on working girls, boys and young persons carried out by the DIF.

Article 6. Programmes of action to eliminate the worst forms of child labour. 1. *Commercial sexual exploitation.* The Committee notes that the national system for the integral development of the family (DIF) has taken measures to provide assistance to girls, boys and young persons who are victims of commercial sexual exploitation and to eliminate this phenomenon. For example, the National Coordination Unit for the Prevention and Elimination of the Commercial Sexual Exploitation of Children has been established. A Plan of Action for the prevention and elimination of the commercial sexual exploitation of children has also been formulated. Furthermore, a Bilateral San Diego/Tijuana Committee to address this problem was created in November 2001. The Committee notes the progress and action taken by the Government, and particularly the formulation by the Ministry of Labour and Social Insurance, in collaboration with ILO/IPEC, of a Programme of action to combat the commercial sexual exploitation of children and to protect victims of this form of exploitation. The Programme commenced on 30 September 2002 and will be completed on 31 March 2005. The Committee requests the Government to provide information on the activities of the Bilateral San Diego/Tijuana Committee. It also requests it to provide information on the impact of the Programme of action to combat the commercial sexual exploitation of children and to protect victims of this form of exploitation and the results achieved.

2. *Various programmes to prevent and eliminate child labour in the marginalized urban sector.* The Committee notes the Government's indication that the Ministry of Labour and Social Insurance has implemented various programmes to prevent and eliminate child labour in the marginalized urban sector and daily work by young persons in the agricultural sector, including the Programme of assistance and prevention for boys, girls and young persons living in the streets; the Programme to prevent, address and eliminate child labour in the marginalized urban sector; and the Programme for compliance with the rights of girls and boys who are children of daily workers in the agricultural sector and for the prevention of child labour (PROCEDER). The Committee requests the Government to provide information on the impact of these programmes in eliminating the worst forms of child labour, and particularly the manner in which they ensure that young persons under 18 years of age working on their own account, such as street children, are not engaged in the worst forms of child labour.

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. In its communication, the ICFTU indicated that the Government, in cooperation with UNICEF, has undertaken to address the problem of child labour, particularly in the urban informal economy, by facilitating access to education. In 1992, the number of years of compulsory schooling rose from six to nine. Nevertheless, the scope of the problem remains immense. At the present time, only six out of ten children complete their elementary education. The ICFTU referred to a report by the national education administration indicating that 1.7 million children of school age are unable to receive education as poverty makes it imperative for them to work. The ICFTU also indicated that, in the specific case of indigenous children, access to education is difficult as teaching is normally provided only in Spanish and many indigenous families only speak their mother tongue. Child labour is relatively higher among the indigenous population than in non-indigenous groups.

The Committee notes the information provided by the Government. It notes in particular that the Ministry of Public Education is developing various strategies and actions to promote greater equity in education. Among others, it has implemented the Programme for the education of migrant girls and boys and the Programme to encourage innovation in basic education. Furthermore, it envisages educational assistance for street children. The Government adds that the Ministry of Social Development, in the context of the "Contigo" strategy, has developed the "Opportunities" social and human development programme. This programme adopts the approach that, to prevent school failure and engagement in the worst forms of child labour, it is necessary, among other measures, to provide children and young persons living in conditions of poverty with free and full access to education and to health services. The "Opportunities" programme recently extended its coverage to urban areas so as to emphasize child labour in the informal economy. According to recent evaluations, the "Opportunities" programme has contributed, through the provision of grants, to decreasing child labour by 14 per cent for boys and 15 per cent for girls.

The Committee also notes that, under the terms of article 3 of the Constitution, every person is entitled to receive an education. The State – the federation, the states, the federal district and the municipalities – has to provide pre-school, primary and secondary education, which constitutes the compulsory basic education. It also notes that under article 3 of the Constitution and section 6 of the General Education Act, the education provided by the State is free of charge. Furthermore, under section 22 of the Federal Labour Act, it is prohibited to employ young persons between 14 and 16 years of age who have not completed their compulsory schooling.

The Committee takes due note of the efforts made by the Government in the field of education, which appear to have resulted in a decrease in child labour. The Committee is of the view that education contributes to eliminating the worst forms of child labour. It encourages the Government to continue its efforts in this field and requests it to provide information on the effective and time-bound measures taken to ensure that access to basic education and vocational training is used as an effective means of preventing the engagement of children in the worst forms of child labour. The Committee also requests the Government to provide additional information on the "Opportunities" programme and to supply statistical data on the school attendance rate in Mexico.

Clause (b). Assistance for the removal of children from the worst forms of child labour. The Committee notes that one of the four strategic components of the Programme of action to combat the commercial sexual exploitation of children and to protect victims of this form of exploitation is to provide direct assistance to 300 boys, girls and young persons who are victims of commercial sexual exploitation or at risk in the cities of Acapulco, Guadalajara and Tijuana. Furthermore, special measures are envisaged for the families of these 300 children. The Committee requests the Government to provide information on the impact of this programme on the rehabilitation and social integration of the children following their removal from work.

Article 8. Enhanced international cooperation and/or assistance. The Government indicates that, with a view to combating the trafficking of young persons and the commercial sexual exploitation of children, the national central Office of Interpol in Mexico, attached to the Federal Investigation Agency of the Attorney-General of the Republic, exchanges information with the member States of the Organization relating to the identification and location of young persons, the criminal records of foreign nationals involved in illicit activities involving young persons in Mexico and the provisional detention of nationals who have committed offences and are to be extradited. It adds that the General Directorate for the Prevention of Crime and Community Services of the Attorney-General of the Republic is also taking measures to combat the trafficking of young persons and the commercial sexual exploitation of children. With a view to locating lost or absent boys, girls and young persons more easily, the Directorate distributes identification cards and establishes community

collaboration committees to prevent the trafficking of young persons and their commercial sexual exploitation. The Government adds that the World Bank has financed several programmes, including projects on basic education (1999-2001). Noting the information provided by the Government, the Committee requests it to provide further information on technical cooperation projects, including support for social and economic development, poverty eradication programmes and universal education, as well as bilateral and international cooperation relating to the trafficking of children.

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

Morocco

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the Government's first report. It also notes a comment sent by the ICFTU on 4 June 2003, which was transmitted to the Government. The Government replied on 9 September 2003. The Committee requests the Government to provide information on the following points.

Article 3 of the Convention. The worst forms of child labour. Clause (a). Slavery or similar practices. 1. Sale and trafficking of children. The Committee notes that the ICFTU indicates that it is widely reported that international trafficking exists, with girls being sent to the Middle East and Europe to work as prostitutes. The Committee notes that section 467-1 of the Penal Code punishes any person who sells or purchases a child under 18 years of age. The Committee also notes that the Government indicates that Act No. 24-03 amending and supplementing certain sections of the Penal Code contains a number of innovations with regard to children. According to the Government, it introduces the concept of the trafficking of children and lays down severe penalties for the sale or purchase of children under 18 years of age. The Committee reminds the Government that, under *Article 3(a)* of the Convention, the sale and trafficking of children not only for economic exploitation but also for sexual exploitation, particularly prostitution, is considered to be one of the worst forms of child labour. The Committee notes the adoption of this new Act and requests the Government to provide a copy of the text.

2. Forced or compulsory labour. The Committee notes the ICFTU's statement to the effect that forced or compulsory labour is prohibited by law but that the Government does not apply this prohibition effectively. The ICFTU states that domestic work under conditions of servitude is common practice in Morocco and poverty obliges some parents to sell their children, sometimes as young as 6 years of age, as domestic servants. For 16 hours of work per day, the parents receive an average of US\$7 per week. The ICFTU indicates that another practice is servitude under conditions of adoption, which is socially acceptable but not regulated by the Government. Under this practice, families adopt girls and use them as servants. In this regard, the ICFTU states that it is necessary to adopt specific regulations to prohibit domestic servitude. The Committee notes the Government's reply to the effect that section 10 of the new Labour Code, adopted in September 2003 and promulgated on 6 May 2004, expressly prohibits forced labour and lays down severe penalties for any persons contravening the provisions of this section. The Government indicates the applicable provisions, including section 467-2 of the Penal Code, which states that any person who exploits a "child under 15 years of age" for the purpose of forced labour acts as an intermediary for the exploitation of a child for forced labour or instigates such exploitation, shall be liable to punishment. Section 467-2(2) of the Penal Code states that forced labour means any act which compels a child to perform work prohibited by law or to commit an act which is harmful to his health, safety or morals.

The Committee notes that, under section 10 of the Labour Code, forced labour is prohibited. The Committee notes, however, that this prohibition applies only to "employees". The Committee requests the Government to indicate how children who are not in paid work are protected against forced labour. Also noting that section 467-2 of the Penal Code prohibits forced labour only for children under 15 years of age, the Committee recalls that the prohibition of forced labour under *Article 3(a)* of the Convention applies to all "children under 18 years of age". The Committee therefore requests the Government to indicate any legislative measure taken or contemplated to prohibit forced labour for all children under 18 years of age, including forced labour for "adopted" children.

Clause (b). Use, procuring or offering of a child for prostitution. The ICFTU states that cases of forced prostitution are frequently reported in some regions of Morocco, particularly in towns or cities where there are large numbers of tourists or near to which major military installations are located. The Committee notes the information contained in the Government's communication to the effect that section 497 of the Penal Code penalizes any person who habitually instigates, favours or facilitates the debauchery or corruption of minors of either sex under 18 years of age. It notes that section 498 of the Penal Code penalizes any person who knowingly: (1) aids, assists or protects in any way the prostitution of others or soliciting for the purpose of prostitution; (2) in any way shares the proceeds of the prostitution of others or receives financial support from a person who habitually engages in prostitution; (3) lives with a person who habitually engages in prostitution; (4) procures, entices or maintains a person even of majority age, and even with that person's consent, for the purpose of prostitution or delivers that person to prostitution or debauchery; (5) acts as an intermediary in any capacity between persons engaging in prostitution or debauchery and individuals who exploit or remunerate the prostitution or debauchery of others. The Committee also notes that the Government's report refers to Act No. 24-03 of 15 January 2004, which incorporates provisions from the Optional Protocol to the Convention on the Rights of the Child on pornography and child prostitution. It requests the Government to provide a copy of this Act.

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee notes with interest the Government's indication that, since the launch of the IPEC/Morocco programme, important programmes have been drawn up and implemented. These include: an integrated programme for mobilization against child labour in Khénifra, a particular objective of which is the removal of children from work; a programme for combating child labour in Salé, which aims to increase awareness of work performed at an early age, improve living conditions and remove children from work while providing financial support for their families; contributing towards the elimination of child labour by promoting the Act on compulsory schooling; a literacy and vocational training programme for young people in the city of Tangier, which aims to provide vocational training for children who are at risk of having to work; contributing towards the elimination of child labour in the province of El Haouz by a programme of schooling and support courses for children at risk of having to work, as well as the removal of children from their workplaces; and a "Red card to child labour" programme, which aims to raise awareness of child labour. The Committee notes that, according to the Government's report, during 2002 and the first half of 2003, a total of 1,310 children were removed from work as a result of these programmes, with financial support provided for 150 families, and that public opinion has been alerted to this problem. The Committee also notes that, according to the IPEC report of June 2004, the objective is that by the end of the project at least 5,000 children will have been removed from the worst forms of child labour and rehabilitation services will be available in 40 target villages.

The Committee requests the Government to continue to provide information on the implementation of these programmes of action and on their impact on the protection and removal of children who are victims of forced labour or of the sale, trafficking or sexual exploitation of children.

Article 7, paragraph 1. Penalties. The Committee notes that penalties have been adopted to ensure observance of the provisions giving effect to the present Convention. The Committee notes that section 467-1 of the amended Penal Code lays down the penalty of imprisonment of two to ten years and a fine of 5,000 to 2,000,000 dirhams for any person who sells or purchases a child under 18 years of age. Section 467-2 of the same Code states that any person who exploits a child under 15 years of age for the performance of forced labour, acts as an intermediary for the exploitation of a child for forced labour or instigates such exploitation shall be liable to imprisonment of one to three years and a fine of 5,000 to 20,000 dirhams. Subsection 2 of the same section indicates that forced labour means any act forcing a child to carry out work prohibited by law or to commit an act which is harmful to his health, safety or morals. The Committee also notes that section 497 of the amended Penal Code states that any person who incites, favours or facilitates the debauchery of minors under 18 years of age shall be liable to imprisonment of two to ten years and a fine of 120 to 5,000 dirhams. Section 498 imposes a sanction of imprisonment of six months to two years and a fine of 20,000 to 200,000 dirhams on any person who knowingly: (1) aids, assists or protects in any way the prostitution of others or soliciting for the purpose of prostitution; (2) procures, entices or maintains a person even of majority age, and even with that person's consent, for the purpose of prostitution or delivers that person to prostitution or debauchery; (3) acts as an intermediary in any capacity between persons engaging in prostitution or debauchery and individuals who exploit or remunerate the prostitution or debauchery of others. Section 499 of the Code adds that the penalties laid down in the previous section are increased to imprisonment of two to five years and a fine of 500 to 20,000 dirhams where the offence has been committed in relation to a minor under 18 years of age. The Committee also notes that section 501 of the Penal Code imposes a penalty of imprisonment of two to five years and a fine of 500 to 20,000 dirhams for any person who habitually receives one or more persons who engage in prostitution in a hotel, guest house, drinking establishment, club, society, dance hall, show venue or annexes thereof which are open to the public or used by the public and of which he is the owner, manager or supervisor. The same penalties are applicable to any person who assists such an owner, manager or supervisor. Section 501 states that, in all cases, the judgement pronouncing the conviction provides for the withdrawal of the convicted person's licence and for the temporary or permanent closure of the establishment. The Committee requests the Government to provide information on the application of these penalties in practice.

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and provision for their rehabilitation and social integration. The Committee notes that the Government, in its second periodic report of February 2003 submitted to the Committee on the Rights of the Child, indicates that the protection of children from all forms of sexual exploitation is not confined to legal texts established for this purpose and notes that some initiatives have been taken to raise awareness of the threat that sexual exploitation poses for children, especially those who are most vulnerable, such as street children, abandoned children and domestic servants. The Committee also notes that the Government, in its written replies to the Committee on the Rights of the Child (CRC/C/Q/MOR/2, page 21) in May 2003, indicates that it is very difficult to evaluate the extent of the sexual exploitation of children, for a number of reasons and in particular because it is a relatively taboo subject. The Committee notes that the Government indicates that a great deal of attention is now being given to the issue and that Morocco is the first Arab Muslim country to have complied with the request of the Special Rapporteur on the sale of children, child prostitution and child pornography to visit Morocco. The Committee also notes that Morocco, under the auspices of the Secretariat of State for Family Issues, Solidarity and Social Action, has started the process for drawing up a national plan of action for combating the sexual exploitation of children, focusing on prevention, protection, rehabilitation and reintegration, as well as strengthening the judicial machinery and reinforcing the institutional framework.

The Committee notes that the Committee on the Rights of the Child, in its concluding observations (CRC/C/15/Add.211, paragraph 62), welcomes the hosting by the State party of the Arab-African Forum against Commercial Sexual Exploitation of Children in preparation for the Yokohama Congress but remains concerned at the high incidence of sexual exploitation in the State party. The Committee notes that, in the context of the preparation of the second World Congress against Commercial Sexual Exploitation of Children, which was held in Yokohama in December 2001, a regional Arab-African Forum in preparation for the Congress was held in Morocco in October 2001. The Forum brought together the representatives of 65 countries, including Morocco. The Committee notes that the report on the situation of sexual exploitation of children in the Middle East and North Africa (MENA) region indicates (page 3) that it is very difficult to evaluate the extent of sexual exploitation of children in the countries concerned, for a number of reasons, and that the data collected by the police and judiciary only reflect part of the reality. In Morocco in 1999, a total of 102 cases of sexual abuse were recorded, and there were 69 cases in 2000 and 210 cases in the first three months of 2001, with about two-thirds involving girls. The Committee also notes that, according to the same report (page 5), no data exist on child pornography, sex tourism and the use of new technologies (Internet), and that these forms of sexual exploitation are considered to be non-existent in the region. The report states that the explosive growth of the sex industry, the use of new information technologies and their impact on the massive worldwide commercialization of children as sexual objects, do not appear to be a source of concern for the countries of the region. The Committee also notes that a toll-free telephone line has been set up, to which children who are victims of abuse have access (report, page 7). It also notes that, according to the same report (page 8), the Association ENAKHIL provides aid to children who are victims of sexual violence or engage in prostitution. The Forum concluded with the adoption of the Rabat Declaration, under which the participating countries undertook to draw up and implement plans of action to prevent and eradicate the sexual exploitation of children. The Committee requests the Government to provide information on the effective and time-bound measures taken to provide the appropriate direct aid necessary for removing children from sexual exploitation and ensuring their rehabilitation and social reintegration into society.

Clause (e). Taking account of the special situation of girls. Domestic servants. The Committee notes that the ICFTU indicates in its observations that the employment of children, especially girls, as domestic servants (*petites bonnes*) is common practice. It indicates that the number of children working as domestic servants is estimated at 50,000. About 13,000 girls under 15 years of age are employed as servants in Casablanca. The ICFTU states that 80 per cent of these servants come from rural areas and are illiterate, that 70 per cent of them are under 12 years of age, and 25 per cent are under 10 years of age. Children working as domestic servants are often victims of physical and psychological abuse.

The Committee also notes that, according to the report on the mission of the Special Rapporteur on the issue of commercial sexual exploitation of children to the Kingdom of Morocco in March 2000 (E/CN.4/2001/78/Add.1, paragraph 10), several government ministries, United Nations agencies and most NGOs, with which the Special Rapporteur had contact, confirmed that the situation of widespread abuse of young girls working as servants (*petites bonnes*) is among the most serious problems confronting Moroccan children. In most cases, the girls are sent by their families from rural areas to work as domestic servants in the big cities, especially Casablanca, Marrakech, Rabat, Meknès, Tangier, Agadir and Fès. The Committee notes that once the girls arrive in their employer's home, they are extremely vulnerable to exploitation. The Committee notes that the results of a government inquiry, presented at a day of study and reflection held by the Moroccan League for the Protection of Children, in collaboration with UNICEF, in 1996, showed that 72 per cent of girls began their working day by 7 a.m. and 65 per cent did not finish until after 11 p.m. The Special Rapporteur is particularly concerned at the vulnerability of these girls to physical and sexual abuse. The Ministries of Human Rights and Foreign Affairs and the Parliamentary Commission on Social Affairs confirmed that there were many cases of rape and ill-treatment (paragraphs 18 and 19). The Committee notes that the Committee on the Rights of the Child noted in its concluding observations in July 2003 (CRC/C/15/Add.211, paragraph 60) the efforts of Morocco to combat child labour but expressed deep concern at the situation of domestic servants (*petites bonnes*), mostly girls, who are subjected to harsh working conditions and abuse. The Committee on the Rights of the Child recommended that Morocco take all necessary measures to prevent and end the practice of children working as domestic servants through a comprehensive strategy, notably by conducting debates and awareness campaigns, providing guidance and support to the most vulnerable families, and addressing the root causes of the phenomenon.

The Committee requests the Government to provide information on the effective and time-bound measures taken or contemplated in order to protect young female domestic servants under 18 years of age from the worst forms of child labour.

Nicaragua

Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1976)

The Committee notes the Government's report and the information sent in reply to its previous comments. The Committee notes with regret that, 28 years after, the ratification is not effectively applied in the country. It would like to draw the Government's attention to the following matters.

The Committee notes that, according to the Government, the Ministerial Resolution of 24 November 2000 on safety and health which applies to the use, handling and application of pesticides and other agro-chemicals, does not apply to agriculture. The Government specifies that according to article 1 of the Resolution, the latter's objective and scope is the establishment of the minimum safety and health measures for the use and handling of pesticides that need to be adopted to ensure the health of workers in performing tasks that involve the use of pesticides and other agro-chemicals. According to article 2, the provisions of the Resolution apply to all workplaces, whether public or private, that carry on industrial work and that use and handle pesticides and other agro-chemicals. The Committee notes this information. It nonetheless considers that the Ministerial Resolution does not appear to give effect to the following provisions of the Convention.

1. *Article 2 of the Convention. Medical examination of fitness for employment of young persons under 18 years of age.* The Committee takes note of article 66(a) of the Ministerial Resolution of 24 November 2000 which forbids employers to allow minors of 16 years of age to work with pesticides. It observes that there is no provision preventing adolescents over 16 years of age from working with pesticides. The Committee recalls that, according to *Article 2* of the Convention, persons under 18 years of age may not be admitted to employment in industrial undertakings unless they have been found fit for the work by a thorough medical examination. The Committee takes note of Chapter XI (articles 46 to 53) of the abovementioned Resolution which deals with medical supervision. It notes in particular that, according to article 46, employers must ensure that systematic occupational medical examinations (pre-employment, periodical and readmission) are carried out where workers are exposed to pesticides or other agro-chemicals. With regard to pre-employment medical examinations, article 48 provides that these are compulsory and must be undergone by all workers wishing to be employed in jobs that involve the handling of pesticides or other agro-chemicals. Furthermore, article 50 of the Resolution stipulates that "the medical examination shall be compulsory for each and every worker who has worked for 90 days continuously; and shall be carried out for workers exposed to pesticides and other agro-chemicals in addition to the general examinations described above". The Committee observes first, that the medical examination, the purpose of which is to set a requirement for the admission to employment of minors under 18 years of age, covers only workers who work with pesticides or other agro-chemicals. Secondly, since it is not carried out until 90 days after the work begins, the examination is not one for admission to employment. The Committee therefore reiterates that the medical examinations provided in *Article 2, paragraph 1*, of the Convention, seek to determine whether minors are fit for the work in which they are to be employed, and must be carried out regardless of the type of work. The Committee accordingly urges the Government to take the necessary steps to draft and adopt regulations on this matter.

2. *Article 3 – periodical medical examinations until the age of 18 years, and Article 4 – periodical examination until the age of 21 years for work involving high health risks.* The Committee notes that pursuant to article 46 of the Ministerial Resolution of 24 November 2000, occupational medical examinations, including periodical ones, are carried out only when workers are exposed to pesticides and other agro-chemicals. Consequently, the Committee reminds the Government that the medical examinations provided for in *Articles 3 and 4* of the Convention should be carried out regardless of the type of work. The Committee urges the Government to take the necessary measures as soon as possible to give effect to these Articles of the Convention.

3. Lastly, the Committee notes that the abovementioned Ministerial Resolution contains no provisions on the application of the following Articles of the Convention: *Article 5* (medical examination involving no expense for the child or young person or his parents), and *Article 6, paragraph 1*, (appropriate measures for vocational guidance and physical and vocational rehabilitation of minors shown by medical examination to be unsuited to certain types of work or to have handicaps or limitations). The Committee urges the Government to take the necessary steps in the near future to draft and adopt regulations that give full effect to the abovementioned provisions of the Convention. Please also keep the Committee informed on this matter and send copies of the regulations as soon as they are adopted.

[The Government is asked to reply in detail to the present comments in 2005.]

Niger

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes the Government's first report. It also notes an observation sent by the ICFTU on 23 September 2003 which was forwarded to the Government on 17 October 2003.

The Committee refers to its comments on the Forced Labour Convention, 1930 (No. 29) and to *Article 3(a) and (d)* of the Worst Forms of Child Labour Convention, 1999 (No. 182), which indicate that the term "worst forms of child labour" includes all forms of slavery or similar practices such as the sale and trafficking of children, forced or compulsory labour and work which, by its nature or the circumstances in which it is carried out, is liable to impair the health, safety or morals of the child. The Committee considers that the problems of forced labour, the sale and trafficking of children for the purpose of sexual or economic exploitation and mine work may be examined more specifically under Convention No. 182. It accordingly requests the Government to provide information on the following points.

Article 3. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. 1. Sale and trafficking of children. The ICFTU states in its observations that young girls are trafficked inside the country for domestic work, and that there is likewise trafficking in boys for the purpose of economic exploitation, and in girls for the purpose of sexual exploitation.

The Committee notes that section 255 of the Penal Code punishes whosoever, by fraud or violence, abducts or causes to be abducted minors under 18 years of age or entices, diverts or removes them, or causes them to be enticed, diverted or removed, from where they were placed by the persons to whose authority or guidance they have been entrusted. Section 257 of the same Code prescribes a heavier penalty if the abducted minor dies. Section 258 punishes anyone who, without fraud or violence, abducts or removes, or attempts to abduct or remove, a minor under 18 years of age. The Committee reminds the Government that, according to *Article 3(a) of the Convention*, the sale and trafficking of children, both for economic and sexual exploitation, including prostitution, is considered to be one of the worst forms of child labour, and that according to *Article 1* of the Convention, each Member which ratifies it must take immediate and effective measures to secure the prohibition and elimination of this worst form of child labour. It requests the Government to provide information on the measures taken or envisaged to prohibit and eliminate this worst form of child labour.

2. *Forced or compulsory labour. Begging.* In its communication of September 2003, the ICFTU asserts that children are forced to beg in West Africa, including in Niger. It states that, for economic and religious reasons, many families entrust their children from the age of 5 or 6 to a spiritual guide (*marabout*), with whom they live until they are 15 or 16 years old. During that time they are entirely in the guide's charge. The guide teaches them religion and in return requires them to carry out certain tasks, including begging. In its previous comments, the Committee had noted that in its concluding observations on Niger in June 2002 (CRC/C/15/Add.179, paragraphs 66 and 67), the Committee on the Rights of the Child expressed concern at the number of children begging in the streets, and, in particular, at their vulnerability to all forms of exploitation.

The Committee notes that section 4 of the Labour Code establishes an unconditional prohibition on forced or compulsory labour. It defines forced or compulsory labour as any work or service demanded of a person under threat of some penalty and which the person does not undertake freely. The Committee notes, however, that according to sections 1 and 2 of the Labour Code, the latter applies only to relationships between employers and workers. It further notes that section 179 of the Penal Code punishes begging and that section 181 of the same Code punishes the parents of minors under 18 years of age who habitually engage in begging, and the persons who invite them to beg or wittingly benefit from the begging. The Committee requested the Government to take all necessary measures to extend the prohibition on forced labour to all work relationships. The Committee notes that at the June 2004 session of the International Labour Conference (ILC, *Provisional Record* No. 24, part 2/10), the Government representative stated that her Government was deeply concerned by this matter. The Conference Committee indicated that it shared the concern of the Committee of Experts, also expressed by the United Nations Committee on the Rights of the Child, at the vulnerability of children who beg in the streets. The Conference Committee took note that the Government of Niger had expressed its willingness to pursue its efforts to eradicate this practice with technical assistance from the ILO and, in view of the seriousness of the problem, it requested the Government to pay particular attention to the adoption of measures to protect children against the form of forced labour represented by begging. The Committee accordingly asks the Government to indicate the measures taken or envisaged to this end. It also requests the Government to indicate how effect is given in practice to sections 179 and 181 of the Penal Code.

Clause (d). Hazardous work. Mines and quarries. The ICFTU indicates that mine work is banned for children under 18 years of age and that a study conducted by the ILO in 1999 on child labour in small-scale mining, covered four types of traditional mines (trona mining in the Boboye region; salt in Tounouga; gypsum in Madaoua; and gold in Liptako-Gourma). According to the ICFTU, the study shows that child labour is widespread, principally in the informal economy, and that work in small-scale mines is the most hazardous of all activities in the informal sector. According to ILO estimates, small mines employ 147,380 workers, 70,000 (47.5 per cent) of whom are children, and small mines and quarries employ 442,000 workers, 250,000 (57 per cent) of whom are children. According to the ICFTU, the study shows that in all the these mines and quarries, working conditions for children are very hard and that from 8 years of age children carry out physically dangerous work such as extraction, more often than not for ten hours or so a day, seven days a week. The work involves substantial risk of accidents and diseases and severely impairs the children's health. The study notes the absence of mining safety techniques on the sites visited and of health infrastructures in the vicinity. In the Tounouga salt mine, 1,620 children under 18 years of age are employed, and salt extraction is carried out almost exclusively by children. Owing to lack of experience, they frequently injure themselves with their tools. In gold mines too, children perform hazardous work underground. The ICFTU asserts that the children are often forced to work by their parents.

In its previous comments, the Committee requested the Government to provide information on the working conditions of these children and on any measures taken or envisaged to protect them from this worst form of child labour. The Government's report contains no information on the matter. The Committee notes that section 152 of Decree No. 67-126/MFP/T of 7 September 1967 provides among other things that employers may not assign children to underground work in mines. It notes that at the June 2004 session of the International Labour Conference, the Government stated (ILC *Provisional Record* No. 24, Part 2/11) that the problem was essentially an economic one, Niger ranking last but one in the world in the development index. The Conference Committee nonetheless regretted that the Government had given the Committee of Experts no information on child labour in mines and asked the Government to pay special attention to the adoption of measures to protect children from hazardous work in mines.

The Committee reminds the Government that, according to *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

among the worst forms of child labour and must be prohibited for anyone under the age of 18. Although the legislation is in line with the Convention in this matter, child labour in mines is, in practice, a problem. The Committee therefore requests the Government to redouble its efforts to ensure that effect is given to the legislation to protect children from underground work in mines. It also requests the Government to provide information on the application of the penalties in practice, including, for example, reports on the number of sentences.

Article 6. Programmes of action. The Committee notes that several action programmes involving the withdrawal of children from the worst forms of child labour are being conducted in collaboration with ILO/IPEC. It notes, in particular, the programme to withdraw children from gold panning in Niger and improve working conditions, the implementation of which has been entrusted to a non-governmental organization, the Organization for the Prevention of Child Labour in Niger (OPTEN-Niger). The aim is to withdraw 90 children, 35 per cent of whom are girls, from the arduous and hazardous tasks of gold panning, and to relocate them in less dangerous, income-generating activities. The Committee further notes the programme to contribute to the elimination of arduous work done by children in the insular villages of the urban commune of Tillabéri, the aim of which is to withdraw 500 children, 50 per cent of whom are girls, from such work and to reintegrate them into the school system or vocational training. The Committee notes that the number of direct beneficiaries of this programme is 702 children – 420 boys and 282 girls – and that the number of indirect beneficiaries is 1,581 children. The number of children who have benefited from the improvement of the school system is 792 – 488 boys and 304 girls.

The Committee requests the Government to continue to provide information on the implementation of these programmes of action and on their impact in terms of protecting and removing children from forced labour, sale and trafficking and from underground work in mines.

Article 7, paragraph 1. Penalties. The Committee notes that under section 181 of the Penal Code, the parents of minors of under 18 years of age who habitually engage in begging, and all persons who invite them to beg or wittingly gain from the begging, shall be punished by a term of imprisonment of from six months to one year.

The Committee also notes that section 255 of the Penal Code punishes the abduction, diversion or removal by fraud or violence of a child under 18 years of age by a prison term of from two to ten years, attempts carrying the same penalty as the offence itself. Under section 257 of the Penal Code, abduction is punishable by the death penalty if it is followed by the death of the minor. Section 258 of the same Code punishes the abduction or leading away or attempted abduction or leading away, without fraud or violence, of a minor under 18 years of age by a prison term of from one to five years, and a fine of from 10,000 to 100,000 francs, or by only one of these two penalties.

The Committee further notes that, under section 327 of the Labour Code, breach of, inter alia, the decree laid down in section 99 (Decree establishing the nature of the work and the categories of enterprises which are prohibited for minors under 18 years of age) is punishable by a fine of from 5,000 to 50,000 francs and recurrent breach, by a fine of from 50,000 to 100,000 francs. The Committee requests the Government to provide information on the application of these penalties in practice.

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. The ICFTU indicates that although compulsory education lasts six years, only 32 per cent of children of primary-school age go to school. Furthermore, most girls are kept at home to work and are married very young. The literacy rate is 7 per cent for girls and 21 per cent for boys. The ICFTU provides a table showing that only 30.3 per cent of children between 5 and 12 years of age attend school. The Committee notes that, according to the Government, basic education is free in Niger and that the country has occupational training centres. It likewise notes the Government's statement that for some years it has been focusing on the enrolment of young girls and that several measures are under way for this category of the population.

The Committee notes that article 11 of the Constitution recognizes education as a fundamental right. It also notes from the information supplied by the Government in the report submitted to the Committee on the Rights of the Child (CRC/C/3/Add.29/Rev.1, paragraph 273), that Act No. 98-12 of 1 June 1998 setting out the aims of the education system, sets forth the right of the child to education and the obligation of the State to make primary education compulsory and free. The Government indicates that section 2 of the abovementioned Act prescribes compulsory education for all citizens of Niger. Education is compulsory from 4 to 16 years of age. The Government specifies in the abovementioned report that no child, boy or girl, can be taken out of or excluded from the education system before the age of 16 years for any reason whatsoever. The Committee requests the Government to provide a copy of these provisions.

The Committee notes that in its report to the Committee on the Rights of the Child (CRC/C/3/Add.29/Rev.1, paragraph 301), the Government indicates that the education system in Niger has been in crisis since the country obtained independence and that despite a plethora of meetings and forums, the crisis continues for a number of reasons, in particular, the economic crisis and inadequate infrastructure and staffing. The Committee notes that a number of programmes are under way at the regional level and international level. At the regional level, an effort has been made to harmonize programmes in French-speaking countries. At the international level, the World Bank, through the basic education sectoral project (PROSEF), facilitated numerous activities between 1995 and 1996.

The Committee takes notes of a programme by the Association of Traditional Chiefs of Niger (ACTN), and of a Memorandum of Understanding with UNICEF concerning the enrolment of girls. The Committee further notes that

according to the information submitted to the Committee on the Rights of the Child in the replies to the issues to be taken up in connection with the consideration with the initial report of Niger (CRC/C/Q/NIG/1), the adoption and implementation of the ten-year education plan 2002-12. The Committee notes, however, that in its concluding observations (CRC/C/15/Add.179, paragraph 58), the Committee on the Rights of the Child welcomes the ten-year education plan and the efforts undertaken by Niger to increase the enrolment of girls, but remains concerned at the low enrolment rate and the widespread illiteracy, the gender and regional disparities in school enrolment, the high drop-out rates, and the insufficient numbers of trained teachers. The Committee requests the Government to indicate, in accordance with *Article 7, paragraph 2(a)*, of the Convention, the effective and time-bound measures taken to ensure, in practice, access to free basic education for girls and boys in urban, rural or particularly disadvantaged areas, on an equal footing for all.

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

Oman

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the Government's first report. Referring to the comments made by the Committee under the Forced Labour Convention, 1930 (No. 29), 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 issue of the use of children as camel jockeys can be examined more specifically under this Convention. The Committee requests the Government to supply further information on the following points.

Article 3. The worst forms of child labour. Clause (d). Hazardous work. In its previous comments, the Committee had expressed concern at the situation of children under 18 years of age involved in camel racing and subject to exploitation. It had also noted that by its nature and the extremely hazardous conditions in which it is performed, camel racing is likely to harm the health and safety of camel jockeys under 18 years of age. The Committee notes that the Government is aware of the dangers of camel jockeying and understands the importance of social dialogue with camel owners. The Government also states that it organized meetings with officials to avoid the negative impact and hazards encountered by contestants. The Committee further notes the Government's indication that, in consultation with the Omani Federation of Riding and Camel Racing, it discussed and promulgated by-laws which, in light of the obligation arising from the ratification of Conventions Nos. 29 and 182, prohibit forced labour and the worst forms of child labour.

The Committee reminds the Government that, by virtue of *Article 3(d) of the Convention*, the Government shall take the necessary measures to ensure that no children under 18 perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals. The Committee asks the Government to supply a copy of the abovementioned by-laws prohibiting the worst forms of child labour. The Committee also asks the Government to provide information on the measures taken or envisaged to ensure that camel jockeys under 18 years of age do not perform their work under circumstances that are detrimental to their health and safety.

Article 7, paragraph 1. Penalties. The Committee reminds 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 accordingly asks the Government to provide information on the measures taken to ensure that persons who exploit children in camel racing are prosecuted and that sufficiently effective and dissuasive penalties are imposed.

The Committee is also addressing a direct request to the Government concerning other detailed points.

Paraguay

Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) (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:

In its previous observation, the Committee had noted the amendment of section 122 of the Labour Code by Act No. 496 of 22 August 1995. Under the provisions of new section 122, young persons between 15 and 18 years of age shall not be employed at night for a period of ten hours between 8 p.m. and 6 a.m. The amendment has reduced to ten hours the 12 hours required by the Convention which was laid down in section 122 of the Code before it was amended by Act No. 496 of 22 August 1995. In addition, the new provisions of section 122 do not stipulate an interval of 14 hours for young persons under 15 years of age. The Committee had also noted that section 189 of the Young Persons' Code (Act No. 903/81) prohibits young persons under 18 years of age from carrying out work at night between 8 p.m. and 5 a.m., namely, for a period of nine hours. As well as being in contradiction with national legislation which lays down ten hours (section 122 of the Labour Code), it is also in contradiction with *Article 3 of the Convention* which lays down an interval of 12 consecutive hours.

The Committee took note of the conclusions adopted in June 2002 by the Conference Committee on the Application of Standards, in which the Conference Committee noted with concern the reduction in the protection afforded to children in relation

to the restriction on night work. It also noted that, before the Conference Committee, the Government representative endorsed the validity of the observation of the Committee of Experts, and expressed the will of its Government to make the necessary amendments to ensure the application of the Convention.

The Committee had hoped that the Government would take the necessary measures to bring legislation into conformity with the provisions of the Convention by amending sections 122 of the Labour Code and 189 of the Young Persons' Code.

The Committee referred to its comments on the application of Convention No. 90.

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

Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (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:

In its previous observation, the Committee noted the new amendment of section 122 of the Labour Code, by means of Act No. 496 of 22 August 1995. According to new section 122, young persons between 15 and 18 years of age shall not be employed during the night for a period of ten consecutive hours, which shall include the interval between 8 p.m. and 6 a.m. The amendment decreased to ten hours, the period of rest of 12 consecutive hours established by the Convention and by section 122 of the Labour Code before being amended by Act No. 496 of 22 August 1995. Furthermore, the Committee observed that section 189 of the Minor Code (Act No. 903/81) prohibits young persons under 18 years of age to perform night work for a period of nine hours between 8 p.m. and 5 a.m. This provision is in violation of both the national legislation that establishes ten hours (section 122 of the Labour Code) and *Article 2 of the Convention* that establishes a period of at least 12 consecutive hours.

The Committee took note of the conclusions adopted in June 2002 by the Conference Committee on the Application of Standards, in which the Conference Committee noted with concern the reduction in the protection afforded to children in relation to the restriction on night work. It also noted that, before the Conference Committee, the Government representative endorsed the validity of the observation of the Committee of Experts, and expressed the will of its Government to make the necessary amendments to ensure the application of the Convention.

The Committee hoped that the Government would take the necessary measures to bring the legislation into conformity with the Convention by amending section 122 of the Labour Code and section 189 of the Minor Code.

The Committee referred to its comments on the application of Convention No. 79.

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

Philippines

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee takes note of the Government's first detailed report and of the communication of the International Confederation of Free Trade Unions (ICFTU) dated 20 August 2003. The Committee also takes note of the Government's reply to the ICFTU's allegations contained in a communication dated 29 December 2003. It requests the Government to supply further information on the following points.

Article 3 of the Convention. The worst forms of child labour. Compulsory recruitment of children for use in armed conflict. The Committee notes the ICFTU's indication that numerous children under 18 take part in armed conflicts. The ICFTU states that, according to a report from the Department of Labor and Employment of the Philippines, the New People's Army (NPA) includes 9,000 to 10,000 regular child soldiers, which represent between 3 and 14 per cent of NPA members. There were also reports of children being recruited into the Citizens Armed Force Geographical Units (a government aligned paramilitary group) and in the armed opposition groups, in particular the Moro Islamic Liberation Front. Citing an ILO study (Rapid Assessment on Child Soldiers in Central and Western Mindanao, February 2002), the ICFTU points out that about 60 per cent of child soldiers were compelled to enter into the armed groups. The ICFTU further states that child soldiers, aside from the obvious hazards of living and working in a military or conflict environment, work long hours, do not always get paid, are away from home and deprived of education.

The Committee notes that, by virtue of sections 3(a) and 22(b) of Act No. 7610 on the special protection of children against abuse, exploitation and discrimination, as amended by Act No. 9231 of 28 July 2003 (hereinafter referred to as Act No. 7610) children under 18 shall not be recruited to become members of the Armed Forces of the Philippines or its civilian units or other armed groups, nor be allowed to take part in fighting, or used as guides, couriers, or spies. According to section 4(h) of Anti-Trafficking Act No. 9208 of 2003, it is prohibited to recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

The Committee also notes the Government's indication that various government agencies, included the Commission on Human Rights, the Department of National Defence, the Armed Forces of the Philippines, and the Department of Social Welfare and Development signed an Agreement on the Handling and Treatment of Children involved in Armed Conflict on 21 March 2000. The following measures were identified to handle children involved in armed conflicts: (i) monitoring of children involved in armed conflict and rescued; (ii) establishing community based preventive and rehabilitative services for children involved in armed conflicts; and (iii) identifying villages ("barangay") where armed conflicts are more likely to occur. The Government further states that other programmes aim at providing children and

families who are affected or involved in armed conflict with psychological, legal, medical, financial and educational assistance. The Committee also observes that a three-year programme supported by ILO-IPEC aims at removing and rehabilitating 200 child soldiers involved in armed conflict in the Mindanao region.

The Committee reminds the Government that by virtue of *Article 3(a)* of the Convention, the forced or compulsory recruitment of children for use in armed conflict is considered as one of the worst forms of child labour, and that under the terms of *Article 1* of the Convention, immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour shall be taken as a matter of urgency. The Committee accordingly requests the Government to provide information on the impact of the various programmes mentioned above to eliminate the compulsory recruitment of children for use in armed conflict. It also invites the Government to redouble its efforts to ensure that children under 18 years of age are not forced to take part in armed conflict either within the national armed forces or rebel groups, and to supply information on any new measures taken or envisaged to this end.

Article 5. Monitoring mechanisms. The Committee notes that, by virtue of section 266 of Act No. 7610, the chairman of the village (“barangay”) affected by the armed conflict shall submit the names of children residing in the said village (“barangay”) to the municipal social welfare and development officer within 24 hours from the occurrence of the armed conflict. The Committee asks the Government to indicate whether the abovementioned measure has permitted children under 18 years of age from being compelled to enrol in the armed forces.

Article 7, paragraph 1. Penalties. The Committee notes that, by virtue of sections 3(a) and 22(b) of Act No. 7610, children under 18 shall not be recruited to become members of the Armed Forces of the Philippines or its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers, or spies. The Committee notes that, by virtue of sections 4(h) and 10(a) of the Anti-Trafficking Act of 2003, a person who recruits, transports or adopts a child to engage in armed activities in the Philippines or abroad is liable to 20 years’ imprisonment and a minimum fine of 2 million pesos. The Committee requests the Government to provide information on the applicable penalties for the violation of section 22(b) of Act No. 7610, as well as information on the penalties imposed in practice on persons found recruiting, or transporting children for the purpose of engaging them in armed conflicts.

Qatar

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee takes note of the Government’s first and second reports. Referring to the comments made by the Committee under the Forced Labour Convention, 1930 (No. 29), 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 issues of trafficking of children and forced labour of children working as camel jockeys can be examined more specifically under this Convention. The Committee requests the Government to supply further information on the following points.

Article 3 of the Convention. The worst forms of child labour. Clause (a). Slavery and practices similar to slavery. The sale and trafficking of children for camel racing. In its previous comments, the Committee had noted that, according to the Committee on the Rights of the Child (CRC/C/15/Add.163, 6 November 2001, paragraph 57), young children are trafficked from Africa and South Asia for the purpose of camel racing. The Committee had also noted that according to the report of Anti-Slavery International, submitted to the United Nations Human Rights Commission in 2001, over 1,600 boys were victims of trafficking during the 1990s, most of them were under 10 years of age and certainly used as camel jockeys in the Gulf States.

In its previous comments, the Committee had further noted that, according to the Government’s indication to the Committee on the Rights of the Child (CRC/C/SR.734, 11 October 2001, paragraph 40), the involvement of children in camel racing is a priority matter for the Government. It had also noted the Government’s statement that the High Council for Family Affairs had implemented measures to protect the children involved in camel racing.

The Committee observes that, according to section 193 of the Penal Code of 1994, a person who imports, exports, sells or takes possession of a person or disposes of that person, as if he/she was in his possession, commits a criminal offence. However, it notes that according to the report of the Special Rapporteur of the United Nations Commission on Human Rights (E/CN.4/2001/73/Add.2, 6 February 2001, paragraph 56), there are reported cases of children trafficked to the Middle East to work as camel jockeys.

The Committee requests the Government to provide information on the measures taken by the High Council For Family Affairs to protect children engaged in camel racing. It reminds the Government that by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children under 18 for sexual or labour exploitation is considered as one of the worst forms of child labour, and that under the terms of *Article 1* of the Convention, immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour shall be taken as a matter of urgency. The Committee accordingly invites the Government to redouble its efforts to improve the situation and to take, without delay, the necessary measures to ensure that no children under 18 are trafficked to Qatar for sexual or labour exploitation, including camel racing.

Clause (d). Hazardous work. In its previous comments, the Committee had noted that the Committee on the Rights of the Child (CRC/C/15/Add.163, 6 November 2001, paragraph 57) expressed its concern about camel jockeys who were denied education and health care and exposed to serious injuries and even fatalities. The Committee notes that, according to sections 1 and 87 of the Labour Law of 2004, Qatari juveniles under 18 years of age shall not be employed in work which, by its nature or the circumstances under which it is carried out, may cause damage to their health, safety or morals. It also observes that section 23 of the Labour Law states that a non-Qatari worker, in order to work, shall obtain the approval of the Department of Labour as well as a work permit.

The Committee reminds the Government that, by virtue of *Article 3(d)* of the Convention, the Government shall take the necessary measures to ensure that no children under 18 perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals. The Committee asks the Government to provide information on the measures taken or envisaged to ensure that non-Qatari camel jockeys under 18 years of age do not perform their work under circumstances that are detrimental to their health and safety.

Article 7, paragraph 1. Penalties. The Committee notes that, according to section 193 of the Penal Code, a person who imports, exports, sells or takes possession of a person or disposes of that person, as if he/she was in his possession is liable to ten years' imprisonment. The Committee asks the Government to provide information on the penalties imposed in practice.

Article 8. International cooperation. The Committee notes the Government's statement to the Committee on the Rights of the Child (CRC/C/SR.734, 11 October 2001, paragraph 40), that it was keen to introduce a law that would apply in all Gulf countries to standardize the rule concerning the involvement of children in camel racing. The Government also states that measures should be taken to prevent the trafficking of children for camel racing. The Committee accordingly asks the Government to provide information on any measures of cooperation passed between Qatar and countries of origin of child victims of trafficking. It also asks the Government to provide information on the steps taken to harmonize the legislation on camel racing in the Gulf countries.

The Committee is also addressing a direct request to the Government concerning other detailed points.

Sierra Leone

Minimum Age (Industry) Convention (Revised), 1937 (No. 59) ***(ratification: 1961)***

In its previous comments, the Committee had taken note of the draft Employment Act prepared with the ILO's technical assistance. The Committee notes 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 observes that this section 34(4) of the draft Employment Act gives effect to *Article 5 of the Convention*. It expresses the hope again 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.

Sri Lanka

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the Government's first report. It also takes note of the communications dated 20 August 2003 and 20 February 2004 from the International Confederation of Free Trade Unions (ICFTU), and of a communication dated 2 March 2004 from the Lanka Jathika Estate Workers' Union (LJEWU). Copies of the communications were forwarded to the Government for any comments it might wish to make on the matters raised therein. In its earlier observations under the Forced Labour Convention, 1930 (No. 29), the Committee made comments on the issues of the recruitment of children for use in armed conflict and child domestic workers. The Committee is of the view that these issues can be examined more specifically under this Convention. It requests the Government to supply further information on the following points.

Article 3 of the Convention. Worst forms of child labour. Clause (a). 1. Sale and trafficking of children for sexual exploitation. In its comments, the ICFTU indicates that Sri Lanka is both a country of origin and of destination of trafficked persons, mainly women and children, for the purposes of forced labour and sexual exploitation.

The Committee notes that section 360A of the Penal Code as amended by Act No. 22 of 1995 and Act No. 29 of 1998 provides that whoever: (2) procures or attempts to procure any person under 16 years of age to leave Sri Lanka (whether with or without the consent of such persons) with a view to illicit sexual intercourse with any person outside Sri Lanka, or removes or attempts to remove from Sri Lanka any such person (whether with or without the consent of such person) for the said purpose; (3) procures or attempts to procure any person of whatever age to leave Sri Lanka (with or

without the consent of such person) with intent that such person may become the inmate of, or frequent, a brothel elsewhere, or removes or attempts to remove from Sri Lanka any such person for the said purpose; (4) brings or attempts to bring into Sri Lanka any person under 16 years of age with a view to illicit sexual intercourse with any other person in Sri Lanka or outside Sri Lanka, commits the offence of procuration and shall, on conviction, be punished with imprisonment for a term of not less than two years and not exceeding ten years and may also be punished with a fine.

The Committee observes that subsections (2) and (4) of section 360A of the Penal Code, as amended by Act No. 22 of 1995 and Act No. 29 of 1998, regarding trafficking of children for the purpose of sexual exploitation, apply only to children below 16 years of age. The Committee recalls that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children under the age of 18 years is considered to be one of the worst forms of child labour, and that under the terms of *Article 1* of the Convention, each Member which ratifies the Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee accordingly asks the Government to indicate the measures taken to secure the prohibition and elimination of the sale and trafficking of children under 18 years of age for sexual exploitation.

2. *Compulsory recruitment of children for use in armed conflict.* In its comments, the ICFTU indicates that Sri Lanka has been the scene of an armed conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE) since 1983. Although there are efforts to move towards peace, it is not clear that these will be successful. The ICFTU refers to the Amnesty International Report of 2003, which indicates that LTTE had recruited hundreds of persons under 18 years of age, some as young as 10 years old. According to Amnesty's report, at the end of 2002, the Sri Lankan Monitoring Mission ruled that 313 cases out of 603 complaints regarding child recruitment were violations of the Cease Fire Agreement. The ICFTU also indicates that many LTTE child recruits are forced or compelled to join the forces. However, many children say that they "volunteered". The ICFTU identifies factors which contribute to such voluntary acts, such as the existence of armed conflict or a military environment itself; poverty; lack of access to education and/or viable and appropriate work; and an abusive or exploitative home situation. These child recruits are trained to handle live munitions, and are engaged in armed conflict with the risk of serious injury or death. The ICFTU urges the Government to prohibit all military recruitment of children whether compulsory, forced, coerced or voluntary into the armed forces or any armed groups, and also to identify other such factors that lead to children's involvement in this worst form of child labour. In its comments, the LJEWU indicates that there is no specific law to deal with the forced or compulsory recruitment of children for use in armed conflict. To give effect to the Convention, the Government should introduce provisions to deal with the prohibition of forced or compulsory recruitment of children under the age of 18 years for use in armed conflict. The LJEWU also indicates that the Government should take immediate measures to stop recruitment and deal with offenders.

The Committee notes that according to the report of the Secretary-General of the United Nations on children and armed conflict of 26 November 2002 (S/2002/1299, paragraph 47), the commitment made to the Special Representative of the United Nations Secretary-General by the Liberation Tigers of Tamil Eelam (LTTE) during his visit to Sri Lanka in 1998 not to recruit or use children in armed conflict has been formally accepted in the current round of negotiations. Demobilization and reintegration of child soldiers from the ranks of LTTE should be accorded priority attention. However, the Committee notes that according to the "Rapid Assessment Study on the Commercial Sexual Exploitation of Children" published by ILO/IPEC in February 2002, a factor that has aggravated the situation of children is the ongoing civil war in the country. About 900,000 children in the north and east of Sri Lanka are directly affected by the war and many more affected indirectly. The armed conflict has displaced an estimated 380,000 children and many of them repeatedly. Most of the displaced children are removed from their family and relatives and are forced to work for their survival. The Committee also notes that in its second periodic report under the Convention on the Rights of the Child in November 2002 (CRC/C/70/Add.17, paragraph 170), the Government indicated that Sri Lanka's authorities estimate that at least 60 per cent of LTTE fighters are below the age of 18 years. Estimates of LTTE cadres killed in combat reveal that at least 40 per cent of the fighting force consists of girls and boys between the ages of 9 and 18 years. Children are well known to be used for both gathering intelligence and in combat. They form the first wave of suicide attacks carried out by LTTE against their targets. Children are used in all activities of armed combat except in leadership positions.

The Committee expresses its serious concern about the current situation of children in Sri Lanka who are used in armed conflict. It reminds the Government that by virtue of *Article 3(a)* of the Convention, the forced or compulsory recruitment of children for use in armed conflict is considered to be one of the worst forms of child labour, and that under the terms of *Article 1* of the Convention, immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour shall be taken as a matter of urgency. The Committee invites the Government to redouble its efforts to improve the situation. It requests the Government to provide information on measures taken to develop and implement appropriate legislation to prohibit the forced or compulsory recruitment of children under 18 years of age for use in armed conflict. The Committee also asks the Government to adopt provisions imposing penalties to deal with the offenders. Finally, it asks the Government to provide information on whether it has established, or is making efforts, towards the elaboration of a global strategy to prevent the participation of children in armed conflict in the future.

Clause (b). Use, procuring or offering of a child for prostitution. In its comments, the ICFTU indicates that child prostitution is prevalent in Sri Lanka. There are reports of boys between 8 and 15 being forced into prostitution. It also indicates that the Government estimates the number of child prostitutes at around 2,000, although other sources estimate

the number to be much higher. The Protecting Environment And Children Everywhere Organization (PEACE—an NGO), reports that at least 5,000 children in the age bracket of 8 to 15 are exploited as sex workers, in particular in certain coastal resort areas.

The Government indicates that the Penal Code has been amended by the Penal Code (Amendment) Act No. 22 of 1995 and by the Penal Code (Amendment) Act No. 29 of 1998 in order to curb obscene publications, and eliminate the use, procuring or offering of children for prostitution. Consequently, section 360A of the Penal Code as amended by Act No. 22 of 1995 and Act No. 29 of 1998 provides that whoever: (1) procures or attempts to procure, any person, whether male or female of whatever age (whether with or without the consent of such person) to become within or outside Sri Lanka, a prostitute; (5) procures or attempts to procure any person of whatever age (whether with or without their consent) to leave such person's usual place of abode in Sri Lanka with a view to illicit sexual intercourse within or outside Sri Lanka; (6) detains any person without the consent of such person in any premises with a view to illicit sexual intercourse or sexual abuse, commits the offence of procuration and shall, on conviction, be punished with imprisonment for a term of not less than two years and not exceeding ten years and may also be punished with a fine. Section 360B of the Penal Code provides penalties for the sexual exploitation of children below 18 years (imprisonment for a term not less than five years and not exceeding 20 years and may also be punished with fine). Furthermore, section 288A of the Penal Code (Amendment) Act No. 29 of 1998 makes provisions to penalize any person who knowingly hires, employs, persuades, uses, induces or coerces a child to procure any person for illicit sexual intercourse (imprisonment for a term not less than five years and not exceeding seven years and may also be liable to a fine).

The Committee notes that the “Rapid Assessment Study on the commercial sexual exploitation of children”, published by ILO/IPEC in February 2002, refers to the PEACE (a local NGO with collaboration by government institutions) Campaign Research Studies, 1999. According to this campaign, about 10,000 children in the age group of 6-14 years are sexually exploited for commercial purposes. The commercial sexual exploitation of children flourished as a trade, because of the Government's support towards the development of the tourist industry and also because law enforcement against such criminal activities was very weak. The Committee notes the information provided by the Government in its second periodic report under the Convention on the Rights of the Child in November 2002 (CRC/C/70/Add.17, paragraph 240) that one of the most degrading and serious forms of child labour occurs in commercial sex tourism. Hence, in its concluding observations on the second periodic report of Sri Lanka in July 2003 (CRC/C/15/Add.207, paragraph 47), the Committee on the Rights of the Child welcomed the Penal Code (Amendment) Act No. 22 of 1995, which seeks to protect children from sexual exploitation. However, it expressed its concern that the existing legislation is not effectively enforced.

The Committee observes that, although the legislation appears to be in line with the Convention in this matter, the commercial sexual exploitation of children under 18 is a problem in practice in Sri Lanka. The Committee expresses its serious concern about the actual situation of children in Sri Lanka who are sexually exploited for commercial purposes. It strongly encourages the Government to increase its efforts to improve the situation. In this regard, the Committee requests the Government to renew its efforts to secure the effective application of the legislation on the protection of children under 18 years for commercial sexual exploitation and to provide information on progress made in this regard. The Committee also asks the Government to provide information on the application of penalties in practice, including information on the infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

Article 5. Mechanisms to monitor the implementation of the provisions of the Convention. According to the Government's indication, the National Child Protection Authority Act No. 50 of 1998 established a National Child Protection Authority (NCPA), which aims at coordinating and monitoring action against all forms of child abuse. Section 14 of Act No. 50 of 1998, sets forth the various functions of the NCPA, which includes: advising the Government in the formulation of a national policy in the prevention of child abuse; monitoring the implementation of laws relating to all forms of child abuse; and recommending measures to address the humanitarian concerns relating to children affected by armed conflict and the protection of such children. The Government also indicates that the Ministry of Employment and Labour has set up a National Steering Committee (NSC) in 1997 under the ILO/IPEC country programme to eliminate child labour. The Committee asks the Government to provide information on concrete measures taken by the NCPA and NSC to prohibit the forced or compulsory recruitment of children under 18 years for use in armed conflict and the sale and trafficking of children for commercial sexual exploitation, and results achieved.

Article 6, paragraph 1. Programmes of action to eliminate the worst forms of child labour. The Committee notes that Sri Lanka is one of the three countries included in the South Asian ILO/IPEC Subregional Programme to Combat Trafficking of Children for Exploitative Employment. A Plan of Action which has been elaborated covers four areas of intervention, namely: legal reform and law enforcement; institutional strengthening and research; prevention, rescue, rehabilitation; and reintegration. This Plan of Action is to be implemented within ten years. The legal reforms needed with regard to child trafficking violations were identified and action is being taken by the Ministry of Justice to make necessary amendments to the law. The Committee asks the Government to provide a copy of the abovementioned Plan of Action for the Elimination of Trafficking of Children, and on the results achieved through its implementation.

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. According to the “Rapid Assessment Study on the Commercial Sexual Exploitation of Children”, a number of government agencies and NGOs are

active in assisting sexually exploited children. All these institutions are registered and monitored by the Probation and Child Care Services Department (PCCSD) under the Ministry of Social Services. The rehabilitation programmes for sexually victimized children include educational, recreational, vocational training and social programmes. The PCCSD provides shelter and protection to sexually abused children and files action in court to achieve justice for the victims. Thereafter, it provides rehabilitation programmes under which the abused children are provided with job-oriented training. Several other NGOs such as the Social, Economic and Development Centre (SEDEC) affiliated with CARITAS, and Eradicating Sexual Child Abuse, Prostitution and Exploitation (ESCAPE), conduct awareness-raising programmes, render legal assistance to children who are sexually abused, and conduct rehabilitation programmes for sexually abused children. The Committee asks the Government to provide information on the impact of the aforementioned programmes with regard to removing children from commercial sexual exploitation and providing for their rehabilitation and social integration.

Clause (d). Identify and reach out to children at special risk. 1. *Children who have been affected by armed conflict.* The Committee notes that in its comments, the ICFTU recommends that the Government design and implement programmes of action to prevent the recruitment of particularly vulnerable groups of children in armed groups. Such action programmes could include socio-economic programmes which enable all children to enter and remain in education; programmes to support families so that children do not drop out of schools; more youth employment opportunities; programmes to address the causes of domestic violence; and public awareness programmes to warn of the dangers of recruitment in the military. The Committee also notes that in its concluding observations on the second periodic report of Sri Lanka in July 2003 (CRC/C/15/Add.207, paragraphs 44-45), the Committee on the Rights of the Child indicated that almost 20 years of civil conflict has had an extremely negative impact on the implementation of the Convention on the Rights of the Child in Sri Lanka. While recognizing that children will greatly benefit from the peace process, the Committee on the Rights of the Child was concerned that during the transition to peace and the reconstruction process, children who have been affected by the conflict remain a particularly vulnerable group. The Committee on the Rights of the Child recommended that Sri Lanka implement the Plan of Action for the Respect of the Rights of Children during the reconstruction process (2003). In particular, the Committee on the Rights of the Child recommended that Sri Lanka: (a) prioritize the demobilization and reintegration of all combatants under 18 and ensure that all armed groups reintegrated into the national armed forces adhere to the minimum age of recruitment of 18 years; (b) develop, in collaboration with international organizations and NGOs, a comprehensive system of psychosocial support and assistance for children affected by the conflict, in particular child combatants, unaccompanied internally displaced persons and refugees, returnees and landmine survivors, which also ensures their privacy; (c) take effective measures to ensure that children affected by conflict can be reintegrated into the education system, including through the provision of non-formal education programmes and by prioritising the rehabilitation of school buildings and facilities and the provision of water, sanitation and electricity in conflict-affected areas. The Committee requests the Government to provide information on effective and time-bound measures taken in line with the above recommendations to address the situation of children who have been affected by the armed conflict. It also requests the Government to supply information on the impact of such measures in providing for the rehabilitation and social integration of former child combatants, and in particular to indicate approximately how many former child combatants have been rehabilitated through such measures.

2. *Child domestic workers.* In its comments, the ICFTU indicates that some 19,111 children work as domestic workers, 70 per cent being girls and 79 per cent from rural areas. It also indicates that there are reports of some rural children employed in debt bondage as domestic servants in urban households and of child domestic servants being employed in 8.6 per cent of homes in the southern province. They are often deprived of education and subject to physical, sexual and emotional abuse. The Committee takes note of the “Rapid Assessment Study on child domestic labour” published by ILO/IPEC in September 2003. The rapid assessment was segmented into three semi-projects. These three semi-projects contribute to the understanding of the situation of child domestic workers. According to the third project entitled “What Happens Behind Closed Doors”, the hypothesis that child domestic workers engage in age-inappropriate domestic chores was confirmed by the fact that many children recruited for domestic work were below 14 years of age and were engaged in a variety of activities including those that are considered to be hazardous. The Committee asks the Government to provide information on measures taken to protect child domestic workers under 18 from hazardous labour and which provide for their rehabilitation and social integration.

3. *Child victims and orphans of HIV/AIDS.* The Committee notes that according to the Joint United Nations Programme on HIV/AIDS, UNAIDS, young persons (15-25) in Sri Lanka constitute a substantial proportion of the population. There is evidence of growing numbers of young persons who engage in commercial sex, both heterosexual and homosexual. Some of these are with tourists and occur along the coastal areas frequented by the tourists. Foreign paedophiles also operate for commercial sex with young boys. Youths out of school are particularly vulnerable. Thus, these groups will be the focus of educational programmes to be implemented with the collaboration of the National Youth Service Council and NGOs. According to UNAIDS, although school children can be reached through school-based programmes, it is also necessary to reach to children out of school and/or unemployed youth. This includes street children in urban areas and areas bordering the conflict such as Anuradhapura town. Community-based organizations need to reach these children and youth using child-friendly approaches. Children and youth in conflict areas, and economically impoverished areas need special consideration. Children and families of those infected with HIV/AIDS also need to be addressed in this plan. These children may require long-term services and support and community-based strategies will be explored to address these needs. NGOs will play a significant role in reaching to the children out of school. Moreover,

UNAIDS estimates that in 2001, 4,800 adults and children lived with HIV/AIDS, and at the end of 2001, around 2,000 children under the age of 15 had lost their mother or father or both parents to AIDS. The Committee observes that the pandemic of HIV/AIDS has consequences on child victims of AIDS and orphans who might more easily engage in the worst forms of child labour. It requests the Government to provide information on effective and time-bound measures taken to address the situation of these children.

Article 8. International cooperation and/or assistance. The Committee notes that Sri Lanka is a member of Interpol which helps cooperation between countries in the different regions especially in the fight against trafficking of children. The Government indicates that the country has received financial and technical assistance from different member countries in giving effect to the provisions of this Convention as well as assistance from ILO/IPEC. According to the information available at the Office, UNHCR is engaged in inter-agency collaboration with regard to the protection of children and adolescents affected by armed conflict. Moreover, Sri Lanka has prepared a Poverty Reduction Strategic Paper (PRSP) to promote growth and reduce poverty through a participatory process involving civil society and development partners, including the World Bank and the International Monetary Fund (IMF). The Committee asks the Government to continue to supply information on international cooperation and/or assistance received to tackle the worst forms of child labour. Noting that poverty reduction programmes contribute to breaking the cycle of poverty which is essential for the elimination of the worst forms of child labour, the Committee also requests the Government to supply information on any notable impact of the PRSP on eliminating the worst forms of child labour.

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

Tajikistan

Minimum Age Convention, 1973 (No. 138) (ratification: 1993)

The Committee notes with regret that, for the fifth 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*, 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*.

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

Turkey

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the Government's first detailed report and of the communication of the International Confederation of Free Trade Unions (ICFTU) dated 15 December 2003. The Committee also takes note of the comments of the Turkish Confederation of Employer Associations (TISK) contained in a communication dated 3 July 2003. Finally, the Committee notes with interest that in 2004, the Government adopted, with the support of ILO/IPEC, a national **Time-Bound Policy and Programme Framework (TBP)** for the elimination of child labour. The basic target is the elimination of the worst forms of child labour within ten years. The Committee requests the Government to supply further information on the following points.

Article 3 of the Convention. Clause (a). 1. All forms of slavery or practices similar to slavery. The Committee notes that a new Criminal Code was adopted on 27 September 2004 and will enter into force in April 2005. The Committee requests the Government to provide information on any new provisions regarding the application of the Convention.

2. Sale and trafficking of children for commercial sexual exploitation. The Committee notes the ICFTU's indications that Turkey is a transit and destination country for trafficked children. Trafficked children originate from Armenia, Azerbaijan, Georgia, Moldova, Romania, the Russian Federation, Ukraine and Uzbekistan. The ICFTU adds that Turkey is a transit country, mainly for children from Central Asia, Africa, the Middle East and The former Yugoslav Republic of Macedonia; these children are then sent to European countries. The ICFTU also states that trafficked children are forced into prostitution or debt bondage.

The Committee notes that section 201(b)(1) of the Criminal Code as amended by Law No. 4771 of 3 August 2002 provides that "anyone with the aim of benefiting from people being put to work or being servants, contingent on them being slaves or similar or on their providing their bodily organs, their being endangered, pressurized, constrained or subject to violence, anyone who abuses their power, burns or benefits from people being experimented on or neglected" is

guilty of an offence. Section 201(b)(3) of the Criminal Code stipulates that, in cases where children who are not yet over 18 years are procured, kidnapped, taken from place to place or coerced or sheltered with the intentions laid out in subsection (1), the same penalties as laid down in subsection (1) shall apply to the perpetrator. It also notes that the Committee on the Rights of the Child, in its Concluding Observation (CRC/C/15/Add.152, 9 July 2001, paragraph 62), recommended to the Government to continue to undertake measures to prevent and combat all forms of economic exploitation of children, including commercial sexual exploitation. The Committee accordingly invites the Government to take, without delay, the necessary measures to ensure that children under 18 years of age are not trafficked to Turkey for sexual exploitation. It also requests the Government to provide information on effective measures taken or envisaged to remove children who are trafficked for sexual exploitation from prostitution and to provide for their rehabilitation and social integration.

Clause (c). The use, procuring or offering of a child for illicit activities. Causing or allowing a child to be used for begging. The Committee takes note of the ICFTU's indication that forced labour occurs in the country in the form of forcing children to beg or to work on the streets. The Committee notes that section 545 of the Criminal Code prohibits the use of children "under 15" for begging. The Committee also notes that, by virtue of article 18 of the Constitution, forced labour is prohibited. The Committee reminds the Government that, by virtue of *Article 3(c)* of the Convention, the use, procuring or offering of a child for illicit activities, including for begging, constitutes one of the worst forms of child labour and shall therefore be prohibited for children "under 18". The Committee requests the Government to provide information on the measures taken or envisaged in national legislation to prohibit the use, procuring or offering of children under 18 for illicit activities, including for begging.

Clause (d). Hazardous work. Street children. The Committee notes the indication of the TISK that children who work in the street are not registered and work in dangerous conditions without protection. It also points out that these children are likely to become homeless people. The Committee notes that, according to the ICFTU, 10,000 children are estimated to work in the streets of Istanbul and about 3,000 in Gaziantep. The ICFTU also indicates that street children are mostly boys (approximately 90 per cent according to the Rapid Assessment conducted by the ILO/IPEC on street working children in Adana, Istanbul and Diyarbakir, November 2001, page 36) and can be classified in two groups. The first group is composed of children who go out on the street during the day to sell all kinds of items (including chewing gum or water); these children return home in the evening. The other group of children includes those that live and work in the street. They are involved in garbage collection and separation, and are often involved in drug abuse, street gangs and violence. The ICFTU adds that the Government has opened 28 centres to assist children who are working in the streets.

The Committee observes that according to the Rapid Assessment conducted by ILO/IPEC (pages 7, 39 and 53), street children who work are aged 7-17, with a median age of 12. The study shows that 17 per cent of these children have completed primary education and that about 55 per cent do not attend school. With regard to street children scavenging in garbage, 72 per cent complained about fatigue, standing long hours, carrying heavy equipment, walking long hours and remaining outside in extreme weather.

The Committee notes that, according to the ILO/IPEC report of 28 August 2003 (Supporting the Time-Bound National Policy and Programme for the Elimination of the Worst Forms of Child Labour in Turkey, pages 48-51), the General Directorate of Social Services and Child Protection (SHÇEK) provides cash and in-kind assistance to children in need and their families. It has directorates in every province and operates rehabilitation centres for children in 21 provinces, through which it provides counselling, training and rehabilitation services to children who live and/or work on the streets as well as their families. The Committee notes, with interest, that ILO/IPEC supported five provincial programmes in Ankara, Diyarbakir, Kocaeli, Gölcük and Adapazari to tackle the problem of working street children, all of which have maintained sustainability since ILO/IPEC has been phased out. In the five years of ILO/IPEC assistance, 15,000 children were withdrawn from the streets. The Committee further observes that the Government launched a one-year education campaign to eliminate child labour in 2001. The programme covered Adana, Bursa, Diyarbakir, Edirne and Gaziantep, and resulted in the withdrawal of 1,710 children working in the street and their enrolment in schools. The Committee encourages the Government to continue its efforts to rehabilitate street children who are engaged in hazardous work. It also asks the Government to provide information on any new measures taken to protect street children from hazardous work and the results achieved.

Article 5. Mechanisms to monitor the implementation of the provisions giving effect to this Convention. 1. Labour inspectorate. The Committee notes the ICFTU's indication that the Government has been working with ILO/IPEC, the social partners and non-governmental organizations since 1992 to eliminate child labour. However, the ICFTU states that "labour inspectors are reported not to check on the agricultural sector or the informal urban economy, exactly those areas where most children are employed".

The Committee notes the Government's indication that the Inspection Council of the Ministry of Labour and Social Security (ÇSGB) is responsible for supervising the implementation of the provisions giving effect to the Convention. The Committee also notes that, by virtue of section 91 of the Labour Law, labour inspectors are responsible for monitoring, controlling and inspecting the implementation of labour legislation. Labour inspectors are authorized to investigate workplaces, to examine relevant documents and materials, and question employers and workers (section 92 of the Labour Law). The Committee further notes that, according to section 97 of the Labour Law, the police forces are compelled to provide assistance to labour inspectors when required and requested. According to the ILO/IPEC report of 28 August 2003

(Supporting the Time-bound National Policy and Programme for the Elimination of the Worst Forms of Child Labour (2004-06), page 57), the labour inspectorate consists of 607 inspectors. The report also indicates that 108 labour inspectors have been trained in communication skills, child psychology, interpersonal communication skills and the problem of child labour; thus they are able to approach the problem of child labour from within the broader context of labour policy issues in the country. The Committee requests the Government to provide information on the activities of labour inspectors, including the number of workplaces investigated per year, and on the findings with regard to the extent and nature of violations detected concerning children involved in the worst forms of child labour in the agricultural sector and in the informal urban economy.

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee observes that the Government is party to a UNICEF programme (2001-05) which aims at reducing the number of street children, providing a safe environment for them and equipping them with the skills necessary to reintegrate into society. The project will achieve this through: (i) raising awareness of the problem among policy-makers and all public services concerned; (ii) building the capacity of public and civil sectors in order to ensure a common approach and to improve the ability of frontline workers; (iii) complementary involvement in other child and family support initiatives; and (iv) strengthening the referral system for children to find appropriate help and support services. The Committee requests the Government to provide information on the impact of the UNICEF programme on reducing the number of street children involved in the worst forms of child labour.

Article 7, paragraph 1. Penalties. 1. Trafficking. The Committee notes that, by virtue of section 201(b), subsection (1) of the Criminal Code, a person who, with the aim of benefiting from people being put to work or being servants, contingent on them being slaves or similar or on their providing their bodily organs, their being endangered, pressurized, constrained or subject to violence, or anyone who abuses their power, burns or benefits from people being experimented on or neglected is liable to five to ten years' imprisonment and a fine of not less than 1 billion Turkish liras. The Committee also observes that, by virtue of section 201(b), subsection (3) of the Criminal Code, the same penalties shall apply in cases where children who are not yet over 18 years are procured, kidnapped, taken from place to place or coerced or sheltered for the purposes laid down in subsection (1). The Committee asks the Government to provide information on the penalties imposed in practice.

2. Causing or allowing a child to be used for begging. The Committee notes that, by virtue of section 545 of the Criminal Code, the use of children under 15 years of age for begging is punishable by three months' imprisonment and a fine of not less than 100 Turkish liras. The Committee requests the Government to provide information on the practical application of the abovementioned provision.

Article 8. International cooperation or assistance. The Committee notes that Turkey is a member of Interpol which helps cooperation between countries in the different regions especially in the fight against trafficking of children. The Committee also notes that the elimination of child labour is included both in the Accession Partnership to the European Union of 19 May 2003 and the National programme for the Adoption of the Acquis (NPAA) adopted on 24 July 2003. Protection of children is defined as one of the main priorities in the NPAA's social policy and employment framework. The issue of the worst forms of child labour is also included in the short-term priorities of the Accession Partnership (2003-04) where it is stated that efforts to tackle the problem of the worst forms of child labour will be continued (Eradicating the worst forms of child labour in Turkey, European Union, March 2004, page 4). The Committee requests the Government to provide information on the measures of cooperation or assistance taken or envisaged with the European Union, or with other countries to eliminate the worst forms of child labour, in particular the trafficking of children for labour or sexual exploitation.

Part III of the report form. The Committee notes with interest the Government's indication that, in accordance with criminal law, 5,005 families that compelled their children to work in the street were brought to court. The Committee asks the Government to provide information on the penalties imposed and to continue to provide information on any court's decisions related to the implementation of the provisions giving effect to the Convention.

The Committee is also addressing a direct request to the Government concerning other detailed points.

United Arab Emirates

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee takes note of the Government's first report, and of the communications of the International Confederation of Free Trade Unions (ICFTU) dated 2 September 2002, 20 August 2003 and 17 June 2004. Referring to the comments made by the Committee under the Forced Labour Convention, 1930 (No. 29), 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 issues of trafficking of children can be examined more specifically under this Convention. The Committee requests the Government to supply further information on the following points.

Article 3 of the Convention. The worst forms of child labour. Clause (a). Slavery and practices similar to slavery.
1. *The sale and trafficking of children for camel racing.* In its previous comments, the Committee had noted the

Government's indication that it is "aware of the seriousness of the issue of the trafficking in children for use as camel jockeys which is incompatible with its obligations" under the Convention. The Government also acknowledged that the present legal and practical measures adopted in this respect are insufficient to prevent completely the trafficking of children for the purpose of camel racing.

The Committee observes that, according to the ICFTU's communication dated 17 June 2004, children continue to be trafficked from countries such as Bangladesh, Pakistan, Sudan and Yemen for the purpose of camel racing in the United Arab Emirates. The ICFTU indicates that, in 2004, Anti-Slavery International obtained pictures of dozens of camel jockeys who appeared to be aged 6-14 years. The photographs were taken in January 2004 at the Nad Al Sheba Race course in Dubai. The ICFTU also highlights that, between October 2003 and February 2004, several Bangladeshi boys aged 4-7 years were trafficked to the United Arab Emirates to work as camel jockeys. Among these children, eight boys are still thought to be working as camel jockeys.

The Committee reminds the Government that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children under 18 for labour exploitation is considered as one of the worst forms of child labour, and that under the terms of *Article 1* of the Convention, immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour shall be taken as a matter of urgency. The Committee expresses its serious concern about the situation of children who are trafficked to the United Arab Emirates to work as camel jockeys. The Committee accordingly invites the Government to redouble its efforts to improve the situation and to take, without delay, the necessary measures to ensure that no children under 18 years are trafficked to the United Arab Emirates for labour exploitation, including camel racing. The Committee asks the Government to provide information on progress made in this regard.

2. *The sale and trafficking of children for sexual exploitation.* In its communication dated 20 August 2003, the ICFTU indicates that, according to a report of the International Organization for Migration (IOM) ("Shattered dreams – Report on trafficking in persons in Azerbaijan" of 2002), girls are trafficked to the United Arab Emirates for sexual exploitation. The girls involved originate from Azerbaijan, The Russian Federation and Georgia, as well as other countries. Referring to the IOM report, the ICFTU states the authorities of the United Arab Emirates make no distinction between prostitutes and victims of trafficking, all of whom bear equal criminal responsibility for involvement in prostitution. The ICFTU points out that trafficked persons are consequently not treated as victims and are not supported or protected.

The Committee notes the Government's indication that section 346 of the Penal Code states that "whoever brings into or out of the country any person with the intent to possess or dispose of that person and whoever possesses, purchases or sells a person as a slave commits an offence". Section 363 of the Penal Code provides that it is prohibited to abet, entice or induce a male or a female to commit prostitution.

The Committee reminds the Government that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children under 18 for sexual exploitation is considered to be one of the worst forms of child labour, and that under the terms of *Article 1* of the Convention, immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour shall be taken as a matter of urgency. The Committee accordingly invites the Government to take, without delay, the necessary measures to ensure that children under 18 years of age are not trafficked to the United Arab Emirates for sexual exploitation. It also asks the Government to take the necessary measures to ensure that children trafficked for sexual exploitation are treated as victims rather than offenders. Finally, it requests the Government to provide information on effective measures taken or envisaged to remove children who are trafficked for sexual exploitation from prostitution and to provide for their rehabilitation and social integration.

Clause (d). Hazardous work. In its previous comments, the Committee had noted the conclusions of the Conference Committee on the Application of Standards in June 2003, according to which numerous underage children continue to be used as camel jockeys. It had also taken note of the concern expressed by the Conference Committee about the hazardous nature of this activity. It had further noted the adoption of Order No. 1/6/266 of 22 July 2002 which prohibits the employment of children under 15 years of age and who weigh less than 45 kg as camel jockeys.

In its communication dated 20 August 2003, the ICFTU indicates that the use of children as jockeys in camel racing is extremely dangerous, and can result in serious injuries and even death. Some children are deprived of food and beaten by their employers. The Committee notes the ICFTU's indication that child jockeys are often separated from their families, and cannot speak Arabic; consequently, they are completely dependent on their employers and more likely to be exploited.

The Committee reminds the Government that, by virtue of *Article 3(d)* of the Convention, the Government shall take the necessary measures to ensure that no children under 18 years of age perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals. The Committee asks the Government to provide information on the measures taken or envisaged to ensure that camel jockeys under 18 years of age do not perform their work under circumstances that are detrimental to their health and safety.

Article 5. Monitoring mechanisms. Police. In its previous comments, the Committee had noted the Government's indication to the direct contacts mission that inspections carried out by the police during camel racing have contributed to reducing the number of children trafficked to this end.

In its communication dated 17 June 2004, the ICFTU indicates that there is evidence that the prohibition to employ children under 15 years of age as camel jockeys is not properly enforced. Indeed, it points out that in a documentary broadcast by the Australian Broadcasting Corporation on 25 February 2003, the police were seen, during a camel race, escorting a group of very young camel jockeys on a bus while other officials attempted to stop the filming.

Noting the absence of information in the Government's report on this point, the Committee requests the Government to provide its observations on the ICFTU's comments. The Committee also requests the Government to provide information on the number of investigations conducted by the police, the places investigated and the number of offences registered. It also asks the Government to provide information on the concrete measures taken to train the police in investigating child trafficking issues and the use of underage camel jockeys.

Article 7, paragraph 1. Penalties. 1. Trafficking of children for camel racing. In its previous comments, the Committee had noted that the Government provided copies of three judicial rulings concerning the trafficking of children. The first ruling in November 2002 concerned a national of Sudan, a trainer of camel jockeys, who was convicted to three months' imprisonment for the accidental death of a juvenile jockey. Another ruling, dated 13 December 2002, convicted two nationals of Pakistan to three years' imprisonment for the abduction and sale of two children. A third ruling of 14 May 2003, convicted a national of Sudan to three months' imprisonment and deportation for the falsification of a passport indicating that the two young persons were his sons. The Committee notes that, according to the Government, section 346 of the Penal Code states that whoever brings into or out of the country another person with the intent to possess or dispose of that person, and whoever possesses, purchases or sells a person as a slave, is liable to temporary imprisonment.

In its communication dated 17 June 2004, the ICFTU states that the trafficking of young children aged 4-12 for camel racing has occurred each year for the last six years, and is publicly known. However, the ICFTU points out that, according to the information given by the Government itself to the direct contacts mission, prosecutions of those exploiting trafficked children in camel races remain rare.

The Committee reminds 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 accordingly asks the Government to provide information on the measures taken to ensure that persons who exploit children in camel racing are prosecuted and that sufficiently effective and dissuasive penalties are imposed. It also asks the Government to continue to provide information on court rulings related to the trafficking of children for labour exploitation as well as the penalties imposed.

2. The trafficking of children for sexual exploitation. The Committee notes the Government's indication that, by virtue of section 346 of the Penal Code, a person who brings another person into a country or takes him/her out of the country, with the intent to take possession or dispose of that person, is liable to temporary imprisonment. The Government also indicates that, by virtue of section 363 of the Penal Code, a person who incites or helps a person under 18 years of age to commit prostitution shall be liable to two years' imprisonment and a fine. The Committee asks the Government to provide information on the penalties imposed in practice.

Article 7, paragraph 2. Time-bound and effective measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. In its previous comments, the Committee had noted that the Committee on the Application of Standards, at the International Labour Conference in June 2003, expressed its deep concern about the fact that numerous underage children were trafficked and enslaved as camel jockeys. It had also noted that the Government accepted to receive a direct contacts mission from 18 to 22 October 2003 as recommended by the Conference Committee. It had further noted that, according to the report of the direct contacts mission, the measures adopted to combat the trafficking of children included the adoption of the Decision of the Ministry of Interior of 20 January 2003, which prohibits the employment of children under 15 years of age as camel jockeys. This decision compels a person who claims to be the parent of a camel jockey under 15 years of age to undertake DNA tests to establish their relationship thereby preventing children from entering the country and living with persons who brought the children to the United Arab Emirates for the purpose of exploiting them as camel jockeys. The Government provided the mission with a list of 42 camel jockeys who were repatriated in compliance with the Decision of the Ministry of Interior of 20 January 2003. The Committee asks the Government to continue to provide information on effective and time-bound measures taken to eliminate the trafficking of children for camel racing and the results achieved.

Article 8. International cooperation. In its previous comments, the Committee had noted that the Ministry of Interior contacted countries where child victims of trafficking originate. According to the Government, it has contributed to reducing the number of children trafficked to the United Arab Emirates to work as camel jockeys. Thus, cooperation between the United Arab Emirates and countries of origin of trafficked children resulted in the repatriation to Pakistan of 86 children working as camel jockeys in 2002, and 21 children in early 2003. The Committee notes the Government's indication to the Committee on the Rights of the Child (CRC/C/SR.795, Summary record, 10 June 2002) that it was willing to cooperate with other countries if camel racing was causing concern to the international community. The Committee asks the Government to provide information on the countries with which it has cooperated to eliminate the trafficking of children to work as camel jockeys, the types of cooperative measures taken and the results achieved.

Part IV of the report form. The Committee requests the Government to provide a copy of available data on the trafficking of children for camel racing and sexual exploitation, including for example copies or extracts from official documents including inspection reports, studies and inquiries, and information on the extent and trends of this form of child labour, 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. To the extent possible, all information provided should be disaggregated by sex.

Noting the Government's statement that the present legal and practical measures adopted are insufficient to prevent completely the trafficking of children for the purpose of camel racing, the Committee reminds the Government that it may avail itself of ILO technical assistance for this purpose.

The Committee is also addressing a direct request to the Government concerning other detailed points.

United States

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)

The Committee takes note of the Government's detailed reports, and of the communication of the International Confederation of Free Trade Unions (ICFTU) dated 9 January 2004. The Committee requests the Government to supply further information on the following points.

Article 3 of the Convention. The worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Slavery. The Committee observes that, by virtue of Title 18 of the United States Code (USC), section 1583, anyone who kidnaps or carries away any other person, with the intent that such person be sold into involuntary servitude or held as a slave, commits an offence. Title 18 USC, section 1584, provides that anyone who knowingly and wilfully holds a person to involuntary servitude or sells into any condition of involuntary servitude any other person, or brings within the United States any person so held commits an offence.

2. Sale and trafficking of children. The Committee notes the indications of the ICFTU, in a communication dated 9 January 2004, corroborated by the report of the Trafficking in Persons and Worker Exploitation Task Force (i.e. a governmental body), that the United States is thought to be the destination of 50,000 trafficked women and children each year. It further indicates that approximately 30,000 women and children are trafficked annually from South-East Asia, 10,000 from Latin America, 4,000 from the former Soviet Union and Central and Eastern Europe, and 1,000 from other regions. The primary source countries for the United States are Thailand, Viet Nam, China, Mexico, the Russian Federation, Ukraine and the Czech Republic. According to the ICFTU, this report also indicates that most trafficked women and children are employed in the sex sector, domestic and cleaning work (in offices, hotels, etc.), sweatshops and agricultural work. Most reported cases of trafficking occurred in New York, California and Florida.

The Committee notes that the Trafficking Victims Protection Act, 2000, created new crimes and enhanced penalties for existing crimes including trafficking with respect to peonage, slavery, involuntary servitude, forced labour or sex trafficking of children. Hence, it observes that Title 18 USC, section 1590 (introduced by the Trafficking Victims Protection Act, 2000), states that whoever knowingly recruits, harbours, transports, provides or obtains by any means a person for labour or services commits an offence.

The Committee also notes the Government's indication that section 105(d)(2) of the Trafficking Victims Protection Act, 2000, mandates an evaluation of the progress made by the United States in the areas of trafficking prevention, prosecution and assistance to victims. The Committee notes with interest that, pursuant to the adoption of the Trafficking Victims Protection Act, victims of trafficking benefit from assistance and are considered to be "victims of a severe form of trafficking in persons (for sexual or labour exploitation according to section 8 of the Act)" when they are under 18 years of age (section 14). The Committee requests the Government to provide information on the impact of the Trafficking Victims Protection Act, 2000, in reducing the number of children involved in trafficking. It also requests the Government to provide, in its next report, its comments on the points raised by the ICFTU.

3. Forced labour. The Committee observes that, by virtue of Title 18 USC, section 1589, whoever knowingly provides or obtains the labour or services of a person: (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan or pattern intended to cause the person to believe that, if the person did not perform such labour or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process, is liable to a fine and/or imprisonment.

Clause (b). 1. The use, procuring or offering of a child for prostitution. The Committee observes that Title 18 USC, section 1591 (as amended by the Trafficking Victims Protection Act, 2000), provides for sanctions for anyone who knowingly: (1) in or affecting interstate commerce, recruits, entices, harbours, transports, provides, or obtains by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1). Title 18 USC, section 1591 also states that whoever, knowing that force, fraud, or coercion will be used to cause a person to engage in a commercial sex act, shall also be punished. The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person (Title 18 USC, section 1591). The Committee also notes that according to Title 18 USC, section 2423(a), it is a criminal

offence to transport an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offence, or attempts to do so. Subsection (b) of section 2423 states that a person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of Chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States, shall be fined under this Title and/or imprisoned for not more than 15 years.

The Committee also takes due note of the Government's indication that all 50 states have laws prohibiting prostitution. It further indicates that state child prostitution statutes address patronizing a child prostitute, inducing or employing a child to work as a prostitute or actively aiding the promotion of child prostitution. It also indicates that some state statutes prohibit child prostitution in very general terms while other states specify the various acts and participants.

2. *The use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee observes that, by virtue of Title 18 USC, section 2251, anyone who employs, uses, persuades, induces, entices or coerces a minor (i.e. a person under the age of 18 according to Title 18 USC, section 2256(1)), or who transports any minor in interstate or foreign commerce, or in any territory of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing a visual depiction of such conduct commits an offence. Title 18 USC, section 2251(1)(c), provides for sanctions for anyone who makes, prints or publishes any notice or advertisement seeking or offering to receive, exchange, buy, produce, display, distribute or reproduce any visual depiction involving the use of a minor engaged in any sexually explicit conduct. The Committee notes that, according to Title 18 USC, section 2252(a), it is prohibited to transport or ship in interstate or foreign commerce, receive, distribute or knowingly reproduce child pornography, by any means including by computer or mails. The Committee also observes that Title 18 USC, section 2260, prohibits the use of a minor to produce child pornography for importation into the United States, and the receipt, distribution, sale or possession of child pornography with the intent to import the visual depiction into the United States. It further notes that, according to Title 18 USC, sections 2423 and 2427, the transportation of children under 18 years of age in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in the production of child pornography, is an offence.

Clause (c). The use, procuring or offering of a child for illicit activities. The Committee takes due note that, under the Controlled Substances Act, it is an offence to knowingly and intentionally employ, hire, use, persuade, induce, entice or coerce a person under 18 years of age to create, manufacture, distribute, dispense, import or export controlled substances or a counterfeit substance (Title 21 USC, sections 841, 861, 952 and 953). The Committee also notes the Government's statement that the use, procuring or offering of a child for the unlawful carrying or use of firearms or other weapons are illegal. The Committee requests the Government to supply a copy of the legal provisions prohibiting the use, procuring or offering of a child for the unlawful carrying of weapons.

Articles 3(d) and 4(1). Hazardous work. The Committee notes the ICFTU's indication that between 300,000 and 800,000 children are employed in agriculture under dangerous conditions. These children work in fields, orchards and packing sheds. For instance, they pick lettuce and cantaloupe, weed cotton fields and pick cherries in orchards. 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. According to the ICFTU, child farm workers risk long-term consequences of pesticide poisoning including cancer and brain damage and suffer high rates of injuries from knives and heavy equipment.

In its previous comments, the Committee observed that the Fair Labour Standards Act (FLSA), Chapter 8, section 212(c), states that no employer shall employ any oppressive child labour in commerce or in the production of goods for commerce. According to section 203(3)(b)(1) of the FLSA, "oppressive child labour" refers to a condition of employment under which any employee aged 16 to 18 is employed by an employer in any occupation that the Secretary of Labor shall find and, by order, declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being. The Committee also noted that section 213 of the FLSA provides for exemptions. Thus, in agriculture 16 is the minimum age under section 213(c)(1) and (2) of the FLSA for employment in occupations (outside of family farms) that the Secretary of Labor finds and declares to be "particularly hazardous for the employment of children". The Committee notes the Government's statement that, by virtue of *Article 4(1)* of the Convention, the types of hazardous work shall be determined by the national competent authority. The Committee nevertheless observes that section 213 of the FLSA authorizes a child aged 16 to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health or well-being by the Secretary of Labor. Consequently, the Committee reminds the Government that, by virtue 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 constitutes one of the worst forms of child labour, and is therefore prohibited for children under 18 years of age. The Committee accordingly requests the Government to indicate the measures taken or envisaged to ensure that work performed in the agricultural sector, which is determined to be particularly hazardous for the employment of children by the Secretary of Labor, is prohibited for children under 18 years.

Article 4, paragraph 3. Examination and periodical revision of the types of hazardous work. The Committee noted, in its previous comments, that 28 Hazardous Orders adopted by virtue of the FLSA determine the types of work or activities that children under 18 shall not perform. It also noted that these Orders were established in 1939 and 1960 with regard to non-agricultural occupations and in 1970 for agricultural occupations.

The Committee observed, in its previous comments, that the United States Department of Labor's Wages and Hour Division (WHD) entered into an inter-agency agreement with the National Institute for Occupational Safety and Health (NIOSH) to conduct research on safety and health risks for children, with particular emphasis on issues relevant to child labour regulations. It noted that, according to the NIOSH's report dated 3 May 2002, "there have been significant changes in the workplace and advancement in knowledge about occupational safety and health hazards that are not reflected in the existing Hazardous Orders". The NIOSH consequently recommended the development of several new Hazardous Orders to protect children from particularly hazardous work not adequately addressed in the existing regulation.

The Committee notes that, as requested, the Government provides detailed information on actions taken by the Government towards amending the provisions of the FLSA and its implementing regulations in light of the NIOSH's report of 2002. The Committee takes due note of the Government's indication that since the recommendations were issued by the NIOSH, the administrator of the WHD has held stakeholders' meetings on the report with all interested parties, including trade unions, organizations of employers, child advocacy groups and educators. The Government also states that the stakeholder meetings were held jointly with the NIOSH and many written comments received. It further indicates that the WHD is in the process of determining which recommendations concerning the Hazardous Orders will be presented in a first round of proposed rules. It also indicates that it is in the final stages of rule-making on several NIOSH Hazardous Orders recommendations: those relating to driving and operating balers and compactors, roofing, and handling explosive materials. The Committee welcomes the Government's initiative to review Hazardous Orders to reflect changes in the workplace and advancement in knowledge about occupational health and safety hazards affecting children. The Committee would be grateful if the Government would supply a copy of the amendments or new orders when adopted.

Article 5. Monitoring mechanisms. 1. General investigations on child labour. The Committee notes the Government's indications that in 2002 the number of targeted investigations in child labour by the WHD increased by 4 per cent; however, the number of child labour violations found in 2002 decreased by 8 per cent from 2001. The Government indicates that in 2002 there were 1,936 cases of violations of child labour standards, 748 of which involved Hazardous Order violations, a decrease of 14 per cent from the previous year. The Committee also notes that in 2002 the WHD initiated efforts to address problems of repeated violations in grocery stores, full services restaurants and quick services restaurants. A survey conducted in 2000 demonstrates a high rate of recidivism in those sectors. As a result, each region has committed to reinvestigate firms with earlier child labour violations. The Government also indicates that a new national survey is being conducted to determine levels of compliance in these industries. The Committee asks the Government to provide information on the findings of this survey.

2. Monitoring mechanisms for the trafficking of children. In its previous comments, the Committee had noted that a worker exploitation task force was established to prevent the criminal exploitation of children and to investigate cases involving the exploitation of children in forced labour in agriculture or sweatshops or as domestic servants or as prostitutes. The Committee had asked the Government to provide updated information on this task force's actions. The Government accordingly indicates that the worker exploitation task force is now referred to as the Trafficking in Persons and Worker Exploitation Task Force. This task force issued, in August 2003, a report entitled "Assessment of United States activities to combat trafficking in persons", which describes the recent activities undertaken in this area. The Committee observes that the United States has made strides in providing benefits and services to victims of trafficking, including housing and legal assistance. For instance, a regulation (66 Feb. reg. 38514 (24 July 2001)) was issued to outline procedures for appropriate federal employees to ensure that victims are housed in a manner appropriate to their status, afforded proper medical care and other assistance and protected while in federal custody. The Committee accordingly encourages the Government to continue its efforts to eliminate child trafficking. It asks the Government to continue to provide information on the measures taken to this end and the results achieved.

3. Monitoring mechanisms in the agricultural sector. The Committee notes the ICFTU's indication that child farm workers account for only 8 per cent of working children, but 40 per cent of all work-related fatalities among minors. The ICFTU adds that an estimated 100,000 children suffer agriculture-related injuries annually in the United States and that very few inspections take place in agriculture.

In its previous comments, the Committee had taken note of a report entitled "Child labour in agriculture: Changes needed to better protect health and educational opportunities" submitted to Congress by the General Accounting Office (GAO) in 1998. This report points out that "the weaknesses in current enforcement and data collection procedures limit enforcement agencies' ability to detect all violations of illegal child labour in agriculture". The Committee had also noted that, according to the GAO's report, the number of recorded inspections in agriculture by the WHD, the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and the states, has generally declined in recent years. Inspections may not be conducted at the appropriate time or in the relevant location. Thus, it observed that the GAO recommended that steps be taken to ensure that the procedures specified in the existing agreement among the WHD and other federal and state agencies, especially with regard to joint inspections and exchange of information, are being followed. The Committee noted that the Department of Labor (DOL) generally concurred with the

GAO's recommendations on the necessity to ensure that coordination procedures specified in existing agreements with federal and state agencies are followed. The Committee notes that the Government supplies a document that addresses each of the GAO recommendations. Thus, the Committee observes that in 1999, the DOL requested an increase of US\$3 million to enhance compliance in targeted industries, including agriculture. Regarding the fact that the criteria used by the WHD to determine where and when to conduct investigations may not reflect the likely presence of children, a national agricultural coordinating team conference was held in 1998. During this conference, the Wage and Hour Offices were instructed to incorporate into each national, regional and local agricultural initiative a child labour enforcement component, including, as appropriate, plans to conduct weekend and pre- and post-school hours investigations designed to detect unlawful child labour. The Committee asks the Government to continue to provide information on the measures taken to ensure the enforcement of child labour laws in agriculture and their impact on the elimination of the worst forms of child labour in this sector.

Article 6. Programmes of action to eliminate the worst forms of child labour. 1. The Federal Inter-Agency Working Group on Young Worker Safety and Health. The Committee takes due note of the Government's indication that a Federal Inter-Agency Working Group on Young Worker Safety and Health was formed in 2003. Within this Working Group, agencies share information on educational programmes focused on an identified occupational hazard, on the provision of personal protective equipment to youth, or on methods by which complex injury and illness surveillance and reporting systems are gathered. This Working Group is composed of the WHD, OSHA, NIOSH, the Department of Interior, the Office of Job Corps, the International Trade Administration and the Department of Commerce. The Committee asks the Government to provide information on the measures taken and findings of the Federal Inter-Agency Working Group on Young Worker Safety and Health.

2. Youth Rules! Campaign. In its previous comments, the Committee noted that various programmes of action were launched to eliminate the worst forms of child labour, including "Work safe this summer" and "Operations salad bowl". As requested by the Committee, the Government provides further information on these programmes. It indicates that the two abovementioned programmes have been integrated into the Youth Rules! Campaign for increased effectiveness. The Committee observes that this campaign aims at increasing public awareness of federal and state rules on young workers. To this end, posters and fact sheets for specific industries such as restaurants, grocery stores and construction firms were designed; information articles on Youth Rules! were published in industry newsletters and magazines; and seminars and compliance training were conducted. The Government also indicates that the Youth Rules! Campaign was broadened in 2003 to include the agricultural industry. The Committee observes that over 20 partners have signed the Youth Rules! Campaign, which include businesses, unions, advocacy groups and 13 individual states (for instance, Illinois, Indiana, New York, Texas, Utah).

3. The Child Exploitation and Obscenity Section. In its previous comments, the Committee had noted that the Child Exploitation and Obscenity Section was acting towards the prevention of the criminal exploitation of children. It asked the Government to provide updated information regarding its actions. The Committee notes the Government's indication that the Child Exploitation and Obscenity Section has worked since 2001 with the assistance of the Bureau of Immigration, the Customs Enforcement of the Department of Homeland Security, the Federal Bureau of Investigation (FBI) and the Postal Inspection Service. The Government also indicates that the Child Exploitation and Obscenity Section conducts programmes that bring together states and federal law enforcement and social services for training in the investigation, prosecution and prevention of commercial sexual exploitation of minors. The Committee asks the Government to continue to provide information on the achievements and impact of the Child Exploitation and Obscenity Section, especially with regard to combating the commercial sexual exploitation of children under 18.

Article 7, paragraph 1. Penalties. The Committee observes that, by virtue of the Victims of Trafficking and Violence Prevention Act, 2000, penalties for infringements of the provisions of the USC on enticement to slavery (Title 18 USC, section 1583) and sale into involuntary servitude (Title 18 USC, section 1584) were increased from imprisonment of no more than ten years to imprisonment of no more than 20 years. It also observes that a person who infringes Title 18 USC, section 1589, on forced labour is liable to a fine and/or to imprisonment for no more than 20 years. It further observes that trafficking with respect to peonage, slavery, involuntary servitude or forced labour is punishable by a fine and/or imprisonment for any term of years or life (Title 18 USC, section 1590). Sex trafficking of children under 18 years of age is punishable by a fine and/or imprisonment for not more than 20 years (Title 18 USC, section 1591(b)(2)). The Committee notes that a person who violates Title 21 USC, section 861(a)(1) and (2), on the prohibition to employ, hire, use, persuade, induce, entice or coerce a person under 18 years of age to import, export or manufacture controlled substances, shall be sentenced to a term of imprisonment which may not be less than 20 years (Title 21 USC, sections 841(b) and 861(b)). Penalties are very detailed and vary according to the quantity of drugs found. However, when children under 18 years of age are used for drug-related offences, the offender is liable to twice the maximum punishment otherwise authorized and at least twice any term of supervised release otherwise authorized (Title 21 USC, section 861(b)). The Committee also observes that the Federal Sentencing Guidelines, 2000, provide for increased penalties for crimes involving minors under 18 years of age such as exploitation of children for drug trafficking (section 2D1.2), for prostitution (section 2G1.1), for the production of pornography (sections 2G2.1. and 2G2.3), or to commit a crime (section 3B1.4). Moreover, the Committee notes the Government's indication 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 asks the Government to provide information on any developments in this regard.

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Children in migrant and seasonal agriculture. The Committee takes note of the ICFTU's indication that only 55 per cent of child farm workers have completed high school. In its previous comments, the Committee noted that, according to the GAO's report on child labour in agriculture of 1998, few of the programmes of the Departments of Education and Labor specifically target migrant and seasonal agricultural child workers. As requested by the Committee, the Government provides information on this issue. The Committee notes that the Department of Education annually collects information on the academic achievements of migrant children in the subject areas of reading and mathematics on state assessments that must be administered at least once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. Each state is asked to report on the percentage of migrant students who have scored at the "proficient" level in reading and mathematics. In addition, the Department of Education also now plans to collect information on the percentage of migrant students who graduate from high school and the number of migrant students who drop out from school. The Committee asks the Government to continue to provide information on the means used to encourage migrant children to remain in school and the results attained.

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 notes that the Trafficking Victims Protection Act, 2000, allows for federally funded or administered benefits and services, such as cash assistance, medical care, food stamps and housing, to be available for certain non-citizen trafficking victims (section 107). It notes that, according to the report of the Trafficking in Persons and Worker Exploitation Task Force of August 2003, the Department of Health and Human Services provides certification and eligibility letters for trafficked persons that allow them to have access to most benefits and services. Since the enactment of the Trafficking Victims Protection Act, the Department has provided 28 benefits eligibility letters to child trafficking victims. The report also indicates that child trafficking victims may be placed with caring families that understand their cultural background and can speak their language. There are also therapeutic placements for children with special needs. The Committee further observes that the State provides assistance for trafficking victims who have requested repatriation to their home countries. The assistance includes maintaining housing and victim benefits pending repatriation. The Government has established links with foreign governments and NGOs to facilitate the victim's return and to ensure that the victim is not trafficked again. The Committee also observes that the Government is engaged in improving its contacts with victims, including engagement in extensive outreach to NGOs which are often the first point of contact with victims of trafficking. The Committee asks the Government to continue to provide information on the measures taken by the Trafficking in Persons and Worker Exploitation Task Force, and the impact of such measures with regard to reducing the number of children involved in trafficking and providing for their rehabilitation and social integration.

Clause (c). Access to free basic education. Child victims of trafficking. The Committee observes that, according to section 106(A)(3) of the Trafficking Victims Protection Act, 2000, the President shall establish and carry out programmes to keep children, especially girls, in elementary and secondary school and to educate persons who have been victims of trafficking. The Committee asks the Government to provide information on the time-bound programmes taken or envisaged to keep child victims of trafficking in school and the impact of such programmes.

Clause (e). Special situation of girls. The Committee observes that, according to the Government, there are federal and state programmes designed to protect young girls who are considered at high risk of exploitation. The Committee requests the Government to provide further information on the programmes specifically designed to protect girls under 18 years of age from the worst forms of child labour.

Article 7, paragraph 3. Competent authority responsible for the implementation of the Convention. The Committee notes that the Criminal Division of the Department of Justice works, with the assistance of the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security (formerly the United States Customs Service), as well as the FBI and the United States Postal Inspection Service, to conduct programmes that bring together state and federal law enforcement and social groups for training in the investigation, prosecution and prevention of commercial sexual exploitation of minors. The Committee also notes that the FBI is responsible for investigating suspected violations of federal drug laws, and benefits from the assistance of the Drug Enforcement Administration to this end. The Committee further notes that child labour standards on hazardous work are administered and enforced by the WHD of the Department of Labor. The Occupational Safety and Health Administration is responsible for the enforcement of the Occupational Safety and Health Act.

Article 8. International cooperation. The Committee notes that the United States is a member of Interpol which helps cooperation between countries in the different regions especially in the fight against trafficking of children. It also observes that, since 1995, the United States participates in ILO/IPEC projects aimed at the elimination of the worst forms of child labour worldwide. The Committee takes due note that, according to the report of the Trafficking in Persons and Worker Exploitation Task Force annexed to the Government's report, the Government supported 200 anti-trafficking programmes in 75 countries in 2002. These programmes include researching into the nature and extent of trafficking in Haiti, the Dominican Republic, Afghanistan and in the Balkans. Another programme aimed at improving access to

education and health for children in the Dominican Republic. The United States also participated in launching media campaigns to promote child welfare and prevent trafficking in Mali and Côte d'Ivoire. The Committee asks the Government to continue to provide information on the steps taken to assist other member States in giving effect to the provisions of this Convention.

Part III of the report form. The Committee notes that, according to the Trafficking in Persons and Worker Exploitation Task Force's report, 2003, the Department of Justice has initiated more than double the number of trafficking prosecutions (20 versus nine), involving more than three times the number of defendants (79 versus 24) in 2001-02 when the Trafficking Victims Protection Act came into effect, than in 1999-2000. It also indicates that the number of defendants successfully prosecuted increased more than twofold (51 versus 23). The Committee also observes that the report provides examples of recent case law involving child exploitation. Thus, in *United States v. Jimenez-Calderon* (Indictment 9/26/02), a Mexican family lured and smuggled girls from small towns in Mexico to the United States with false promises of marriage, only to force them into prostitution in New Jersey. Two defendants were sentenced to 210 months' incarceration, three other members of the conspiracy are awaiting sentencing and two others are fugitives. The Committee also observes that another case (*United States v. Alamin and Akhter* (Indictment 11/16/00)) involved a 14-year-old Cameroonian girl who was held in involuntary servitude and used as a domestic servant for several years. It further observes that in *United States v. Quinton Williams* (indictment 2/25/03), a person transported a 16-year-old girl by car to different states where he supervised her prostitution activities, collected and kept all of the earnings. He was convicted of sex trafficking of children and sentenced to 125 months' imprisonment and ordered to pay a US\$2,500 fine. The Committee asks the Government to continue to provide information on court decisions concerning child trafficking for labour or sexual exploitation and the penalties imposed. It also asks the Government to provide information on case law regarding other worst forms of child labour.

Part V of the report form. The Committee observes that the report on the youth labour force drafted by the DOL, in June 2000, provides statistics on trends in youth employment, occupational injuries, illnesses and fatalities. According to the abovementioned data on injuries, male workers under 18 suffer from sprains, strains and tears (22 per cent); cuts and lacerations (14 per cent); and heat burns and scalds (9 per cent). Females suffer from the same type of injuries but in different proportions. It also observes that out of 442 cases of occupational fatalities among youth under 18 years of age 57 per cent occurred in non-agricultural occupations. The Committee also notes that specific data on the number of children trafficked in and out of the United States, on child victims of sexual exploitation (prostitution and pornography) or on children engaged in hazardous work do not seem to exist. The Committee encourages the Government to continue to supply 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, 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. As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, and status in employment, school attendance and geographical location.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 77** (Haiti, Kyrgyzstan, Tajikistan); **Convention No. 78** (Algeria, Haiti, Kyrgyzstan, Tajikistan); **Convention No. 79** (Kyrgyzstan); **Convention No. 90** (Serbia and Montenegro); **Convention No. 123** (Mongolia, Uganda); **Convention No. 124** (Bolivia, Kyrgyzstan, Slovakia, Tajikistan); **Convention No. 138** (Albania, Angola, Antigua and Barbuda, Austria, Azerbaijan, Bahamas, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Central African Republic, Chile, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Colombia, Costa Rica, Croatia, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Georgia, Greece, Guatemala, Guyana, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Jordan, Kazakhstan, Republic of Korea, Lesotho, Libyan Arab Jamahiriya, Madagascar, Malawi, Mauritania, Papua New Guinea, Slovenia, Syrian Arab Republic, Tajikistan, United Kingdom, Yemen); **Convention No. 182** (Algeria, Angola, Argentina, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Botswana, Brazil, Bulgaria, Burkina Faso, Canada, Cape Verde, Central African Republic, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guyana, Honduras, Iceland, Indonesia, Ireland, Italy, Japan, Jordan, Kenya, Republic of Korea, Lebanon, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Malawi, Malta, Mauritania, Mexico, Mongolia, Morocco, New Zealand, Nicaragua, Niger, Norway, Oman, Papua New Guinea, Philippines, Portugal, Qatar, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Singapore, Spain, Sri Lanka, Sweden, United Republic of Tanzania, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom, United Kingdom: Guernsey, Uruguay, Viet Nam).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 138** (Finland, Germany, San Marino).

Equality of Opportunity and Treatment

Afghanistan

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

1. *Articles 1 and 2 of the Convention.* A national policy to promote equality of opportunity and treatment in employment and occupation. Recalling its previous observations, the Committee notes the adoption of the new Afghan Constitution on 4 January 2004 which calls in its preamble for the creation of a civil society free from oppression, atrocity, discrimination and violence, based on the rule of law, social justice and the protection of human rights. The Committee particularly notes that article 22 provides that any kind of discrimination and privilege between the citizens of Afghanistan is prohibited and that all citizens – whether women or men – have equal rights and duties before the law. It notes in addition that the Constitution provides that followers of all religions are free to practice their faith, and recognizes that many ethnic groups compose the Afghan nation.

2. The Committee hopes that the Government will soon be in a position to take all the necessary measures to declare and pursue, in law and in practice, a national policy designed to promote equality of opportunity and treatment in employment and occupation irrespective of race, colour, sex, religion, political opinion, national extraction, and social origin, as envisaged under *Articles 1 and 2* of the Convention. In this context, the Committee particularly requests the Government to ensure that the human rights of women and girls are promoted and protected in respect of education, training, employment and occupation, in both rural and urban areas. It also urges the Government to repeal expressly all existing laws, regulations and instructions that restrict the access of women and girls to education and employment, as they are contrary to the Convention.

3. In the light of the recent changes in the country, the Government is asked to make every effort to provide a full report on the application of the Convention in law and practice in accordance with the report form established by the Governing Body for this purpose.

Bangladesh

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1972)

1. *Article 1 of the Convention.* *Sexual harassment.* The Committee notes that the Government has not responded in its report to the Committee's General Observation of 2002 on sexual harassment. It also notes that the United Nations Family Planning Association State of the World Population Report, 2000, declares Bangladesh to be the second highest in the world in the incidence of violence against women and that the Prevention of Violence Against Women and Children Act came into force in February 2000 (referenced in the report of the Special Rapporteur on violence against women of the UN Commission on Human Rights, E/CN.4/2001/73/Add.2 at 19). The Committee further notes that the UN Committee on the Elimination of Discrimination against Women, in its Concluding Observations of July 2004, expressed concern over the occurrence of widespread violence against women, including sexual harassment in the workplace (CEDAW/C/2004/II/CRP.3/Add.2/Rev.1, paragraph 23). The Committee thus hopes the Government will provide information on the measures taken to address sexual harassment in accordance with the Committee's General Observation in 2002. It would also welcome information on how the Prevention of Violence against Women and Children Act has been enforced in practice in relation to work-based sexual violence, including copies of any relevant court decisions.

2. *Prohibition of discrimination.* The Committee recalls that, under the Constitution, women shall have equal rights with men in all spheres of the State and of public life and that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth, while no legislative ban on discrimination exists in conformity with the Convention. Noting that the draft Labour Code is still in the process of adoption, the Committee once again urges the Government to ensure that the Labour Code will include a prohibition of discrimination in accordance with the requirements of the Convention. It requests the Government to continue to supply information on the progress in the adoption process and to provide a text upon adoption. In the meantime, the Government is requested to provide information on how the constitutional provisions on equal rights and non-discrimination have been enforced in practice, the penalties imposed and information on relevant judicial decisions.

3. *Article 2. Equality of opportunity and treatment of men and women.* The Committee recalls its longstanding concern over the low participation rate of women in employment in comparison with men and its linkage to the lower education and literacy rates of women in comparison to men. It thus welcomes the Government's indications that parity largely has been achieved between the enrolment of boys and girls in primary schools. The Committee also notes the various measures taken by the Government to improve female literacy. At the same time, it notes that no statistical data on literacy rates or enrolments rates of men and women in secondary and higher education have been provided. In this regard, the Committee notes that the Government target of 40 per cent of primary school teaching posts filled by women by 2002 has been almost met. It also notes that the Government is taking measures to promote teacher training for women in

secondary school. The Committee would welcome information from the Government as to whether similar targets for the recruitment of women into secondary and higher education teaching posts also will be set.

4. The Committee notes that according to the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women of July 2004, trafficking of women and girls from the country, remains a problem and that according to the Special Rapporteur on Violence against Women, discriminatory employment practices in Bangladesh contribute to the incidence of such trafficking, particularly of women belonging to lower caste groups or ethnic minorities. Having in mind that the lack of training and employment opportunities increases women's vulnerability to traffickers, the Committee reiterates its request for information on the measures taken to promote, in practice, equal access to training and employment of women, including those belonging to lower caste and ethnic minority groups.

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

Bosnia and Herzegovina

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1993)***

The Committee notes the observations received from the Confederation of Independent Unions of Bosnia and Herzegovina dated 29 July 2004 which were forwarded to the Government on 11 August 2004. The union alleges that the situations in the enterprise Aluminium Mostar and the "Ljubija" iron mine, which the Committee addressed in its previous observation, had not yet been resolved.

Noting that the Government's report has not been received. The Committee must repeat its previous observation which read as follows:

1. With reference to its previous comments on the fundamental importance of establishing the rule of law and formulating and implementing a genuine national policy of equality of opportunity and treatment in all spheres, including in employment and occupation, in order to promote national reconciliation and peace, the Committee notes the Government's first report on the application of the Convention, which outlines the legal and institutional framework intended to give effect to provisions of the Convention. The Committee takes note in particular of section 5 of the Labour Code and section 3 of the Employment Act of the Republica Srpska, as well as section 5 of the Labour Code (as amended in August 2000) and section 2 of the Employment and Social Security of the Unemployed Act of the Federation of Bosnia and Herzegovina. The Committee welcomes that these provisions prohibit discrimination in employment and occupation, including in the context of employment services, on all the grounds enumerated in Article 1(1)(a) of the Convention and that, as stated by the Government, all employers' and workers' organizations had been consulted in the process leading to the adoption of the laws in question.

2. Nevertheless, the Committee recalls that, while the affirmation of the principle of equality in legal provisions is an important element of the national policy to promote equality of opportunity and treatment in employment and occupation as required by *Article 2* of the Convention, it is equally important to take measures to ensure that the Convention's provisions are fully applied in practice. Aware of the enormous challenge rebuilding a multi-ethnic, peaceful and prosperous society in Bosnia and Herzegovina, the Committee emphasizes the need to take decisive steps to ensure that equality and non-discrimination in employment become a reality for men and women throughout the country, irrespective of their sex, religion, race or national extraction, or any other criteria enumerated by the Convention. The Government is therefore requested to provide in its next report information on the practical measures taken to ensure the application of the Convention in the public and private sectors, including sensitization and training of labour market actors.

3. The Committee recalls that, at its 276th Session (November 1999), the Governing Body of the ILO approved the report of the Committee set up to examine the representation alleging non-observance by Bosnia and Herzegovina of Convention No. 111, made under article 24 of the ILO Constitution, by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (USIBH) and the Union of Metalworkers (SM) and entrusted follow-up of its recommendations to the Committee of Experts (see GB.276/16/4, paragraph 23). The Governing Body considered that the facts involved constituted a violation of Convention No. 111, since the type of discrimination described in the representation was of the kind prohibited by *Article 1(1)(a)* of that instrument, in that it involved an exclusion based solely on national extraction or religious belief which had the effect of destroying equality of opportunity and treatment in employment and occupation between workers of Croatian extraction and the workers of Bosnian or Serbian extraction employed by the "Aluminium" and "Soko" undertakings.

4. The Committee previously noted with interest sections 143 and 144 of the new Labour Code (as amended in August 2000) which are designed to provide various levels of compensation to workers who lost their employment during the civil war which ravaged the country from 1992 onwards. The Committee considered that it was too soon to affirm that the provisions in question settle conclusively the situation of workers in the "Aluminium" and "Soko" factories and insisted that it is for the various parties concerned – the Government, the management of the two undertakings, and the workers who made the representation – to apply the provisions of the Labour Code and the recommendations of the Governing Body in such a way that the workers of the "Aluminium" and "Soko" factories who were unable to resume their former employment – solely on the basis of their ethnic origin and/or religious beliefs – can receive appropriate compensation.

5. The Committee notes from the Government's report that as of 31 March 2000 there were 740 employees at "Aluminium" factories out of which 692 were Croats (93.5 per cent), 27 Serbs (3.9 per cent), and 21 Bosnians (2.8 per cent). Before the civil war the "Aluminium" workforce of 3,278 employees had the following composition: 1,455 Croats (44.4 per cent), 1,082 Bosnians (33 per cent) and 742 Serbs (22.6 per cent). The Government states that an inspection carried out in the "Soko" undertaking displayed a similar situation, with a composition of the 433 employees as of 31 March 2000 as follows: 414 Croats, nine Bosnians, and five Serbs. According to the Government, measures were taken concerning the obligations of the two enterprises in question to establish the legal status required of all employees who did meet the conditions set forth in section 143 of the Labour Code and who submitted applications in this respect. According to the findings at the disposal of the Government of the Federation of Bosnia and Herzegovina, this process has only led to severance payments, while there were no cases of return of such employees to work. The Committee notes this information and requests the Government to provide with its next report

detailed information on those workers of the “Aluminium” and “Soko” factories whose employment relationship has formally been terminated in accordance with section 143, include their number, national extraction, and whether they received severance payments. The Government is also requested to provide detailed information on any claims brought by affected employees of these factories before the cantonal and federal commissions for the implementation of section 143 of the Labour Code, including the results of these proceedings.

6. The Committee also recalls the communications of the USIBH and the trade union organization of the “Ljubija” iron mine according to which the managers of the mine in question dismissed all the miners who were not Serbs, namely some 2,000 workers, during the civil war which ravaged the country from 1992 onwards. The Committee noted that the facts alleged by the USIBH are similar to those examined by the Governing Body within the context of the abovementioned representation under article 24, namely that there was dismissal (or non-reinstatement) of workers based solely on their national extraction and stressed that the principle laid down in the Convention is of universal application, that applies whatever the national extraction of the worker discriminated against may be. The Committee once again hopes that it will be possible to resolve this case, and trusts that in its next report the Government will make its comments in reply to these communications, indicating any progress made in respect of this case.

7. The Committee refers also to the comments made under Conventions Nos. 81 and 158.

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

Brazil

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)

The Committee notes the communication received from the Teachers’ Union of Itajaí and Region which was sent to the Government for comment on 15 July 2004. The communication concerns the dismissal of three university professors, allegedly on the basis of their political opinion. The Committee requests the Government to provide a reply in respect to this communication together with its report for examination by the Committee at its next session. In addition, the Government is requested to provide full information in the next report on the matters raised by the Committee in its observation and direct request of 2002.

Bulgaria

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1955)

1. *Article 1 of the Convention. Equal remuneration for work of equal value.* The Committee notes with interest that under section 14(1) of the Act on Protection against Discrimination of 24 September 2003, the employer shall ensure equal remuneration for equal work and work of equal value and that, according to section 14(2) this principle applies to “all remuneration, paid directly or indirectly, in cash or in kind”. The Committee asks the Government to confirm that “all remuneration” in the sense of section 14(2) includes the ordinary or basic salary and additional emoluments whatsoever arising out of the worker’s employment in accordance with *Article 1(a)* of the Convention. It also asks the Government to provide information on the practical application and enforcement of the principle of equal remuneration for men and women workers for work of equal value under section 14, including through relevant administrative and judicial bodies.

2. The Committee recalls that the Labour Code (Amendments and Additions) Act issued by Decree No. 44 of 12 March 2001, introduced a new section 243 in the Labour Code, which provides in subsection (1) for equal remuneration for men and women workers for the “same or equivalent work” rather than for equal remuneration for work of equal value. In this regard, the Committee notes the Government’s explanation that the term “equivalent”, as used in the Bulgarian language, was meant to refer to the equal value of the work performed by women and men regardless of its nature. The Committee asks the Government to provide information on the practical application of section 243 of the Labour Code by the competent administrative and judicial authorities.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

1. *Article 1(1)(a) of the Convention. Prohibition of discrimination.* The Committee notes with interest the adoption of the first Act on Protection Against Discrimination of 24 September 2003 providing a comprehensive protection against discrimination on a number of grounds in employment and occupation, vocational training and education and conditions of work. Section 4 of the Act prohibits direct and indirect discrimination on the basis of “sex, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or any other grounds, established by law or by international treaties to which the Republic of Bulgaria is a party”. It also notes with interest the Law Amending and Supplementing the Labour Code of 18 June 2004 which inserts in paragraph 3 of section 8 the additional grounds of “sexual orientation” and “differences in contract time and duration of working time”, upon which discrimination is prohibited. Noting that Chapter III of the Act on Protection against Discrimination 2003 establishes a committee for the protection against discrimination with advisory, investigative and quasi-judicial powers, the Committee asks the Government to provide information on the

specific activities and decisions taken by this Committee to ensure and promote the legislation which implements the Convention. Please also provide information in future reports on the implementation, enforcement and impact in practice of the provisions of the new Act on Protection Against Discrimination.

2. *Articles 2 and 3. Discrimination on the basis of national extraction or religion.* In its previous observation, the Committee expressed concern over the treatment of ethnic minority groups of Turkish and Roma origin and the fact that a general climate of prejudice and intolerance against minorities prevailed which had led to instances of discriminatory practices. The Committee notes in this regard the information provided by the Government on the various programmes aimed at the integration of these groups in society and the labour market through employment creation and vocational training. It notes in particular the Programme for the Integration of Minorities, the activities carried out under “Beautiful Bulgaria” and the project “Employment by supporting business – JOBS targeting the Roma community”. The Committee acknowledges the efforts taken by the Government to work with the Roma community and to improve the employability and qualifications of ethnic minority groups. It points out, however, that in the absence of an evaluation by the Government, through surveys or otherwise, on the effectiveness of these programmes as to the elimination of discrimination in recruitment and access to employment and adequate vocational training of persons belonging to the Roma and Turkish communities, the Committee is unable to monitor and assess the progress made under the Convention. The Committee urges the Government to undertake such an evaluation and to provide information on the progress made in its next report. Please also provide information on any measures taken or envisaged, including by the Committee for the Protection Against Discrimination, to monitor the employment situation of Bulgarians of Roma and Turkish extraction in order to ensure their equal access to training and employment.

3. Considering the abovementioned concern over the treatment of and intolerance against ethnic minority groups of Turkish and Roma origin, the Committee asks the Government to indicate the concrete and proactive measures taken to raise public awareness and promote respect and tolerance for these ethnic minority groups in society in general.

4. *Article 3.* For a number of years the Government has been asked to provide information on the application in practice of the Act on Political and Civil Rehabilitation of Repressed Persons. In particular, the Committee had requested information on the number of men and women of Turkish origin who had applied for and obtained compensation under the implementing decrees of this Act (Nos. 139 of July 1992 and 249 of December 1992). The Committee also hoped that the Government would indicate the number of repatriated workers of Turkish origin, who were unemployed but not receiving benefits, who were able to benefit from the compensation provided by Decree No. 170 of 30 August 1990 regarding the restoration of real estate to Bulgarian citizens of Turkish origin who were forced to leave Bulgaria during the period May-September 1989. Noting the Government’s statement that the information requested is not available in the judicial statistics system, the Committee asks the Government to indicate how it has been monitoring the application of the abovementioned legislation in order to ensure adequate compensation for past discrimination of the men and women concerned.

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

Chad

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1966)***

1. *Article 1(1)(a) of the Convention. Definition of discrimination.* The Committee once again refers to its previous comment concerning article 32 of the Constitution, which 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 other grounds of discrimination set out in *Article 1(1)(a)* of the Convention, particularly race and colour. The Committee notes the statement of the Government that race and colour were never criteria for discrimination in Chad and that the legislator therefore simply omitted these terms in the Constitution. While stressing the equal importance of all grounds listed in the Convention, the Committee observes 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 hopes that the Government will consider amending article 32 of the Constitution or adopting legislation so as to bring it fully into line with the Convention. Noting from the report that the regulations enforcing the Labour Code will take into account the grounds of race and colour, the Committee requests the Government to provide information on the progress made in this respect and to provide a copy of these regulations as soon as adopted.

2. *Part V of the report form. Practical application.* The Committee notes from the Government’s brief report that equality of treatment is recognized in Chad, that women are not discriminated against and are entering employment in both the private and public sectors, and as members of Government and Parliament. The report however contains no information on concrete measures taken to facilitate women’s access to public and private employment nor data on the employment situation of women. Both these issues have been raised in earlier comments by the Committee following the communication from the Trade Union Confederation of Chad (CST) of 27 June 1997 alleging non-application by Chad of the principles of equality in employment and occupation for women workers. The Committee stresses once again that, in addition to legislative and policy measures, the Convention requires the Government to pursue a national policy for the promotion of equal opportunity and treatment in employment and occupation through positive measures with a view to

eliminating discrimination on the grounds contained in the Convention and promoting equality. In connection with this it continues to encourage the Government to provide adequate resources to those structures responsible for implementing such policy. The Committee reiterates its request for information on the measures taken to promote equal access of women to training and employment in the private and public sectors and the results of such action, as well as data on labour force participation of men and women, as is called for under the population policy declaration, and the policy to integrate women into development.

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

Cyprus

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1968)***

Articles 1 and 2. Equality of opportunity and treatment of men and women. The Committee notes with interest that with the Equal Treatment of Men and Women in Employment and Vocational Training Act of 2002, Cyprus has adopted for the first time comprehensive legislation on equality of opportunity and treatment between men and women in employment and occupation. The Act prohibits both direct and indirect discrimination on the grounds of sex, as well as on the basis of pregnancy, childbirth, breastfeeding, maternity or illness due to pregnancy or childbirth. Under section 14 of the Act every person who considers himself or herself affected by a violation of the Act may institute civil proceedings against an offender. Section 22 provides for the establishment of a Gender Equality Committee with promotional functions, but which is also mandated to accept and initiate complaints. The Committee requests the Government to provide information on the application and enforcement of the Act, including through the competent judicial and administrative bodies. Please also indicate the impact of these new legal provisions on the access of women and men to and terms and conditions of employment and various occupations.

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

Czech Republic

Equal Remuneration Convention, 1951 (No. 100) ***(ratification: 1993)***

1. *Articles 1 and 2 of the Convention. Application of the Convention through laws and regulations.* The Committee notes the entry into force on 1 January 2004 of Act No. 218/2002 on the service of public servants in administrative authorities and on remuneration of such servants and other employees in administrative authorities (“Service Act”). Section 80 establishes the principle of equal treatment of all civil servants as regards working conditions, including “remuneration and other monetary fulfilment”. Under Part X of the Act, the remuneration of public servants, candidates to the public service and other employees in administrative authorities consists of a basic salary and additional payments, such as extra pay for performing management duties, overtime, night work, rewards, etc. Under section 136(2) of the Act, the Government has issued Regulation No. 469/2002 containing the catalogue of administrative activities classified into pay grades pursuant to their complexity, responsibility and demanding nature. The Committee considers that the above provisions are in accordance with the Convention and asks the Government to provide information on their implementation in practice, including any relevant administrative or judicial decisions, as well as their impact on reducing the gender gap in all levels of remuneration in the public service.

2. *Articles 2 and 3. Promoting and ensuring the application of the Convention in practice.* The Committee notes with interest the Ministry of Labour and Social Affairs’ Methodological Instruction No. 9/2002 addressed to labour inspectors. The Instruction explains the legal provisions on gender equality in force, including the principle of equal remuneration for men and women workers for work of equal value, and highlights the role of labour inspectors in ensuring their application. The Instruction provides practical guidance to labour inspectors on how to conduct equality inspections. In addition, the Ministry issued detailed methodological instructions for inspections regarding equal remuneration on 25 October 2003 which instruct inspectors to use an analytical method for assessing work value in order to determine wage discrimination. The Committee welcomes these measures to promote the application of the Convention in practice by providing labour inspectors with the necessary instructions and expertise. The Government is asked to provide information on the practical use of these instructions and the number of inspections carried out concerning pay discrimination, including any sanctions imposed. Please also continue to provide information on any other measures taken to address the existing wide gender remuneration gap.

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

Eritrea

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) *(ratification: 2000)*

The Committee recalls that at its 282nd Session (November 2001) the Governing Body of the ILO approved the report of the tripartite committee set up to examine the representation alleging non-observance of Ethiopia of Conventions Nos. 111 and 158, made under article 24 of the ILO Constitution by the National Confederation of Eritrean Workers (GB.282/14/5). The Governing Body concluded that large-scale deportations of persons, including workers from Ethiopia to Eritrea and vice versa, occurred following the outbreak of the border conflict in May 1998. Recalling its previous comments following up on the Governing Body's conclusions, the Committee notes from the Government's report that Eritrea filed its statement of claims with the Eritrea-Ethiopia Claims Commission on 12 December 2001 in accordance with the Commission's instructions. The statement included claims relating to Ethiopia's treatment of workers of Eritrean nationality or origin (Eritrea claim 15 – persons expelled from Ethiopia; and Eritrea claim 23 – Eritrean nationals and persons of Eritrean origin remaining in Ethiopia). The Government indicates that it is currently preparing its counter-memorial with regard to the claims relating to expelled persons, while the memorial regarding persons that are still within Ethiopia will be due at a later stage. The Committee notes the Government's assurances that it would take all the necessary measures to fully implement any awards rendered. It also confirmed that Ethiopians residing in Eritrea were entitled to their employment rights and in case of abuse, victims were able to assert their rights. The Committee thanks the Government for this update and requests the Government to continue to provide information on its cooperation with the Government of Ethiopia and the Eritrea Ethiopia Claims Commission with regard to employment-related claims, any awards issued in regard to such claims, as well as the measures taken to implement them.

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

France

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) *(ratification: 1981)*

1. In its observation and direct request of 2002, the Committee noted numerous Government initiatives to combat discrimination and promote equality of opportunity and treatment on the basis of the criteria set in the Convention. In particular, it noted with interest Act No. 2001-1066 of 16 November 2001 to combat discrimination, which amended the Penal Code and the Labour Code by extending the discrimination criteria and the areas in which discrimination is prohibited, by introducing into French law the notion of indirect discrimination, by shifting the burden of proof to the advantage of employees subjected to discrimination and by allowing complaints to be handled by trade unions and associations. The Committee requested the Government to provide information on the practical follow-up to these measures and on any evaluation of their impact and any difficulties encountered.

2. The Committee notes with interest that a decision has been taken to implement the recommendation made by the High Council for Integration in 1998 and taken up in 2003 by the Discussion Group on the Application of the Principle of Secularism in the Republic (see paragraphs 11 and 12 below), to establish an independent high authority to combat discrimination and promote equality. Such a body would be responsible for all forms of discrimination and have the authority to bring about changes in practices and behaviour. It would play a triple role: processing complaints and supporting the victims of discrimination; information and advocacy; and increasing and disseminating knowledge. Noting that such an authority was to be established in 2005, the Committee hopes that the next report will contain information on the work it has done in the area of employment and on the results it has achieved.

Discrimination on grounds of race and national extraction

3. The Committee noted in its previous observation that the measures taken so far appeared not to have eliminated or reduced discrimination in employment based on race and national extraction, and requested the Government to provide information on any studies or evaluations undertaken to determine the extent and nature of such discrimination, and on all new measures taken to facilitate integration of the persons affected. The Committee notes from the reports of the various bodies that have addressed this matter since 1998, including the report of the mission to advise the Government on the creation of the new authority to combat discrimination, that the results obtained by the machinery set up to combat discrimination are "mixed". Despite an abundance of laws and administrative or advisory bodies and although the problems are now better understood, practical results are disappointing: discrimination persists and has even worsened; acts of discrimination are seldom punished and their victims, whose background is largely non-European immigration, are having ever greater difficulty in asserting their rights. While the number of complaints filed for discrimination has increased significantly in recent years, owing in particular to the opening of a free helpline for victims, they are rarely acted on by the courts due to lack of evidence and there are still few convictions (29 in 2002).

4. The Committee hopes that the creation of the high authority to combat discrimination and promote equality will enable practical results to be obtained rapidly in eliminating discrimination, particularly in employment. It hopes in particular that the future authority will be able to act effectively to help the victims of discrimination in employment to

assert their rights and that the next report will contain information on activities undertaken in this area. It also hopes that the necessary awareness raising and training will be undertaken, particularly for the courts, employers, trade unions and associations, so that the legislative provisions prohibiting discrimination in employment, particularly on grounds of race or national extraction, are better known and observed, and breach of them more effectively penalized. It requests the Government to provide information in its next report on the practical effect given to the new provisions of Act No. 2001-1006 respecting the burden of proof in cases of discrimination.

5. The Committee notes that the existence of discrimination and inequality is now widely recognized and documented. According to the report submitted by the Government in May 2004 on the application of the Convention on the Elimination of All Forms of Racial Discrimination (CERD/C430/Add.4), the children and grandchildren of immigrants who arrived in France after the Second World War have been having great difficulty in finding jobs although they have grown up in France, have generally become naturalized French, have been through the French school system and are, for the most part, considerably better educated than their parents. The most serious difficulties are encountered at the hiring stage, in which applicants with names of Maghreb and African origin stand little chance of being interviewed. Unemployment among young graduates of immigrant backgrounds is purported to be four to five times higher than among other graduates. The Committee requests the Government to indicate in its next report the measures that it has taken or plans to take, in conjunction with employers' organizations and trade unions, to put an end to discrimination in hiring and to promote the access of these young people to employment and training.

6. The Committee notes with interest in this connection that 40 or so enterprises signed a Diversity Charter in October 2004 in which they undertake to implement a policy of non-discrimination and to seek diversity at all stages of human resource management – hiring, training, career advancement and promotion – to make their management and their staff aware of this undertaking, to place this policy on the agenda of staff representatives and to report yearly on measures taken and on results. The Committee hopes that the next report will contain information on the results obtained by this initiative and on any measures taken to publicize and encourage similar initiatives to change human resource management practices in enterprises with a view to securing greater equality of opportunity. The Committee stresses the interest of associating workers and their representatives in the definition, implementation and evaluation of these new practices, and would appreciate receiving information on this subject.

Equality between men and women

7. The Committee recalls that although there has been significant progress in the last 20 years as regards women's status in the world of work, major inequalities remain. According to a report by a working party of the Higher Council on Equality at Work, sent by the Government with its last report, women now account for nearly 50 per cent of the economically active population and hold more skilled jobs. However, they are still concentrated in a limited number of occupations in the tertiary sector. Fewer women than men receive continuous training. On average, women earn 25 per cent less than men, and are more often unemployed and in precarious employment.

8. The Committee notes from the information sent as reply to its previous comments, that the Government plans to adopt a new policy on equality at work and wage parity between men and women and that cooperation is under way with the social partners to agree on coherent, pragmatic and resolute action in pursuit of equality at work. It notes that in March 2004, a Charter was adopted on equality between men and women setting out a series of measures and commitments spanning a period of three years and based on a fivefold approach to achieving progress which includes equality in employment and work/life balance with a view to a new distribution of social roles between men and women. The Committee hopes that the next report will contain information on specific measures taken under the Charter in these two areas and on the practical results obtained in reducing inequalities in employment.

9. The Committee notes that, according to numerous studies and surveys, the continuing wage differential between men and women is due to the fact that women's skills rank lower in the wage scales of collective agreements, and to inequalities in men's and women's careers which grow as their careers advance owing to a system of promotion and bonuses that is more advantageous to men. The Committee notes that the abovementioned Higher Council's working party on women's place in social dialogue has acknowledged that women's participation in the negotiating process has some impact on the content of agreements, particularly with regard to working hours, equality in employment and work/life balance, and that better representation of women in bargaining could lead to a change in classifications that might reduce wage differentials and improve women's access to vocational training. The Committee hopes that the next report will indicate the measures taken or envisaged by the Government and the social partners to secure greater participation by women in social dialogue, and particularly their representation on negotiating bodies and in the leadership of employers' and workers' organizations.

10. The Committee notes that the current discussions and work on promoting equality between men and women devote considerable attention to the matter of "work/life balance" or "family/professional life". It notes that the Government has ratified Convention No. 156 and requests it to indicate in its next report the measures taken or envisaged to combat any remaining stereotypes about women's place in employment.

Discrimination on religious grounds

11. The Committee notes that Act No. 65 of 17 March 2004 and its implementing circular of 18 May 2004 ban the wearing, in public schools, of any conspicuous religious signs or apparel under penalty of disciplinary measures including

expulsion. According to the preamble to the abovementioned circular, the Act is intended to ensure observance of the constitutionally guaranteed principle of secularism, which is based on respect for freedom of conscience and the State's neutrality vis-à-vis religion. It is designed to allow schools to accomplish their duty of instilling the values of the Republic including equality and human dignity, equality between men and women and the freedom of every individual, including to choice of lifestyle, and to teach pupils to live together and respect the differences of others. By protecting pupils from pressure that might arise from ostensive signs of religious affiliation, the Act guarantees freedom of conscience for all.

12. The Committee notes that the Act was passed following a protracted public debate, at the request of school principals anxious to preserve neutrality and calm in their establishments; that expulsion is applied only after extensive dialogue with the pupil and his/her parents; and that the Act will be assessed one year after its entry into force. While appreciating the reasons for the Act, the Committee fears that it may in practice end up keeping some children, particularly girls, away from public schools for reasons associated with their religious convictions, and thus may diminish their capacity to find employment, contrary to the Convention. The Committee requests the Government to provide information in its next report on the assessment of the application of the Act. Please indicate in particular the number of pupils expelled from public schools and the measures taken to ensure that they nonetheless have proper opportunity to acquire education and training.

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

Greece

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1984)***

1. *Article 3(c) of the Convention. Repeal of legislative provisions discriminating on the basis of sex.* The Committee notes with satisfaction the adoption of Act No. 3103 of 2003, section 20 of which provides that section 1(2)(a), paragraphs 2, 3 and 4 of Act No. 2226 of 13 December 1994, as amended by section 12 of the Act No. 2713 of 1999, imposing restrictions on women's admission to the police academies have been replaced by the following: "Both men and women are admitted to the academies concerned and the qualifications and preliminary tests of the candidates will be the same for both sexes."

2. The Committee further notes the information in the Government's report that Presidential Decree 90/2003 determines a single basis for the candidates' athletic tests and a minimum height limit of 1.70 meters (regardless of sex) for admission. The Committee asks the Government to provide a copy of Decree No. 90/2003 and to keep it informed of the practical impact of this Decree on the admission of women in the police academies and their employment in the various jobs in the police and fire brigade.

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

Guinea

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1960)***

Article 1 of the Convention. The Committee notes that the Government's report has not been received. 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.

Hungary

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1961)***

1. *Articles 1 and 2 of the Convention. Measures to prohibit discrimination and to promote equality.* The Committee notes with interest the adoption of Act CXXV of 2003 which prohibits discrimination in private and public employment on all grounds listed in *Article 1* of the Convention, as well as on the grounds of mother tongue, disability, state of health, family status, motherhood or fatherhood, sexual orientation, sexual identity, age, financial status, part-time or fixed-term status or other employment relationships, trade union membership or other status (section 8). The Act also contains provisions on indirect discrimination, harassment, burden of proof and positive measures. It also provides for the establishment of a public administrative body mandated, inter alia, to investigate and decide discrimination cases, initiate law suits, and engage in promotional activities and cooperation with workers' and employers' organizations. The

Committee requests the Government to provide information on the application and enforcement of the new Act in respect of employment and occupation, including through the competent judicial and administrative bodies.

2. *Discrimination on the basis of sex.* The Committee recalls that, at its 275th Session (June 1999), the Governing Body approved the report of the committee designated to examine the representation submitted by the National Federation of Workers' Councils (NFWC) pursuant to article 24 of the ILO Constitution, alleging the Government's non-observance of the present Convention, and of the Employment Policy Convention, 1964 (No. 122). The Governing Body determined that there was insufficient information to permit it to reach any conclusions regarding the issues raised in the representation, including the NFWC's allegations that the Government's enactment of legislation reducing the personnel and social security-related budgets of institutes of higher education in 1995 had resulted in the dismissal of a disproportionate number of female lecturers and researchers. However, it requested the Government to provide additional information to the Committee of Experts on the issues raised in the representation.

3. In reply to the Committee's previous comments on this matter, the Government states that like any other employer, the institutes of higher education are bound by the prohibition of discrimination established under the law the protection of which also extends to female teaching staff in these institutions. In cases of alleged discrimination the right to a remedy was established under the Labour Code. The Government also states that there have been a number of court decisions in regard to dismissals in the context of the 1995 austerity measures holding that dismissals had been illegal based on procedural reasons rather than due to discrimination. It also provided examples of the judicial decisions in such cases. The Committee notes this information. However, the Government was not able to provide information disaggregated by sex on the number of teaching staff dismissed due to the 1995 austerity measures, nor on the number of non-teaching staff dismissed. The Committee therefore requests the Government to take the necessary measures to provide this information in its next report in order to allow the Committee to consider fully the de facto result of the austerity measures in relation to the application of the Convention.

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

India

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) *(ratification: 1960)*

Discrimination on the basis of social origin

1. In its 2002 observation, the Committee had referred to a communication from the ICFTU dated 2 September 2002 and to the Government's reply, which had been received during the Committee's session, on 3 December 2002. The Committee notes that an additional reply was received on 19 December 2002.

2. The communication of the ICFTU referred to the practice of manual scavenging, i.e. the removal of human and animal excreta from public and private latrines and open sewers. Manual scavenging is performed almost exclusively by Dalits (also known as untouchables) and according to government statistics, an estimated 1 million Dalits in India are manual scavengers. Women clean public latrines daily, removing the excrement with brooms and small tin plates and piling it into baskets which are carried on the head to faraway locations. Manual scavengers may also be engaged in underground sewage work, or in cleaning faeces from the railway systems, or in the disposal of dead animals. They work for state municipalities or for private employers. They are exposed to the most virulent forms of viral and bacterial infections, including tuberculosis. They may be paid as little as 12 rupees (US\$ 0.30) a day, for unlimited hours. Sometimes, they do not receive their pay.

3. According to the ICFTU, the allocation of labour on the basis of caste is a fundamental part of the caste system. Within the caste system, Dalits, who are considered "polluted" from birth, are assigned, through threats and coercion, tasks and occupations which are deemed ritually polluting by other caste communities, such as scavenging. Refusal to perform such tasks can lead to physical abuse, social boycott and exclusion from any other form of employment. This practice is described as clearly discrimination on the basis of social origin, as defined in *Article 1 of the Convention*.

4. The ICFTU alleges that, although legislation was enacted in 1993 to prohibit the employment of manual scavengers and the construction of dry latrines and funds exist for the construction of flush latrines and the rehabilitation of scavengers under a government national scheme, the employment of Dalits as manual scavengers continues throughout India. There is a lack of political will at the local level to implement the relevant legislation. Dalits continue to be employed in manual scavenging by the State, through local governments, state municipalities and railways authorities. State governments often deny the existence of manual scavenging and dry latrines within their jurisdiction or claim that a lack of water supply prevents them from constructing flush latrines. There also appears to be a reluctance to prosecute those who employ scavengers or construct dry latrines. There is a National Commission for Safai Karamcharis (the official name for manual scavengers), which only has advisory powers and no authority to summon or monitor cases.

5. The ICFTU submits that the Government of India has failed to fulfil its obligation under *Article 2* of the Convention to pursue a policy to eliminate discrimination in employment, and its obligation under *Article 3(d)* to implement this policy in respect of employment under the direct control of a national authority. It calls on the Government

to pursue actively the full implementation of the 1993 Act and to provide details regarding prosecutions and punishments for failure to implement the Act.

6. In its reply dated 2 December 2002, the Government states that the eradication of manual scavenging is a matter of priority concern for the Government of India. It recognizes that manual scavenging still exists in certain pockets, due mainly to unchanged societal structures and mores. In order to resolve the problem of dry latrines, the Government has enacted a central legislation – the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, which came into force in 1997 – and it has made every effort to implement the Act in full earnest.

7. The Government refers to two programmes aiming at converting the existing dry latrines into low-cost flush latrines and providing alternative employment to the liberated scavengers – a centrally sponsored Scheme of Urban Low Cost Sanitation for Liberation of the Scavengers, initiated in 1980-81, and a National Scheme of Liberation of the Scavengers and their Dependants, launched in March 1992. Under these schemes, 37,430 scavengers and 401,257, respectively, have been liberated and 154,767 have been trained under the National Scheme to take up alternative occupations. Furthermore, the Government provides financing to the National Safai Karamchari Finance and Development Corporation, which since its inception in January 1997, has helped 43,764 beneficiaries.

8. The Government considers that the National Commission for Safai Karamcharis has sufficient powers to monitor and advise the Government effectively, and denies that female workers mainly perform manual scavenging in India, as they have been officially estimated as representing only 35 per cent of the total scavengers.

9. In the Government's additional reply, the National Commission for Safai Karamcharis agrees that manual scavenging is still prevalent in many parts of the country. It states that central as well as state governments are aware of the issue and are endeavouring to eradicate this inhuman practice and refers to a number of other schemes implemented by various ministries in central Government.

10. The Committee notes that in the practice of manual scavenging, persons belonging to a certain social group called the Dalits, are usually engaged on account of their social origin. This constitutes discrimination, as defined in *Article 1, paragraph 1(a)*, of the Convention.

11. The Committee takes note of the Government's statement that the eradication of manual scavenging in the country is a matter of priority concern for the Government. It notes that the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, punishes the employment of persons for manually carrying human excreta and the construction or maintenance of dry latrines with imprisonment and/or a fine, and that a number of schemes have existed for a number of years for the construction of flush latrines and the liberation and rehabilitation of manual scavengers.

12. The Committee notes with concern that despite those measures, manual scavenging continues to be used in large parts of the country and large numbers of men and women have still to perform degrading tasks by reason of social origin and economic circumstances in inhuman conditions, in contravention of the Convention. The Committee expresses the hope that the Government will step up its efforts to ensure the prompt elimination of this practice and the access of the persons involved to other, more decent, jobs. In particular, the Committee requests the Government:

- to take measures to ensure that the state, local and railway authorities apply and enforce the prohibitions contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, and that the penalties provided for their violation are effectively imposed (please provide indications on the number of prosecutions engaged and the number and nature of penalties imposed);
- to evaluate the effectiveness of the existing schemes for the construction of flush latrines and the rehabilitation of manual scavengers, taking into account the reports and recommendations of the competent organs including the National Commission for Safai Karamcharis and the National Commission on Scheduled Castes and Tribes; and
- to launch and/or expand public awareness programmes for the population and educational and training programmes for the authorities involved, in order to promote the changes in mentalities and social habits which are necessary to bring about the elimination of manual scavenging.

The Government is requested to provide information on the concrete measures taken with regard to these matters.

13. The Committee notes that the practice of manual scavenging is an aspect of the continuing discrimination suffered by the Dalits in Indian society. The Committee is concerned that although "untouchability" was abolished by the Constitution of India in 1950, and a number of programmes have been put in place over the years to promote the economic and social advancement of Dalits (or members of the scheduled castes as they are referred to in the relevant legislation), the pace of progress has been very slow and millions of men, women and children belonging to this social group continue to be relegated to the most menial tasks, without the possibility of moving to other types of jobs or employment. The Committee is aware of the magnitude of the problem and of the constraints faced by the Government in trying to eradicate century-old conceptions and practices. It nevertheless hopes that the Government will make renewed efforts and take further action with a view to eliminating discrimination in employment and occupation for members of the Dalit population and promoting equality of opportunity and treatment for them, and that the next report will contain information on the measures taken, including educational programmes, towards this end.

14. In its previous direct requests, the Committee has sought to ascertain the practical impact of the laws and programmes which have been implemented over the years to reserve a certain proportion of posts in the central and state civil services, and to promote income-generating activities for members of the scheduled castes. The Committee will continue to monitor these laws and programmes and requests the Government to continue to provide information on the results achieved.

Discrimination based on sex

15. In its 2002 observation, the Committee had referred to comments made by the ICFTU pointing to the continuing discrimination against women in employment and occupation, as evidenced by the fact that women constitute only a small minority of the formal workforce, and the wide gap between male and female education. The Committee had acknowledged that, according to the provisional results of the 2001 census, some progress had been made in promoting female literacy since 1991. It expressed the hope that further measures would be taken to consolidate the positive trend and results achieved so far and to address the remaining educational gap between men and women, and requested the Government to provide statistical data on the enrolment of boys and girls, based on the final results of the 2001 census. The Committee had also requested the Government to provide information on the status of the National Policy for the Empowerment of Women, 2001, the agency or agencies responsible for monitoring the projects and programmes aiming at the economic empowerment of women in the informal economy and of self-employed women, and statistics on the labour force participation of women.

16. The Committee notes that the Government's last report does not provide any new information and merely states that the information requested, including statistics from the 2001 Census, will be supplied as and when it becomes available.

17. The Committee can only hope that the Government will take the necessary measures to provide the information requested in its next report to enable the Committee to ascertain the progress made towards the reduction of the wide inequalities which continue to exist between men and women in regard to access to education and training and employment and occupation.

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

Japan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)

1. The Committee notes the observations by the Japanese Trade Union Confederation (JTUC-RENGO) dated 27 August 2003 and the observations by the Women's Union Kansai, the Staff Union of Okayama University Medical School, and the Kinki District Council of the Japan National Hospital Workers Union (JNHUWU/ZEN-IRO), all dated 3 March 2003, as well as the Government's replies. The Committee also received further communications dated 26 August 2003 and 4 August 2004 from the JNHUWU/ZEN-IRO to which the Government has replied. The Committee also recalls the comments by the International Confederation of Free Trade Unions (ICFTU) of 31 October 2002, the Municipal School Lunch Workers' Union of Miki, the Union of Part-Time Workers Employed by the Municipality of Amagasaki, and the Osaka Chapter of All Japan Harbour Workers' Union.

2. *Articles 1 and 2 of the Convention. Measures to promote the application of the principle of equal remuneration for work of equal value.* The Committee notes that according to the Basic Survey on Wage Structure 2002 the overall gender wage gap (contractual cash earnings) was, at 35.1 per cent, slightly higher than 34.5 per cent in 2000. According to the November 2002 report of the Study Group on the Issue of Wage Disparity Between Men and Women, gender wage disparities mainly resulted from the fact that men and women occupy different types of positions, as well as from gender differences in relation to length of service and the manner in which family allowances are granted. The study found that wage disparities resulted from the administration of wage and employment management systems including appraisal systems rather than from the systems themselves.

3. The Committee notes with interest that following the Study Group's report the Government issued in 2003 a Guideline Concerning the Measures for Improving Wage and Employment Management for Eliminating Wage Disparity Between Men and Women. This set of voluntary guidelines recommends that enterprises analyse the incomes of their male and female employees and improve their employment and wage management. To that end, the objectivity and transparency of wage decisions and personnel appraisals should be enhanced, and the family allowances schemes should be reviewed. The guidelines also promote non-discriminatory job allocation and posting; stress the need to review career tracking systems and their implementation; and promote family-friendly workplaces. Positive action is recommended to overcome wage disparity caused by the limited access of women to certain positions and by length of service requirements. The Committee welcomes these guidelines, because they target, albeit in a general manner, some of the issues at the root of remuneration inequalities between men and women in Japan. The Committee asks the Government to provide detailed information on the promotion of the guidelines, their application in practice by enterprises and their effect with regard to reducing the gender wage gap.

4. According to RENGO, the conclusions and recommendations on the causes of gender wage disparities contained in the abovementioned report are meaningful and significant. However, in RENGO's view enforceable legislative

provisions are required to eliminate the factors underlying the gender wage disparities. In this context, the Committee also recalls its previous comments concerning section 4 of the Labour Standards Act which provides that an employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman. In reply, the Government states that this provision satisfies the requirements of the Convention and reiterates its view that the application of the principle of equal remuneration for men and women workers for work of equal value was ensured through administrative supervision and guidance. The Committee maintains that section 4 of the Labour Standards Act does not fully reflect the principle of the Convention, as it does not reflect the notion of equal remuneration for work of equal value. While the Committee understands that in some recent judicial decisions objective criteria related to job content have been used when comparing work performed by men and women, thus indirectly applying the notion of work value, the Committee encourages the Government to consider promoting a better application of the Convention by giving full legislative expression to the principle of equal remuneration for men and women workers for work of equal value. Please also indicate any consideration given to the legislative proposals made by RENGO, such as the introduction of a general prohibition of direct and indirect discrimination in employment against both women and men.

5. The Committee notes that, following the adoption of the “Proposal for Positive Action” in 2002 by the Positive Action Promotion Council, the Government has set up such councils at all Prefectural Labour Bureaus. The councils are supposed to develop activities to promote positive action in favour of women in collaboration with workers’ and employers’ organizations. The Committee also notes that the Proposal for Positive Action explains the nature and benefits of positive action measures to employers, personnel managers, supervisors, workers and public officials. The Committee asks the Government to provide information on the concrete activities of the positive action promotion councils and information on practical examples of how gender wage disparities have been addressed in practice through positive action measures at the enterprise level.

6. *Indirect discrimination.* The Committee notes that the observations made by all of the workers’ organizations referred to in paragraph 1 above contain references to situations where part-time, temporary or wage workers employed on a daily basis received less remuneration, including benefits, than regular workers, even when carrying out the same or similar duties as the latter. It is alleged that the lower rates of remuneration paid to non-regular workers constitute indirect sex discrimination because of the high proportion of women employed in these categories. For instance, the Staff Union of Okayama University Medical School states that as of 1 April 2002 the Okayama medical school and university hospital employed 299 part-time workers under multiple wage-based short-term contracts, 94.3 per cent of whom were women. Apparently these part-time workers carried out the same tasks as regular employees, but under less favourable working conditions, including lower pro rata wages and benefits. The Women’s Union Kansai also refers to cases of female part-time workers employed by the former Japan National Railways who received less remuneration than their full-time counterparts. However, insufficient information is given as to the gender structure of the part-time workforce in that establishment. JNHU’s Kinki District Council provided additional information on the working conditions of wage-based workers in national hospitals and sanatoriums, who are predominately women. JNHU indicates that after salary reductions in 2002 for both regular and wage-based personnel in these institutions, wage disparities between these categories remained unchanged. The ICFTU and RENGO expressed continuing concern about the use of two-track employment management systems and their discriminatory impact on the wage levels of women.

7. The Committee notes from statistical information provided by the Government that in 2001, among regular employees in national and local government institutions, 31.8 per cent of full-time workers were women, compared to 70.2 per cent of women among part-time workers. In the private sector, only 31.6 per cent of regular full-time workers were women compared to 68.6 per cent among regular employees employed on a part-time basis. The Government indicates that the tripartite Labour Standards Investigative Council adopted a report on future part-time employment policy which recommended that fair treatment should be accorded to part-time workers. The Committee notes that this approach has been subsequently reflected in amendments to the Guidelines under the Part-Time Work Act. The Government is asked to continue to provide information on the measures taken or envisaged to promote wage parity for part-time workers, taking into account the principle of equal remuneration for men and women workers for work of equal value, including the measures taken to promote the abovementioned guidelines and indications as to their effective application. Please also provide detailed statistical information on the proportion and sex composition of part-time workers across the various sectors, as well as the wage levels of male and female part-time workers.

8. With regard to the use of career tracking systems and further to the Committee’s comments, the Government refers to the Guideline Concerning the Measures for Improving Wage and Employment Management for Eliminating Wage Disparity Between Men and Women mentioned above, which provides guidance to enterprises on whether the introduction of two-career tracks is necessary and on the importance of allowing mobility between the two-career tracks. The guidelines also highlight the need to provide appropriate information on the functioning of the career tracking system to the employees concerned. Further, the Government indicates that administrative guidance is still being provided to ensure that enterprises implemented such systems in accordance with the Equal Employment Opportunity Act and the Matters to be Noted in Relation to Employment Management Differentiated by Track. Recalling its previous comments on the use of career tracking systems, the Committee notes these additional efforts to lessen the use of such systems and to minimize their gender discriminatory effect. It asks the Government to provide information on the impact of these

measures, including their effects on the wage levels of men and women employed in companies using career tracking systems, recent statistical information on the extent to which such systems are still being used and the distribution of men and women within each track.

9. The Committee notes from the Government's report that in 2001, out of a total of 177,715 temporary or daily workers in national and local government institutions, 78.9 per cent were women. In the private sector, overall there was a more balanced representation of men and women in the category of temporary and daily employees. The number of wage-based employees employed on a daily basis in national hospitals and sanatoriums decreased by 2,742 between 1996 and 2002, while the number of permanent nurses increased by 1,983 during the same period. The Committee asks the Government to continue to provide information on the sex composition of temporary and daily or wage-based workers across the various sectors and industries. With regard to the continued reliance on such employment in national and local government institutions, the Committee wishes to receive further information on the distribution of temporary and daily workers according to the different institutions, disaggregated by sex. Please also indicate the nature and content of the work carried out by these workers as compared to regular employees.

10. The Committee notes the Government's view that part-time work, wage-based or temporary employment, as well as two-track career systems, were not discriminatory in themselves and that there was a continuing national debate on what constituted indirect discrimination. The Committee takes this opportunity to emphasize that, in the context of the Convention, the concept of indirect discrimination refers to apparently neutral situations, regulations or practices which result in unequal treatment with regard to remuneration of men and women performing work of equal value. It occurs when the same condition, treatment or criterion is applied equally to men and women, but results in a disproportionately adverse impact on persons of one sex, and is not based on an objective job-related justification. The Committee shares the view that the use of part-time, temporary and wage-based workers, as well as two-track career management systems, may not be discriminatory per se. However, it points out that where workers employed in such categories are paid lower rates of remuneration than regular workers for performing work which is of equal value and where these categories are dominated by one sex (in this case women), the question of indirect sex discrimination does arise and should be examined in the light of the particular circumstances and the reasons given for the differential treatment. Unless there is an objectively justifiable, job-related reason for such differential treatment, then indirect discrimination will be found to occur. The Committee therefore considers it important that the Government, in consultation with workers' and employers' organizations, puts in place the necessary legal, institutional and procedural framework under which instances of indirect discrimination in the context of part-time, temporary and wage-based employment, as well as the use of two-track career management systems, can be identified and remedied.

11. *Article 3. Objective appraisal of the job.* RENGO states that there was a need to study and develop techniques of job evaluation in order to implement the principle of equal remuneration for work of equal value. In this regard, the Government is asked to provide information on any measures taken or envisaged to promote methods for the objective appraisal of jobs on the basis of the work carried out.

12. *Measures of redress.* The Committee notes that labour inspections carried out in 2002 found 12 cases of violations of section 14 of the Labour Standards Act, but that no case was referred to the prosecutor's office. The Committee reiterates its request to the Government to provide information on any cases brought before the dispute adjustment commissions under the Equal Employment Opportunity Act. Please also continue to provide information on any judicial decisions relevant to the application of the Convention.

Workers with Family Responsibilities Convention, 1981 (No. 156) ***(ratification: 1995)***

The Committee notes the discussion in the Conference Committee on the Application of Standards in June 2004 and the Conference Committee's request to the Government to provide information in its next report on the matters raised in the discussion, as well as on those matters raised by the Committee of Experts in its observation and direct request made in 2003. The Committee also notes the observations from the Japan National Hospital Workers Union (JNHWU/ZEN-IRO) dated 4 August 2003 and from the Japanese Trade Union Confederation (JTUC-RENGO) dated 31 August 2003, which have been forwarded to the Government. RENGO acknowledges that certain progress has been made with regard to the revision of the Child-Care and Nursing Care Leave Act but raises a number of issues that still need to be addressed. JNHWU/ZEN-IRO states that in the context of the establishment of the National Hospital Organization, where many wage-based workers had obtained regular status employment, some wage-based nurses were only offered part-time status due to their family responsibilities. The Committee will address these comments together with the Government's response to these comments and to its 2003 observation and direct request.

Latvia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1992)***

1. *Article 1 of the Convention. Prohibition of discrimination.* The Committee notes with interest that under section 7 of the new Labour Code of 2002 everyone has an equal right to work; to fair, safe and healthy working conditions; as

well as to fair remuneration, irrespective of race, skin colour, gender, age, disability, religious, political or other conviction, national or social origin, property or marital status or other circumstances. Section 27 of the Labour Code sets out a prohibition of discriminatory treatment on the same grounds in employment and occupation, providing definitions for direct and indirect discrimination and harassment, including sexual harassment. The Committee also notes with interest the provisions regarding non-discriminatory job advertisements and interviews (sections 32 and 33). In the Committee's view these new provisions are in accordance with the Convention and should operate to improve its application. It requests the Government to provide information on the measures taken to make these new equality provisions known to the broader public and to provide information on their practical application and enforcement, including through relevant administrative and judicial bodies.

2. *Discrimination on the grounds of national extraction.* The Committee regrets that the Government has not provided any information in reply to the Committee's previous observation in which it had expressed concern over certain provisions of the State Language Act, 1999, which might have a discriminatory effect on the employment or work of the large Russian-speaking minority in the country. The Committee particularly recalls that section 2(2) of the Act provides that the use of language in private institutions, organizations and enterprises and the use of language with regard to self-employed persons shall be regulated in cases when their activities concern legitimate public interests. Legitimate public interest is broadly defined by the Act as including public safety, health, morals, health care, protection of consumer rights and labour rights, workplace safety and public administrative supervision. In this context the Committee notes the Regulations Regarding the Extent of Official Language Knowledge Required for the Performance of Professional and Official Duties, and Procedures for Testing Fluency of the Language of 19 June 2001. The Regulations assign levels of Latvian language proficiency to the various occupations and positions in the public sector (Annex I of the Regulations) and to some private sector occupations and positions which involve the exercise of certain public functions (Annex II of the Regulations). The Committee also notes that according to paragraph 5 of the Regulations the level of language proficiency for positions in the private sector other than those listed in Annex II shall be determined by the employers themselves. The Committee considers that these regulations provide guidance for the public sector in accordance with the Convention.

3. The Committee remains concerned, however, that the State Language Act and the implementing regulations may be interpreted and applied, particularly in the private sector, in a manner that would be indirectly discriminatory on the basis of national extraction. It also notes that the United Nations Committee on the Elimination of All Forms of Racial Discrimination raised this issue with the Government in its concluding observations of 21 August 2003 (CERD A/58/18, paragraph 445). The Government is therefore once again requested to provide detailed information on the application of the State Language Act with regard to access to employment and occupation, including administrative and judicial decisions and sanctions imposed for violations of the Act. The Committee also requests the Government to provide information on any measures taken to assess the impact of the Act on Latvia's ethnic and linguistic minority groups in respect of their employment and occupational opportunities; and on efforts made by the Government to provide Latvian language training to these groups.

4. *Discrimination on the grounds of political opinion.* The Committee also regrets that the Government's report contains no information in reply to the Committee's previous comments regarding one of the mandatory requirements established by the State Civil Service Act 2000 in order to qualify as a candidate for a position in the civil service which is that the person concerned "is not or has not been in a permanent staff position in the state security service, intelligence or counter-intelligence service of the USSR, the Latvian SSR or some foreign State" (section 7(8)). A similar provision is found in the Act on Police of 1999, stating that "the police shall not employ a person who is or has been a permanent or temporary staff employee of the security service (intelligence or counter-intelligence service) of the USSR, Latvian SSR or some foreign State; an agent, a resident or keeper of a safe house (under any form of cover organization)" (section 28, fourth sentence) on the basis of employment in security forces of the former political regime. The Committee considered these exclusions as not sufficiently well defined and delimited to ensure that they do not become discriminatory in employment and occupation based on political opinion. The Committee therefore once again hopes the Government will revise the provisions concerned. The Government is further requested to provide detailed information in its next report on the application of the provisions, including the number of persons and their levels who have been dismissed or excluded from being a candidate for a civil service position based on section 7(8) of the State Civil Service Act and from being employed by the police based on section 28 of the Act on Police. Please also provide information on whether persons affected have appealed against their exclusion or dismissal on the basis of these provisions to the National Human Rights Office or the courts, as well as administrative or judicial decisions in respect of such cases.

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

Liberia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1959)***

Failure to report. The Committee notes that for the past ten years the Government's report has not been received or did not contain any information in reply to the Committee's comments. Having previously noted that there was no

legislation or national policy to implement the Convention, the Committee once again urges the Government 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 to V of the report form*.

Libyan Arab Jamahiriya

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1961)***

The Committee notes the Government's reports, including a further reply to the comments by the International Confederation of Free Trade Unions (ICFTU) of 2000.

1. *Articles 2 and 3 of the Convention. Discrimination based on race, colour or national extraction.* In its previous observation, the Committee had referred to the comments of the ICFTU in 2000 alleging that acts of violence, stemming from the anti-black sentiment in the population, had been perpetrated by young Libyans against black Africans, following a decision of the Libyan authorities to take drastic measures against the employment of foreigners. In its reply, the Government recognized that disputes between citizens of the Libyan Arab Jamahiriya and citizens of other countries had occurred and indicated that the issues had been forwarded to the judiciary. The Committee notes that the judiciary has rendered a decision on this matter and that the Government will inform the Committee in due course on any further developments. The Committee requests that a copy of this judgement be forwarded to the Office. As for the measures against the employment of foreigners, the Committee notes that the Government continues to maintain that there is no discrimination or bad treatment towards foreigners of whatever nationality and that numerous black Africans work or are employed.

2. The Committee notes this information as well as the Government's statement that it is endeavouring to provide all the necessary care and treatment to foreign workers from African or other countries who contribute to the development process. While welcoming this statement, the Committee remains concerned that a climate of anti-black sentiment and racially motivated acts against foreign workers may well have an adverse impact on their employment situation and terms and conditions of employment. The Committee stresses that the Convention protects both citizens and non-citizens against discrimination on the basis of race, colour and national extraction. It therefore urges the Government to provide the information previously requested on measures taken: (1) to prevent racially motivated violence against foreign workers; (2) to ensure that these workers are not being discriminated against in employment and occupation on the basis of race, national extraction and colour; and (3) to promote tolerance, understanding and respect between Libyan citizens and workers from other African countries. To this end, the Government may wish to consider undertaking studies with a view to effectively assessing the occurrence of racial and ethnic discrimination in employment and occupation, and taking the measures necessary to eliminate and prevent such occurrences.

3. The Committee regrets to note that the Government once more failed to provide information enabling the Committee to assess the progress made in the application of the Convention generally. It therefore reiterates its previous comments, which read as follows:

Articles 2, 3 and Parts IV and V of the report form. The Government reiterates that discrimination is prohibited in legislation and that in practice there are no complaints about discrimination. The Committee once again recalls that it is concerned over statements to the effect that the Convention is fully applied, particularly when no other details are given on the content and methods of promoting and implementing the national policy on equal opportunity and treatment or on the employment situation of women and men and members of various groups. The Committee also recalls that the absence of complaints concerning discrimination usually means a lack of awareness and/or insufficient complaint or inspection mechanisms. The Committee therefore once again requests the Government to supply detailed information on the measures taken or envisaged to ensure effective application of the principle of equality of opportunity and treatment in employment and occupation and particularly on the practical effect given to the legislative prohibition against discrimination. Please indicate the measures taken to obtain the cooperation of employers' and workers' organizations in promoting the acceptance and observance of non-discrimination and equality in employment and occupation.

Discrimination on the basis of sex. The Committee recalls its previous comments concerning the access of women to all types of work and sectors of production, and not only those corresponding to traditional stereotypes of "women's work". It notes the Government's statement that training opportunities are available to women on an equal footing with men in all fields. The Committee again asks the Government to supply statistical data in its next report on women's participation in training in the various fields of study and on the quantitative as well as qualitative position of women in the labour market. Please also provide copies of reports or studies which illustrate the implementation of the principle of equality of opportunity and treatment between men and women with regard to access to employment and terms and conditions of employment in both the public and private sector. Noting that section 1 of Act No. 8 of 1989 states that women are entitled to assume judicial and public prosecution posts, as well as posts in the judicial administration on the same conditions as those offered to men, the Government is requested to provide any information, including any statistical data, that would allow it to assess the impact of the Act on the equal access of women to posts in this specific field.

The Committee hopes that the Government will make every effort to provide in its next report full information in this regard.

Madagascar

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)

Articles 1 and 2 of the Convention. Discriminatory provision in collective agreement. The Committee recalls the observations made by the Union of Commercial On-Board Staff (PNC) of Air Madagascar concerning the unequal remuneration arising out of the difference in the retirement age for male and female on-board staff, which is set at 50 years for men and 45 for women by the applicable collective agreement. The Committee had noted that the Arbitration Council of the Court of First Instance of Antananarivo ruled on this issue on 18 November 1997, when it declared the relevant provisions of the collective agreement inapplicable on the ground that they constituted discrimination on the basis of sex. The Committee had shared this conclusion and encouraged the Government to make every effort to resolve the situation in conformity with the principles of equality. In this regard, the Committee notes the Government's indication that its observation had been brought to the attention of Air Madagascar. The Committee also notes that, in the meantime, the Supreme Court of the Republic of Madagascar ruled in its judgement of 5 September 2003 in the case of *Dugain and others v. Air Madagascar* that the courts may annul provisions of collective agreements when they are contrary to public order or to international conventions protecting the rights of women, including Convention No. 111. The case was sent back to the lower court. The Committee welcomes this decision and asks the Government to include in its next report, information on the outcome of these proceedings, including relevant judicial decisions, and the impact on the employment and remuneration situation of the relevant male and female staff.

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

Malta

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1988)

Articles 1 and 2 of the Convention. Application in law. The Committee notes with interest the adoption on 9 December 2003 of the Equality for Men and Women Act (No. 1), 2003, prohibiting direct and indirect discrimination based on sex or family responsibilities, as well as the adoption in December 2002 of the Employment and Industrial Relations Act (No. 22), 2002. Further to previous comments, it notes with satisfaction that section 27 of the Employment and Industrial Relations Act sets out the principle of equal remuneration for men and women workers for work of equal value and that the definition of wages is sufficiently broad to include other emoluments (section 2), in accordance with *Article 1 of the Convention*. It further notes that a worker alleging unequal payment for work of equal value may, within four months of the alleged discrimination, lodge a complaint with the Industrial Tribunal (section 30(1)) and that such workers are protected against victimization (section 28). The Government is asked to provide information on the application and impact of these new legal provisions in relation to promoting equal remuneration between men and women.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1968)

1. *Article 1 of the Convention. Legislative protection.* The Committee notes the adoption of the Employment and Industrial Relations Act (Act No. 22 of 2002) in December 2002 (which is a consolidation of the Conditions of Employment (Regulation) Act and the Industrial Relations Act). It also notes with interest the adoption of the Equality for Men and Women Act (Act No. 1 of 2003) on 9 December 2003 which reinforces the legal protection against gender-based discrimination.

2. *Prohibited grounds of discrimination.* The Committee notes that section 26 of the Employment and Industrial Relations Act sets out the principle of equal opportunities in employment and occupation for men and women workers and prohibits discrimination on the following grounds: marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers' association. However, it notes that the Act does not include certain prohibited grounds of discrimination: race, national extraction and social origin, which are enumerated in *Article 1(1)(a)* of the Convention. The Committee requests the Government to provide detailed information with its next report on the measures taken or envisaged to ensure that discrimination on the grounds of race, national extraction and social origin are prohibited in law and practice in accordance with the Convention.

3. *Equality of opportunity and treatment of men and women.* The Committee notes that the Government has adopted for the first time an Equality for Men and Women Act prohibiting discrimination in employment and occupation on the grounds of sex or because of family responsibilities and that it explicitly prohibits sexual harassment in employment and occupation. It also notes the establishment of the National Commission for the Promotion of Equality for Men and Women (under section 12 of the Equality for Men and Women Act) which is responsible, inter alia, for identifying, establishing and updating all policies directly or indirectly related to issues of equality for men and women workers and for investigating and mediating any claim of discrimination. It notes that the Commission shall submit an annual report of its activities (section 15). The Committee requests the Government to provide information with its next report on the measures taken or envisaged by the National Commission for the Promotion of Equality for Men and

Women to promote gender equality and to provide a copy of its annual report, once it has been issued. Please also supply information on the implementation and impact of the Act.

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 very brief first report. It also notes the comments submitted by the International Confederation of Free Trade Unions (ICFTU) dated 9 September 2002 and the Free Confederation of Workers of Mauritania (CLTM) of 17 December 2002, which had been sent to the Government for its reply thereon.

Articles 1(b) and 2 of the Convention. The Committee notes the comments by the CLTM regarding the low participation of women in certain economic sectors and in high-level education, the discriminatory practices in recruitment and the fact that the labour inspectorate is preventing workers from denouncing such practices and from engaging in legal proceedings. It also notes the allegation by both the ICFTU and the CLTM that while the Constitution prohibits discrimination based on sex and the Labour Code provides for equal remuneration for equal work, only a minority of women workers benefit from this protection. The Committee notes that most of these allegations concern issues covered by Convention No. 111 and refers to its comments made relating to the application by Mauritania of that Convention. With regard to inequalities in remuneration, the Committee asks the Government to provide a reply on this matter with its next report, which the Committee will examine along with the comments by the ICFTU and the CLTM at its next session.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)

The Committee notes the Government's report, received in September 2004. It also notes the comments submitted by the Free Confederation of Mauritanian Workers (CLTM) received in February 2003 and sent to the Government in March 2003, which relate in part to issues covered by Convention No. 111, notably discriminatory practices in recruitment, occupation and classification and the unequal treatment of certain groups of Mauritians. The International Confederation of Free Trade Unions (ICFTU) also submitted comments, on 9 September 2002, concerning participation of women, and these are being addressed in a direct request. The Committee refers also to its observation on the Forced Labour Convention, 1930 (No. 29), following the direct contacts mission to the country focusing on that Convention, in May 2004.

1. *Article 1 of the Convention. Discrimination on the basis of race, colour, national extraction, and social origin.* The Committee notes the allegations by the CLTM that the State has established an arbitrary political and legal system according to which certain Mauritians, in particular slaves, former slaves and descendant of slaves are excluded from active life and deprived of certain economic and social rights. The CLTM states that they are unpaid or underpaid, and that they do not have equal opportunities in employment due to discriminatory practices in recruitment, occupation and classification. The CLTM further alleges that the labour inspectorate is preventing workers from denouncing discriminatory practices and from bringing legal proceedings against their employers. The system is said to allow public and private establishments to violate the laws on a daily basis without being prosecuted and to discriminate in recruitment on the basis of social origin and political belonging. The Committee notes that these allegations relate closely to the concerns expressed in its previous observation regarding the treatment of former slaves and their descendants and the alleged exclusion and discrimination against some groups of the population, including black communities, in respect to access to employment. In this context, the Committee had requested information, including statistics, on measures taken by the Government to promote equal access of disadvantaged social and ethnic groups to training employment and occupation irrespective of their race, colour, or social origin.

2. The Committee notes that the Government's report replies to some of the issues raised by the ICFTU and CLTM. It notes the Government's statement that, in Mauritania, there are no disadvantaged ethnic groups because, in the past, the same social stratification (nobles, professionals or caste groups, tributaries and those held in slavery) existed amongst all of the four main ethnic groups composing Mauritanian society (Moors, Pulaar, Soninké and Wolof), and slavery used to exist within all of these groups. The Government adds that it is taking efforts to improve the conditions of all those living in poverty, who include others in addition to former slaves. The Committee also notes the adoption of the Labour Code of 2004, section 395(2), of which contains the principle of non-discrimination on the basis of race, national extraction, colour, sex, political opinion, religion and social origin, and section 104 of which requires the employer to respect the principle of non-discrimination with respect to recruitment. The Committee recalls that under Convention No. 111, "social origin" is a prohibited ground of discrimination and refers to situations in which an individual's membership of a class, socio-occupational category or caste determines his or her occupational future. It points out that prejudices and preferences based on social origin may still persist even when rigid stratification in society have disappeared, and that former slaves and their descendants may continue to face discrimination in employment and occupation due to their social origin – as they are said to do by the CLTM. Noting that the Strategic Framework on the Fight against Poverty aims to reduce inequalities and to respond to the basic needs of the most deprived, the Committee asks the Government to provide

information on the measures taken or contemplated under this Framework to improve the levels of training and employment as well as the social mobility of the most disadvantaged men and women of all ethnic groups, and in particular the former slaves and their descendants, and to reduce discriminatory practices against them with respect to employment and occupation, and especially recruitment. The Committee also requests the Government to provide information on the measures taken to ensure effective and impartial supervision by the labour inspectorate of discriminatory practices and to guarantee the right of workers to institute legal proceedings when they consider they are being discriminated. It refers in this connection to the comments being made under Convention No. 29 on the strengthening of labour inspection.

3. The Committee notes the Government's statement that it cannot supply any statistics on the impact of its actions targeting the most advantaged layers of society as these concern all citizens irrespective of their ethnic origin. The Committee recalls that in order to assess the impact of any government national non-discrimination policy and to determine the need for taking special measures to promote equality, some indication is needed, be it overall trends in employment and training, on the labour market situation of all groups in society. The Committee urges the Government to provide such information in its next report, to the extent it is available; and to indicate whether assistance is needed in the construction of an adequate statistical system.

4. *Discrimination on the basis of national extraction.* The Committee continues its follow-up to the recommendations made in 1991 by a committee established by the Governing Body to examine a representation made by the National Confederation of Workers of Senegal (CNTS), under article 24 of the ILO Constitution, alleging failure to apply the Convention, in particular to black Mauritanian workers of Senegalese origin whose employment was adversely affected as a consequence of the conflict with Senegal in 1989. In this context, the Committee is monitoring whether appropriate measures are implemented to compensate for the harm done to Mauritanian nationals who were subjected to discrimination, by reintegrating such persons into their employment and re-establishing their related rights. The Committee notes the Government's statement that appropriate measures have been taken to reinsert these workers in professional life and to offer retirement pensions to those entitled to them. The Committee is bound to urge the Government once more to provide specific details on the measures taken and the number of affected workers that have been effectively inserted in government employment or alternatively provided with compensation, and those who received retirement pensions after the events of 1989, and on any administrative and legal appeals lodged by those who consider that they have suffered prejudice in these areas.

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

Morocco

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1979)

1. *Article 2 of the Convention. Application in the private sector.* In its previous observation, the Committee had noted the communication by the International Confederation of Free Trade Unions (ICFTU) alleging wage discrimination in the female-dominated export-oriented textile and informal manufacturing industries, including the non-payment of minimum wages and supplementary hours of work. Having noted the absence of a government reply to the alleged wage discrimination in these industries, the Committee had requested information on the specific measures taken to ensure the application of the minimum wage legislation in these industries and to provide information, including statistics, on the manner in which the principle of equal remuneration between men and women for work of equal value, including the payment of additional allowances, was applied.

2. The Committee notes with interest that Act No. 65-99 on the new Labour Code has entered into force and that sections 9 and 346 of the Code prohibit discrimination based on sex in a number of areas, including wage discrimination between men and women for work of equal value. It also notes that a pilot programme to promote decent work is being implemented with ILO assistance in the textile and clothing industries. Noting that the action plan to promote decent work in this sector aims at eliminating all forms of discrimination between men and women, the Committee asks the Government to provide information on the activities under the action plan to address existing wage inequalities in the sector and to promote the principle of remuneration between men and women for work of equal value.

3. *Enforcement.* Noting the Government's statement that the Labour Inspectorate monitors the application of the provisions of the Labour Code and that regular inspections are carried out in the textile and clothing industries, the Committee asks the Government to indicate in its next report the manner in which the Labour Inspectorate ensures that sections 9 and 346 of the Labour Code are applied in the textile and clothing industry, as well as in the informal manufacturing industries. Please also provide information on the contraventions detected and the remedies provided.

4. *Article 2. Equal remuneration in the public sector.* In its communication of 2003, the ICFTU had also maintained that wage discrimination, including in respect of leave benefits, existed in the public service where women were concentrated in a few occupational categories and under-represented in management positions or posts of responsibility. The Government, in reply, had referred to the various legislative texts providing for equality between men and women in access to the public service and indicated the progress made with regard to the access of women to high-level posts in the public sector. While appreciating the progress made, the Committee had stressed that equal pay legislation and gender-neutral salary scales, while being essential steps, are not sufficient in themselves to apply the

Convention. It had also noted that the number of women in high-level positions remained low and had encouraged the Government to continue its efforts to implement specific measures to promote the recruitment of women to all categories in the public service.

5. The Committee notes the Government's statement that the concentration of women or men in certain job categories is explained, not by preferences based on sex, but by the free choice of the person concerned to opt for a certain function in the public service because of his or her qualifications. The Committee points out that discrimination is often not caused by legal restrictions but rather flows from social stereotypes that deem certain types of work as suitable for men or for women. As a result, persons may apply for a job based on work they are deemed to be suitable for rather than on actual ability and interest. Such stereotypes, based on traditional assumptions concerning gender roles in the labour market and in society, including those assumptions relating to family responsibilities, channel women and men into different education and training and subsequently into different jobs and career tracks. This occupational gender stereotyping results in certain jobs being held almost exclusively by females with the pernicious effect that "female jobs" are often undervalued for purposes of wage rate determination, regardless of the actual skill, effort and education required in the performance of these jobs. Therefore, the Committee refers in this regard to its comments on the application of Convention No. 111 in the public service and asks the Government to provide information with its next report on the specific measures taken to promote the recruitment of women to all categories in the public service with a view to reducing wage inequalities between men and women.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1963)***

1. In its observation of 2003, the Committee noted a communication from the International Confederation of Free Trade Unions (ICFTU) alleging the existence of legal provisions restricting women's employment directly and indirectly, inequalities between men and women in access to high-level posts in the public service, and serious breaches of the Labour Code in the textile exporting industry, where the great majority of employees are very young and illiterate women. In reply the Government stated that there were no discriminatory provisions in the national legislation, that all discrimination was expressly prohibited in the new Labour Code and that progress had recently been made in women's access to posts of responsibility. So that it could make a fuller assessment regarding the ICFTU's allegations, the Committee requested more detailed information on the distribution of men and women at the various levels of the public administration, working conditions in the textile exporting industry, restrictions imposed in law or in practice on women's employment, and any difference in the treatment afforded to men and to women by the Family Code that might operate to women's disadvantage in the labour market. It furthermore requested the Government to provide the text of the new Labour Code.

Legal reforms

2. The Committee notes with interest the adoption, on 16 January 2004, of the new Family Code, which ensures equal rights and responsibilities for men and women within the family and abolishes a number of restrictions in the old Moudawa (personal status code) that placed women at a disadvantage. According to the Government's latest report, the Family Code marks a turning point in the history of Morocco, and was initiated by feminist circles and is well suited to Morocco's political, legal, economic and social circumstances. In the Committee's view, the new Family Code is an important step in the pursuit of equality between men and women in society, and creates a new environment which should be conducive to more rapid progress towards equal opportunity and treatment for men and women in employment.

3. The Committee notes with interest that section 9 of the new Labour Code Act No. 65-99 prohibits, as the Convention requires, all discrimination based on race, colour, sex, disability, marital status, religion, political opinion, trade union affiliation, national extraction or social origin, which results in a breach or distortion of the principle of equal opportunity and treatment in employment or occupation, including in hiring, the conduct and distribution of work, vocational training, wages, promotion, grant of social benefits, disciplinary measures and dismissal. Section 9 also lays down for women the right to conclude a work contract and the right, whether or not they are married, to join an occupational organization and to participate in its administration and management. The Committee further notes that section 40 of the Code treats sexual harassment as serious misconduct on the part of an employer or head of an enterprise.

4. The Committee further observes that the Penal Code, as amended in 2003, now contains several new provisions that impose penalties on all forms of discrimination and secure better protection for women, in particular against sexual harassment, and notes that the reform of the Commercial Code and the Dahir on obligations and contracts give women the right to hire out their services and to trade without their husbands' consent.

Policies and practices

5. The Committee welcomes the major efforts the Government has made in recent years to create a legal framework for the elimination of discrimination against women and the promotion of equal opportunities and treatment, including in employment. It recalls, however, that legal texts alone are not sufficient to ensure that the Convention is fully applied. A whole set of practical measures is needed as well in order to remove any obstacles to the implementation of equality and reduce inequalities that exist in practice between men and women in employment and work.

6. In this connection, the Committee notes that the fifth periodic report of Morocco on the application of the International Covenant on Civil and Political Rights (CCPR/C/MAR/2004/5) acknowledges that although there is wide-ranging legislation, disparities persist, including in employment, that are attributable to economic and geographical considerations and deep-seated traditions and customs within certain social milieux. The Committee requests the Government to indicate in its next report the measures that have been taken or are envisaged to encourage the necessary shift in the mentalities and conduct of men and women alike, and to promote understanding and acceptance of the principle of equality between men and women, in particular in work and employment.

7. A major obstacle to equality in practice is the rate of illiteracy among women which significantly limits their ability to assert the rights conferred on them by law. According to the abovementioned report on the application of the International Covenant on Civil and Political Rights, despite the Government's efforts Moroccan society continues to be plagued by illiteracy, and illiterate women, who are predominantly from rural areas, account for 61.9 per cent of illiteracy nationwide. The Committee calls on the Government to persist with its measures to eradicate female illiteracy and to encourage girls and women to acquire education and training that will afford them access to employment on a par with men. It hopes that the Government's next report will contain information on results obtained in this area.

8. The Committee notes that the last report does not contain the information it requested on the situation of women in the textile exporting industry. It notes, however, from the Government's report on the application of the Equal Remuneration Convention, 1951 (No. 100) that an ILO pilot programme to promote decent work in which the Ministry of Employment and of Social Partners is associated is currently under way in the textile and clothing sector. The executive summary of the programme reports a "decent work deficit", affecting women more particularly: their jobs are more precarious and their wages lower, and they are treated differently in terms of recognition of length of service. The action plan of the pilot programme includes the formulation of a sectoral action plan for the elimination of all forms of discrimination between women and men. The Committee requests the Government to provide information in its next report on any progress made through implementation of the pilot programme. Please also indicate supervisory measures and penalties applied to secure compliance with the laws and regulations on non-discrimination and women's conditions of employment in enterprises in this sector.

9. The Committee notes that the report reproduces information already sent in the previous report concerning the appointment of a number of women to some of the highest ranking posts in the Administration. The Government also provided statistical tables on the numbers of the Administration staff disaggregated by sex, but no information or comments allowing the Committee to assess the extent of any progress. The Committee requests the Government to indicate in its next report whether it intends to implement a policy systematically to promote women to posts of responsibility in the public service and in jobs under Government control, possibly including performance targets and a monitoring mechanism.

10. The Committee notes that in October 2004 a Centre for information, documentation and studies on women was opened and that its purpose is to collect and process demographical and statistical data on the status of women, conduct surveys and studies on women and carry out training and continuous training programmes. The Committee hopes that the Centre will also be used for gathering and analysing statistical data on women's employment, since such information is essential as a basis for defining policies to promote equality of opportunity and treatment such as the one mentioned above. It hopes that in its next report the Government will provide information on the Centre's work on employment issues.

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

Pakistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

The Committee recalls the comments sent by both the International Confederation of Free Trade Unions (ICFTU) and the All Pakistan Federation of Trade Unions, dated 18 September 2001 and 9 July 2003 respectively. The All Pakistan Federation of Trade Unions stresses the need to adopt legislation and establish effective labour inspection services in order to enforce the Convention. The ICFTU alleged that women did not always receive equal treatment with their male counterparts in terms of pay and benefits. Noting that the Government's first report has not been received, the Committee hopes that the Government will make every effort to supply the report in the very near future, including any comments the Government may wish to make in reply to the observations made by the abovementioned workers' organizations.

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

The Committee notes the report of the Government and the communication received from the International Confederation of Free Trade Unions (ICFTU) which has been sent to the Government for comments.

1. In its previous observation, the Committee invited the Government to reply to comments by the All Pakistan Federation of Trade Unions (APFTU) concerning the application of the Convention, alleging that the Government has not held consultations

with employers' and workers' organizations to facilitate the declaration and pursuance of a national policy to promote equality of opportunity and treatment in respect of employment and occupation as envisaged in the Convention. The Committee notes the Government's reply that it has always consulted all stakeholders on all important and policy issues of labour relations. It further notes the assurances given by the Government that it will continue to promote the tripartite consultation process in the future and to involve workers' and employers' organizations in the decision-making process. The Committee draws the Government's attention to the fundamental nature of the right to non-discrimination and the importance of formulating and implementing a national policy in accordance with the requirements of the Convention. The Government is urged to cooperate with the social partners with a view to promoting the acceptance and observance of the national policy to promote equality of opportunity and treatment in respect of employment and occupation and to keep the Committee informed of developments in this regard.

2. *Discrimination on the basis of religion.* The Committee notes that the Government did not provide any new information in response to the Committee's previous requests related to discrimination on the basis of religion. The Committee recalls its hopes that the Government would review section 295C of the Penal Code, or the "Blasphemy Act", which provides that anyone guilty of defiling the name of the Prophet Mohammed could be subjected to the death penalty, and sections 298B and 298C of the Penal Code, which establish sentences of imprisonment for up to three years for any members of the Qadiani, Lahori and Ahmadi religious groups who, inter alia, preach or propagate their faith, whether by spoken or written words, or by visible representation. It also requested the Government to reconsider its position with regard to the declaration required to obtain passports, to the effect that the founder of the Ahmadi movement was a liar and an impostor, which is designed to prevent non-Muslims from obtaining passports which identify them as Muslims. The Committee therefore is bound to express its concern once again that the enjoyment of equality of opportunity and treatment in respect of education and employment for certain religious minorities is necessarily impaired by the application of the measures referred to above. It also reiterates its request to the Government to provide statistical data on the professional situation of the various religious minorities, including the Ahmadis, with particular regard to their access to employment and their conditions of employment. The Committee also hopes that the Government will provide detailed information on the measures taken to guarantee in practice non-discrimination on the basis of religion for all aspects of employment (that is access to vocational training, employment and the various occupations, as well as terms and conditions of employment). The Committee also reiterates its request for information on the strategy implemented by the Minorities Affairs Division of the Federal Government and on the work of the National Commission for Minorities. It further requests the Government once again to provide information on the implementation and results of the project on the development and strengthening of governmental and non-governmental institutional capacity for the promotion of human rights, implemented by the ILO, which commenced in 1999.

3. *Discrimination on the basis of sex.* As regards the impact of the measures taken by the Government to combat illiteracy of women and the low participation of women and girls in education and training, the Committee notes from the Government's report that only marginal progress was made over the last decades. According to the Government, about 50 per cent of girls drop out of school before completing primary education, and that the drop-out rate for girls in rural areas is as high as 75 per cent. In 1991, only 23 per cent among girls between six and 14 years of age from families living below the poverty line were attending schools compared to 54 per cent among boys. The Government states that the reasons for the continuing problems include social attitudes, the lack of mobility of girls and their additional domestic responsibilities, the financial burden for poor families, the lack of educational facilities and the bad state of existing ones as well as the absence of female teachers beyond the primary level. The Committee notes that the Government has planned to increase the allocations for the educational sector to improve the illiteracy rates of women. The Committee also notes that education is an area of concern of the National Plan of Action for Women and that the Government has launched the Khushali Bank and Khushali Pakistan Schemes which aim at giving an impetus to the female literacy rate. The Government is asked to provide further information on these schemes as well as on the measures implemented under the National Plan of Action to promote education and training of women and girls and the progress made in increasing allocations for education. The Committee requests in particular information on measures taken to increase participation of girls in rural areas in primary and secondary education, including action taken to change social attitudes, such as perceived domestic responsibilities and lack of mobility of girls, that prevent them from enjoying their equal rights to education.

4. As regards the need to take measures to combat segregation in training between women and men, the Committee notes with interest that the National Training Bureau launched a women's training component involving the establishment of a number of training centres offering courses in occupations less traditional for women. The Committee also notes that special programmes and modules are provided for vocational guidance. The Committee invites the Government to provide information on further measures taken in respect of training of women for employment and to supply statistical information on women's participation in such training. It reiterates its request to provide information on the progress made by the project to establish a national training and resource centre.

5. According to the ICFTU, discrimination against women in access to employment remains pervasive including unequal treatment in terms of pay and working conditions, despite the fact that the Government has taken some steps to encourage equal treatment for women, such as the formation of a National Commission on the Status of Women. This information also contains allegations of many reports of sexual harassment at the workplace. The Committee has repeatedly requested the Government to indicate the measures taken or envisaged to give effect to the recommendations made in 1997 by the National Commission of Inquiry for Women, and particularly its recommendation that a detailed examination be made of laws and regulations that discriminate against women, with the aim of proposing amendments and other remedial measures. While noting from the Government's report that no legislative or other measure has yet been taken in this regard, the Committee notes the additional measures to promote gender equality announced by the Minister of Labour, Manpower and Overseas Pakistanis on 30 April 2001 as part of a broader package of labour welfare reform. The measures announced include equal remuneration for men and women for work of equal value through appropriate legislation, enhancement of maternity benefits for female mineworkers, safeguards against sexual harassment through appropriate action and the recruitment of female labour inspectors for enforcement of labour law for female workers. The Committee hopes that the Government will take all measures necessary to work towards the elimination of discrimination in employment and occupation on the basis of sex, and in so doing will give due regard to the recommendations made by the 1997 Commission of Inquiry. The Government is asked to provide information in its next report on any measures taken or planned to promote equality for women, including information on the structure, mandate and activities of the National Commission on the Status of Women and the implementation of the measures announced by the Minister of Labour, Manpower and Overseas Pakistanis.

6. *Special industrial zones (SIZs) and export processing zones (EPZs).* The Committee notes from the report of the Government that separate labour laws for SIZs and EPZs are being finalized. The Committee in particular notes the statement of the Government that the Convention "is being kept in view" while drafting these laws. The Committee hopes that the Government will take the steps necessary to ensure that the labour laws for SIZs and EPZs fully reflect the principles and

objectives of the Convention, in particular the prohibition of discrimination on the grounds listed in *Article 1(1)(a)*, including with regard to terms and conditions of employment and the prevention of and protection from sexual harassment. The Government is requested to provide information in its next report on any progress made in this respect and to provide copies of any new laws as soon as adopted.

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

Paraguay

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

Discrimination on the basis of political opinion. In its earlier observation, the Committee noted with interest that, according to the Government's report, section 95 of the Bill on the Status of Civil Servants and Public Employees, which was before the National Parliament, would repeal Act No. 200 of 17 July 1970, which, by stating that "no public official may engage in activities contrary to public order or to the democratic system established by the Constitution", could give rise to discriminatory practices based on political opinion. The Committee notes from the Government's report that to date no Act in respect of public servants has been approved and that three Bills are before the National Parliament, of which one has the approval of the Drafting Committee. Recalling that it has been pointing out since 1985 that the section 34 of the abovementioned Act is in contravention of *Article 1(1)(a) of the Convention*, the Committee again urges the Government to take the measures necessary to repeal Act No. 200 and requests it to continue 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.

Philippines

Equal Remuneration Convention, 1951 (No. 100) ***(ratification: 1953)***

Article 1(b) of the Convention. Work of equal value. For a number of years the Committee had noted that section 5(a) of the 1990 Rules implementing Republic Act No. 6725 of 12 May 1989, which defined work of equal value to be "activities, jobs, tasks, duties or services [...] which are identical or substantially identical", appears to restrict the application of the principle of equal remuneration for men and women workers to jobs which are essentially the same – a concept which is narrower than that required by the Convention. The Committee recalled in this regard that a proposed amendment of section 135(a) of the Labor Code 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". Noting that the Government merely states in its reply that it has taken note of the Committee's observation, the Committee stresses that, while there is no general obligation to enact legislation, existing legislative provisions that are not fully in conformity with the provisions of the Convention should be amended to bring it into conformity with the meaning of the Convention. It, therefore, hopes that the Government will make every effort to adopt the proposed amendment to the Labour Code or to amend its regulation, so that it is in conformity with *Article 1(b)* of the Convention. In the meantime, the Committee reiterates its request to the Government to provide information on the measures taken to apply, in practice, the principle of equal remuneration between men and women workers for work of equal value where women and men carry out different work.

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. Over a number of years, the Committee had expressed its concern that employers' preferences for hiring males were not considered to constitute unlawful discrimination due to the lack of any specific legislative prohibition against the practice and an overly broad interpretation of inherent requirements of the job. The Committee had noted that section 135 of the Labor Code continued to provide that "favouring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sex" is unlawful discrimination. Noting that section 135 still does not include a prohibition for such favourable treatment of men over women on account of their sex in *hiring*, the Committee urges the Government to take the necessary measures so that women are also protected against discrimination in hiring practices in conformity with the Convention.

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

Saudi Arabia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) *(ratification: 1978)*

1. The Committee notes the communication by the International Confederation of Free Trade Unions (ICFTU) dated 31 August 2004 and the Government's reply, received on 18 November 2004, concerning discrimination against male and female migrant workers on the basis of religion, race, sex and nationality. The Committee notes that some of the issues raised by the ICFTU concern the modalities of the foreign labour sponsorship system and abuses by recruitment agencies which are beyond the scope of Convention No. 111. With respect to the allegations made by the ICFTU with regard to the alleged widespread practice of forced confinement and slavery conditions of many women migrant workers, the Committee refers to its comments in its 2003 observation under Convention No. 29.

Discrimination against migrant workers on the basis of race, religion and sex

2. The Committee notes that the ICFTU has alleged substantial discrimination against migrant workers on the basis of race, religion, sex and nationality. The Committee recalls that nationality is not one of the grounds of discrimination formally prohibited by Convention No. 111, but that migrant workers are nonetheless protected by the instrument in so far as they are victims of discrimination in employment and occupation on the basis of one or more of the prohibited grounds of discrimination in the Convention, including religion, race or sex (see paragraph 17 of the 1988 General Survey on equality in employment and occupation).

3. *Articles 1 and 2 of the Convention. Religious discrimination.* The Committee notes the comments by the ICFTU that migrant workers who are not Muslim must refrain from public display of religious symbols such as Christian crosses or the Hindu *tilaka*. The ICFTU further maintains that although discrimination against Hindus appears to have eased somewhat as job advertisements in newspapers no longer request applications from Muslims and Christians only, religious discrimination continues to exist, either directly when job advertisements exclude members of certain religious groups from applying, or indirectly, by preventing migrant workers from exercising their religion openly, which could deter applicants. The Committee notes the Government's reply that there is no discrimination of any kind in occupation or employment and that the Code on Labour and Workers includes the concept of non-discrimination as it does not deal with a worker's religion, political views, race or national origin and defines a worker as being a person, regardless of his or her beliefs. The Committee requests the Government to state whether job advertisements in fact still include references to religion, and to provide information on the measures taken or envisaged to address the perception of religious discrimination, both direct and indirect, in all its forms.

4. *Discrimination based on race and national extraction.* The Committee notes that the ICFTU refers to the concern expressed by the United Nations Committee on the Elimination of Racial Discrimination (CERD/C/62/CO/8) about allegations of substantial racial prejudice against migrant workers, in particular those coming from Asia and Africa. In this regard, the ICFTU states that although the labour law protects nationals and non-nationals against performing work to which they have not agreed and protects them from abuse by their employer, including contract violations, physical abuse, providing misleading information and unfair treatment, employers of low-paid migrant workers widely disregard these provisions. In the same context, the Committee notes the statement made by the ICFTU that the labour sponsorship system entails a heavy dependency of the migrant worker on his or her employer and allows employers to exert disproportionate pressure on a worker. According to the ICFTU, this has a negative impact on the conditions of work of migrant workers as employers have forced migrant women and men to work excess hours without overtime pay or days of rest. Many employers are said to violate the provisions of the labour law, sometimes resulting in gross exploitation of migrant workers, such as reducing wages illegally and withholding vacation days and accumulated unpaid wages and benefits from their employees. The ICFTU further alleges that the migrant worker's heavy dependency on the employer also inhibits access to the complaint mechanisms of the Labour Disputes Department.

5. The Committee notes that the Government states that there is no discrimination in any form in any of the regulations in force and that there are special regulations governing the relationship between an employer and a migrant worker by virtue of the Council of Ministers Order No. 166 of 12/7/1421. As for the alleged reduction of wages, the Government states that if indeed such practice exists, it would be a blatant violation of the existing regulations and punishable by law. However, the Government indicates that some workers may see their wages diminish because of a distortion resulting from mediating offices in countries sending these workers, because wrong information is given on the exact amount of the wages. The Government is currently discussing the issue with all the concerned embassies and has requested their collaboration to address the issue.

6. The Committee notes the Government's statement that the allegations are too general and that if there are a few cases, this cannot be taken to be a general practice. The Government maintains that the accuracy of this statement is substantiated by the fact that foreign workers continue to come to Saudi Arabia for work. The Government further reiterates its previous statements that the Islamic *Shari'a* is the Constitution of the Kingdom and that its principles of dignity and the prohibition of injustice in all its forms provide for justice and equality. The Committee expresses concern, given the seriousness of the allegations, that the modalities of the foreign labour sponsorship system, especially the

possibility for employers to exert disproportionate power on migrant workers, may lead to discrimination against migrant workers on the basis of race and national extraction with respect to their conditions of work.

7. In its previous observation, the Committee had drawn the Government's attention to *Article 2 of the Convention*, which requires the Government to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation by methods appropriate to national conditions and practice, with a view to eliminating any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin in respect thereof. It has also pointed to the importance of taking measures to address discrimination, both direct and indirect, in all its forms and requested the Government to take the necessary steps to ensure that the principles of the Convention in respect of promoting equality in employment and occupation on all the grounds listed in *Article 1(1)(a)* are fully applied, including the grounds of religion, political opinion, race and national extraction. The Committee finds no indication from the Government's report that any such measures have been taken. It urges the Government to ensure that all workers, including migrant workers, are protected against discrimination on all the grounds prohibited in *Article 1(1)(a)* of the Convention and to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation by methods appropriate to national conditions and practice, which applies to all workers, including male and female migrant workers. It requests the Government in addition to carry out a detailed examination of the situation of migrant workers with a view to determining the situation in practice with regard to allegations of discrimination on the grounds of race and national extraction.

8. *Discrimination based on sex.* The Committee notes the statement by the ICFTU that migrant domestic workers have no protection under the labour law and are particularly vulnerable to exploitation and summary dismissals. Women are particularly affected, as a large majority of these workers are female. At least 1 million women from Sri Lanka, the Philippines and Indonesia are working legally in some of the lowest paid jobs and an overwhelming majority of them are domestic workers. Small numbers of women from Africa and other Asian countries are also employed in low status jobs. The ICFTU maintains that sex-based discrimination is a serious problem in Saudi Arabia and that there is a general pattern of discrimination and abuse of women migrant workers, including forced confinement, sexual harassment, sexual abuse and rape. In addition to complaints related to long hours of work, unpaid salaries, denial of benefits and intimidation from employers, the ICFTU states that many domestic workers share additional hardships, due to their isolated working environment. The ICFTU also claims that the rights of women migrants are further compromised by the prevailing gender segregation, restrictions on freedom of expression and movement, and gender bias in the judicial system.

9. The Committee notes that the Government states, in reply, that domestic workers who live among Saudi families are in a position of security because of the care and attention paid to them by their treatment as members of the family. The Government also reiterates that it endeavours to protect the rights and dignity of all persons who live on its territory and to provide them with justice and equality. Considering the seriousness of the allegations made by the ICFTU with respect to female migrant domestic workers of African and Asian origin, the Committee requests the Government to provide information on the measures taken to ensure that these workers are protected in law and practice against abusive and discriminatory treatment in their living and working conditions.

10. *Enforcement.* The Committee notes the statement provided by the ICFTU that although progress has been achieved in filing complaints, enforcement remains a problem with respect to complaints submitted by migrant workers. The ICFTU refers in particular to the inability or reluctance of Saudi authorities to enforce judgements against employers of migrant workers and to the fact that the overwhelming majority of migrant workers, many of them women, have no knowledge of the relevant enforcement bodies, and no opportunity to access them or be informed of their rights. The Committee asks the Government to provide information on the measures taken or envisaged to inform migrant workers of their rights, to improve their access to the courts and other relevant bodies and to ensure the effective enforcement of judicial decisions regarding their complaints. Please also provide information on the number of complaints of discrimination based on race and sex received from male and female migrant workers and the remedies provided to these workers.

Equality of opportunity and treatment between men and women

11. *Occupational segregation by sex.* For a number of years, the Committee has expressed concern that section 160 of the 1969 Labour Code, which provides that "in no case may men and women co-mingle in the place of employment or in the accessory facilities or other appurtenances thereto", might result in de facto occupational segregation on the basis of sex. The Committee notes the Government's statement that a new draft Labour Code is still under examination in the Shoura Council. It hopes that the draft Code will be adopted soon and that it will take into account the requirements of the Convention and the Committee's comments with regard to the possibility of extending women's occupational and employment opportunities into prohibited areas.

12. Further in this context, the Committee had earlier noted the Government's statements that the application of section 160 did not result in de facto segregation on the basis of sex because women have access to occupations in a number of sectors also occupied by men, including commerce, industry, education and medicine. Consequently, the Committee had encouraged the Government to make every effort to provide statistical data on the distribution of men and women in the different jobs and occupations and at the different levels in the public service. The Committee notes the Government's statement that it is paying great attention to increasing the opportunities and fields for women's

employment and that women have been promoted into state jobs, including higher positions, over the past few years. It is clear from the information provided, however, that the practice of keeping women separate from men in the workplace persists. The Committee notes from the statistics provided on the Saudi employees employed by the State in 2002-03, that men and women are employed in equal numbers in the education sector but that no women are employed as judges, state prosecutors and legal investigators. The Committee asks the Government to indicate the reasons for the non-appointment of women judges, legal investigators and prosecutors and the measures taken to promote their access into these occupations. Noting further the Government's indication that the relevant information and statistics on the distribution of men and women employed in the civil service at grades 13 or higher, and on the distribution of men and women in the different jobs and occupations, will be communicated once they are made available, the Committee hopes that the Government will very soon be in a position to provide such information in its report.

13. *Article 3(e). Access of women to vocational training and education.* The Committee notes from the statistics provided by the Government that the educational and training courses and programmes for women mainly concern teaching, home economics, secretarial skills, computer skills, administration and finance, librarianship, interior design, dressmaking, and food and packaging. While appreciating that the number of women enrolled in vocational training programmes has increased, the Committee must observe that many of these courses offered to women continue to be in fields considered as being traditionally feminine. Noting that no information is provided on the number of women who have enrolled in the abovementioned courses and who have subsequently been employed, the Committee requests the Government to indicate the measures taken in regard to career guidance and placement services targeting women having undergone this training.

14. Further to the above, the Committee notes that in reply to its previous request for information on the implementation of a national policy on non-discrimination in vocational education and training, the Government indicates that it has made some efforts to provide more educational and training opportunities for women. It notes in particular: (a) the adoption of Order No. 63 of 2004 of the Council of Ministers on procedures relating to the determination of curricula and educational inputs for girls; (b) the adoption of Order No. 120/12 of 2004 on increasing the opportunities and areas of work of Saudi women and promoting their training opportunities through the Human Resource Development Fund; (c) the decision to expand the fields of training and education abroad for Saudi women so that it covers all specializations, including engineering; (d) the opening of a women's university and the Government's intention to examine the possibility of opening more universities for women; (e) the adoption of procedures that guarantee increasing job opportunities for women; and (f) the establishment of a national committee specialized in women's affairs. The Committee welcomes these measures and asks the Government to provide information in its next report on how they have contributed in practice in providing more diversified training and education to women and have promoted their subsequent access to a wider range of occupations in the public and private sectors. Please also provide specific information on the activities of the newly established committee on women's affairs with respect to the application of the Convention.

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

Serbia and Montenegro

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 2000)***

1. The Committee notes the communication submitted jointly by the World Confederation of Labour (WCL) and the Confederation of Autonomous Trade Unions of Serbia (CATUS) dated 6 January 2004 providing information on the application by Serbia and Montenegro of Convention No. 111. The communication refers to section 13(1) of the 2001 Labour Code establishing a general health requirement as a condition for establishing an employment relationship; section 14(1) which requires every employee to inform the employer of his or her health condition and other circumstances that significantly influence his or her performance of duties prior to entering into an employment contract; and section 16(3) which requires the employee, when establishing an employment relation, to submit to the employer documents proving that she or he meets the conditions for work. WCL and CATUS allege that sections 13(1), 14(1) and 16(3) of the Labour Code are discriminatory with regard to access to employment, in disregard of *Article 1(1)(b)*, *Article 3(1)(b)* and *(c)*, as well as *Article 3(2) of the Convention*.

2. Noting that the Government's first report has not been received, the Committee hopes that a report will be supplied for examination by the Committee at its next session. It also requests the Government to include any comments it wishes to make in reply to the observations made by WCL and CATUS in order to enable the Committee to consider the matters raised at its next session.

Sierra Leone

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1966)***

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.

Slovenia

Equal Remuneration Convention, 1951 (No. 100) ***(ratification: 1992)***

1. *Articles 1 and 2 of the Convention. Application of the Convention in law.* The Committee notes with satisfaction that the Employment Relationships Act of 2002 gives legislative expression for the first time to the principles contained in the Convention. Article 6(2) provides for equal opportunities and equal treatment of men and women in employment, including the payment of wages and other income arising out of the employment relationship. Article 126 defines remuneration for work carried out on the basis of an employment contract as comprising the wage and other types of remuneration. Section 133(1) states that the employer must pay equal remuneration for equal work and for work of equal value to workers regardless of their sex. The Committee asks the Government to provide information on the application of these provisions in practice, including through administrative and judicial decisions, labour inspections and measures to promote the objective appraisal of jobs in order to determine equal work value.

2. The Committee further notes the adoption of the Act on Equal Opportunities for Men and Women in 2002 which provides measures to promote the effective realization of gender equality, including positive measures in the field of employment. The Committee asks the Government to indicate any measures taken or envisaged under this Act which are aimed at promoting the application of the principle of the Convention.

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

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

The Committee notes the information provided by the Government in its report and the comments submitted by the International Confederation of Free Trade Unions (ICFTU) on 14 May 2002 concerning the application of Convention No. 100 and this Convention with respect to women and the Roma.

1. The Committee notes the ICFTU comments on the gap between male and female wages across the economy, mostly because senior positions and positions with high remuneration tend to be filled by men. The Committee also notes the

Government's information on the measures taken in the framework of the Employment Policy Programme implemented by the Employment Service of Slovenia (EES). It notes that they succeeded in lowering the unemployment rate to 12.2 per cent in 2000 and that 50.7 per cent of the registered unemployed persons are women. However, it notes that neither women nor national minorities are on the list of the target groups of the Employment Policy Programme and that data on the gender structure of participation in the employment and training programmes have not been collected. Further, the Committee notes the data provided in the Statistical Yearbook 2000 of the Republic of Slovenia, in particular table 13.6 on the average monthly gross earnings by level of professional skill by activity and by sex. It notes that men's average gross earnings are higher than women in all sectors of activity, and that in most sectors of activities, the lower the level of education, the higher the difference in earnings between men and women. In particular, the Committee notes sharp differences in the sectors of public administration, education and health and social work, which traditionally employ a large proportion of women. It also notes that the Government acknowledges that de facto equality between women and men cannot be achieved merely by means of legislation, but that it also requires affirmative action. Therefore, the Committee asks the Government to supply information on any measures envisaged or undertaken to enhance equality of opportunity and treatment of specific disadvantaged groups, namely women and national minorities. In particular, it asks the Government to indicate the positive measures undertaken to improve women's opportunities through technical training and vocational guidance, and their equal treatment in access to jobs and in their terms and conditions of employment. It further asks the Government to continue to supply statistical data on employment and remuneration disaggregated by sectors of activity, by sex and if possible, by level of responsibility.

2. The Committee notes the ICFTU's indication that women continue to be under-represented in political decision-making posts. In this regard, it notes the information in the Government's report on the recently increased presence of women in political life. It notes that in the 2000 election 12 women were elected deputies (13.3 per cent), in comparison with the 1996 election when only seven women were elected. It also notes that three women became ministers (20 per cent). Further, it notes the efforts of the Office for Equal Opportunities (former Women's Policy Office) that implemented a twofold strategy: at the regional level, it set up a network of coordinators that encouraged women to participate in politics and run as candidates; at the national level, it developed a network of experts, representatives of women's groups and political parties to develop new approaches for increasing women's participation in decision-making positions. The Committee hopes the Government will continue to promote women's participation in decision-making posts since, despite such progress, women's participation is still low.

3. The Committee notes the ICFTU's statement that Roma suffer disproportionately higher unemployment than other groups, and in many areas are essentially absent from the formal labour force. The Committee notes the Government's efforts to address the participation of Roma in employment and occupation by the "public works programmes" undertaken by two municipalities together with the Employment Service of Slovenia, aiming at training Roma as construction workers for public works. The Government indicates that these programmes were successful in creating better living conditions for Roma families, providing Roma with training and employment opportunities and contributing to their socialization. It also notes a second form of public programmes in primary schools. Nevertheless, the Committee notes the Government's data that show that almost two-thirds of the Roma live on social security benefits, 13 per cent have full-time work, and the rest live on casual or seasonal work. Therefore, the Committee asks the Government to supply information on whether it plans to extend the "public works programmes" to other municipalities or other sectors of activity and on any other positive measures contemplated or taken to target specifically the Roma and correct this de facto inequality of opportunity and treatment. Please also supply information on any measure undertaken to improve the level of educational attainment among Roma children to enable them to prepare better for entry into employment.

4. The Committee notes the adoption of the Labour Relations Act of 24 April 2002, which prohibits discrimination on all the grounds set forth in the Convention, as well as on the basis of age, health condition and special needs, membership of a trade union, social background, civil or financial status, sexual orientation or any other personal circumstances. It also notes with interest that it specifically prohibits indirect discrimination that "may be assumed if the effect of apparently neutral provisions, criteria and practice, is such that they are disadvantageous to persons of certain sex, race, age, medical condition or disability, religious or other conviction, sexual orientation or national origin, unless such provisions, criteria and practice are objectively justified appropriate and necessary". Further, the Act shifts the burden of proof in sex discrimination cases, expressly bans discrimination in job advertisements, provides for the principle of equal remuneration for men and women and the employer's responsibility for providing a working environment free from "undesired treatment of sexual nature, including undesired physical, verbal or non-verbal treatment or other sexually based behaviour". Nothing that the Act will enter into force on 1 January 2003, the Committee asks the Government to provide information on the implementation of the Act in its next report.

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.

South Africa

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2000)

1. *Article 1(b) of the Convention. Equal remuneration for work of equal value.* The Committee had previously noted that section 6 of the Employment Equity Act (EEA) of 1998 prohibits any person to "unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including gender, sex", including with respect to remuneration. It had asked the Government to indicate whether this section required equal remuneration for men and women for work of equal value. The Committee notes, in this regard, the Government's statement that while section 6 does not specifically include this principle of the Convention, it nonetheless prohibits unfair discrimination based on sex. In this context, the Committee notes with interest the judgement by the Labour Court of 8 December 1999 in *Louw v. Golden Arrow Bus Services* stating that although the principles of equal pay for equal work and analogously for work of equal value are not enshrined in the unfair labour practice definition, they are "principles of justice, equity and logic which may be taken into account when considering if an unfair labour practice has been committed". The Court also holds that it is an unfair labour practice to pay different wages for equal work or for work of equal value if the reason is direct or indirect discrimination on arbitrary grounds or on the grounds listed in the Act which

include sex. The Committee asks the Government to consider amending the Employment Equity Act so as to provide for equal remuneration for men and women for work of equal value.

2. *Article 3. Objective evaluation of jobs.* The Committee notes with interest that the Labour Court in the abovementioned *Louw v. Golden Arrow Bus Services* case relied on evidence by an independent expert explaining the “Peromnes job evaluation system” to determine whether two jobs were of equal value. The Peromnes method, which is widely used, is a points assessment technique using eight factors, each of which is weighted to determine the position of the job in the grade ranking: problem solving; consequences of judgements; pressure of work; knowledge; job impact; comprehension; educational qualification; and training experience. The Committee asks the Government to continue to provide copies of similar case law and information on how the provisions of the Convention are applied in practice in both the private and public sectors. Please also indicate any measures taken or envisaged to promote the use of the Peromnes method or any other method for the objective appraisal of jobs and their impact on reducing wage differentials between men and women.

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

Spain

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)

The Committee notes the information contained in the Government’s report, including its response to comments submitted in October 2002 by the *Confederación sindical de comisiones obreras* (CC.OO) with respect to the application of the Convention.

1. *Application by laws.* The Committee notes with interest the adoption of Act No. 33 of 5 July 2002 modifying section 28 of the consolidated text of the Act on the status of workers. It notes in particular that the notion of remuneration in section 28 of the Act, which provides for equal remuneration between men and women, has been enlarged in conformity with Directive 75/117/EC of 10 February 1975. It also notes the adoption of Act No. 62 of 30 December 2003, Chapter III, which introduces for the first time into Spanish labour law the definition of direct and indirect discrimination. The Committee asks the Government to provide information on the practical application of the abovementioned provisions.

2. *Labour inspection and equal remuneration.* The Committee notes that the comments submitted by the CC.OO include claims that labour inspections with respect to equal remuneration are insufficient both in quantity and in quality. It considers that the labour inspectorate should act not only upon the request of the parties, but also on its own initiative and that the Government should give particular attention to the inspectors being trained to detect indirect discrimination which might exist with regard to remuneration. Further, section 90 of the Workers’ Statute states that collective agreements should be communicated in order to be registered with the labour authority, who will verify at this moment the application of the existing legislation. The CC.OO states that in order to assume responsibility for this function with respect to the principle of the Convention, it is necessary for all public servants of the labour authority to have a deeper understanding of equal remuneration for work of equal value. In its response, the Government indicates that the fourth Equality Plan for Equal Opportunities between men and women, approved by the Ministerial Council on 7 March 2003, is to be implemented between 2003 and 2005. The Equality Plan provides, among other measures, “that priority must be given to the activities of the Inspectorate for Labour and Social Security, with a view to eliminating all types of direct and indirect sex discrimination and with special attention being paid to discrimination in remuneration” (paragraph 2.3.3 of the Plan). This priority has been integrated into the programme of measures adopted by the Inspectorate for Labour and Social Security. The Committee asks the Government to provide information with its next report on the results of the fourth Equality Plan and the activities of the labour inspectorate carried out with the aim of eliminating inequalities in remuneration between men and women.

3. With respect to the role played by the labour authority regarding possible discriminatory clauses in collective agreements, the Government states that in many cases the general directorate of labour asks for modification of those clauses which give rise to discrimination based on sex. The Committee considers that the labour authority may play an important role in ensuring that collective agreements are in conformity with the Convention. It asks the Government to provide more detailed information with its next report on the training that the labour authority receives in this respect, as well as information on the activities carried out to ensure the application of the Convention during the reporting period, and to provide concrete examples.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)

1. *Discrimination based on race, colour, religion and national extraction.* In its observation of 2002, the Committee requested the Government, in view of these serious incidents that had occurred in 2000 in the provinces of Murcia, Alicante and Almeria affecting immigrant workers of Moroccan extraction, to indicate the measures taken with a view to raising public awareness and promoting tolerance towards minority groups and encouraging their integration in the economic and social life of the country.

2. The Committee notes that in reply to that observation, the Government merely repeats the information supplied in 2001 in the report on the Migration for Employment Convention (Revised), 1949 (No. 97), to the effect that a number of bodies have been established to deal with immigration policy and that a new programme has been adopted to regularize and coordinate immigration. No information has been provided on specific measures taken in order to raise public awareness and to promote tolerance towards minority groups.

3. The Committee notes, however, that the last report mentions other important new initiatives to combat discrimination. In particular, Act No. 62/2003 of 30 December 2003 establishes, in Chapter III, a series of measures to apply effectively and in practice the principle of equal treatment and non-discrimination particularly in respect of racial or ethnic origin, religion or belief, disability, age and sexual orientation. It introduces the notion of indirect discrimination into Spanish law and treats harassment on the above grounds as discrimination. It shifts the burden of proof where there is a clear presumption of discrimination on these grounds. It allows positive action in order to prevent and compensate disadvantages experienced by certain groups and the inclusion in collective agreements of measures to combat all forms of discrimination and to prevent harassment. The Act also sets up a Council to Promote Equal Treatment and Non-Discrimination with regard to Racial and Ethnic Origin. The Council's mandate is to assist the victims of discrimination and forward their complaints, to conduct studies and publish reports on the subject and to promote measures that can help to eliminate discrimination.

4. The Committee notes these measures with interest. It hopes that the next report will contain information on their application in practice, including:

- the number and nature of complaints of breach of the provisions of the law dealing with discrimination in employment and occupation, and the outcome of such complaints;
- programmes and plans of action to promote equal treatment in employment with regard to racial or ethnic origin;
- any measures adopted under collective agreements pursuant to the Act; and
- the activities of the Council to Promote Equal Treatment and Non-Discrimination with regard to Racial and Ethnic Origin.

5. The Committee again expresses the hope that the next report will contain information on the awareness-raising and education programmes undertaken to promote, among the public, all levels of the competent authorities and at work, better understanding and greater tolerance towards persons belonging to minority groups, particularly immigrants and nationals of non-European extraction, and Roma/Gypsies. The Committee refers the Government in this connection to its observation on Convention No. 97 in which it examines the communication from the Moroccan Democratic Federation of Labour alleging aggression against Moroccan workers in Spain – evidence of the need for vigorous action to combat racist and xenophobic ideas.

6. The Committee hopes that the Government's recent initiatives, particularly the creation of the Council to Promote Equal Treatment and Non-Discrimination with regard to Racial and Ethnic Origin will be an incentive to the collection of statistical and other data showing how members of minority groups fare on the labour market which can be used to formulate effective policies for these minorities and evaluate the policies' practical outcomes.

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

Sri Lanka

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

The Committee notes the communication from the International Confederation of Free Trade Unions (ICFTU) dated 20 February 2003. The Committee will further consider the communication together with the Government's next report and any observation the Government may wish to make in this regard.

Further, 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 information provided by the Government in its report and the comments submitted by the Lanka Jathika Estate Workers' Union on 5 June 2001 and the comments of the Employers' Federation of Ceylon attached to the Government's report.

1. With respect to the existence of different wage rates for men and women in the tobacco trade and different time/piece-rates for men and women in the cinnamon trade, the Committee notes that the Government continues to repeat its previous statement that the necessary action will be taken by the Commissioner of Labour. It also notes the communication by the Employers' Federation of Ceylon, indicating that the principle of equal remuneration is generally respected and that the wages boards for the cinnamon and tobacco trades have remained inactive since 1980; therefore, the wage rates established by these boards are no longer in practice. The Committee asks the Government to provide information on the current wage rates in the tobacco and cinnamon trades for men and women, and to continue to provide full information on all measures taken or contemplated to eliminate wage differentials between men and women in these trades.

2. *Article 4 of the Convention.* The Committee notes the Government's statement that, while the National Labour Advisory Council is having monthly meetings, it has not deliberated the issue of equal pay for at least seven years. It also notes that the Lanka Jathika Estate Workers' Union is again reiterating its earlier comments regarding non-compliance with *Article 4* of the Convention by the Government. The Committee urges the Government to consider more active measures to involve the workers' and employers' organizations in the implementation of the provisions of the Convention, including awareness raising of

the social partners regarding their vital contribution to the effective implementation of the principle of equal remuneration for women and men for work of equal value. It asks the Government to provide information, in its next report, on the particular 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.

Sudan

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1970)***

1. The Committee is gravely concerned at the insecurity and violence prevailing in the Darfur region characterized by attacks on civilians, including widespread rape and other sexual violence, abductions, extrajudicial killings and looting. It notes the establishment by the Secretary-General of the United Nations under Security Council resolution 1564(2004) of 18 September 2004 of an international commission of inquiry in order to investigate immediately reports of violations of international humanitarian law and human rights law in Darfur by all parties, and to determine also whether or not acts of genocide have occurred. The Committee is concerned at the impact of the current situation on the application of the Convention to all parts of the population, irrespective of race, colour, sex or religion, and hopes that all hostilities will cease in the very near future, to establish conditions under which the Convention can be respected. The Government is requested to provide information on the measures taken to ensure that the local population can exercise their occupations free from discrimination. In this regard, the Committee also refers to its observation on the application by Sudan of Convention No. 29.

2. *Article 1(1)(a) of the Convention. Prohibited grounds of discrimination.* The Committee refers to its previous comments, in which it noted the adoption of a new Constitution, which prohibits discrimination on grounds of race, sex and religion. In those comments, it drew the Government's attention to the absence of a formal prohibition of any form of discrimination on the grounds of political opinion, national extraction, colour and social origin. It also noted the adoption of a number of other legislative texts, including the 1997 Labour Code, which does not contain provisions respecting non-discrimination in employment and occupation. The Committee noted the Government's explanation that the definition of "worker" in the Labour Code refers to "any person, male or female" and thus ensures the absence of discrimination on any grounds. The Committee once again recalls the importance of defining and prohibiting discrimination in law on all grounds of discrimination contained in *Article 1(1)(a)* of the Convention. Therefore the Committee urges the Government to take the necessary measures to prohibit in law and practice discrimination in employment, occupation and training on all the grounds covered by the Convention, and requests the Government to indicate the measures taken to this end.

3. *Articles 2 and 3. Formulation and implementation of national policy.* The Committee noted in its previous comments that, while the establishment in the Constitution of the principle of equality of opportunity and treatment and the judicial protection of victims of discrimination represents an important stage in the implementation of this principle, they cannot on their own constitute a national policy within the meaning of *Article 2* of the Convention. The implementation of a policy of equality of opportunity and treatment also presupposes the adoption of specific measures designed to correct inequalities observed in practice. Indeed, the promotion of equality of opportunity and treatment in employment and occupation as required by the Convention is not aimed at a stable situation which can be definitively attained, but at a permanent process in the course of which the national equality policy must continually be adjusted to the changes that it brings about in society. While the Convention leaves it to each country to intervene according to the methods which appear to be the most appropriate, taking into account national circumstances and customs, the effective application of the national policy of equality of opportunity and treatment requires the implementation of appropriate measures and programmes to promote equality and correct de facto inequalities which may exist in training, employment and conditions of work. The Committee once again requests the Government to take the necessary measures, as set out in *Article 3(a), (b), (c), (d) and (e)* of the Convention, inter alia, with a view to guaranteeing the effective application of the Convention.

4. *Equality of opportunity and treatment of men and women.* In its previous comments, the Committee noted from the concluding observations of the Committee on Economic, Social and Cultural Rights of 1 September 2000 (E/C.12/1/Add.48) that the Public Order Act of 1996 provides for the flagellation or lashing of women for wearing allegedly indecent dress or for being out in the street after dusk, which in practice seriously limits the freedom of movement of women. The Committee previously has expressed concern about this treatment and it once again emphasizes that it may have a very negative impact on the training and employment of women. The Committee notes the Government's statement that the Public Order Act of 1996 does not contain any provision restricting the freedom of movement of women nor penalties on this matter. The Committee requests the Government to provide a copy of this Act in its next report, so that it can be reassured that the Public Order Act does not contain any provision that violates the principle of equality of treatment and opportunity for men and women with regard to jobs of their own choosing, through restricting the freedom of movement of women.

5. *Article 3(c). Equality of access to training and jobs.* The Committee notes with regret that the Government has not replied to the question that it raised in previous comments concerning the impact of the Passports and Immigration Act, 1970, which, among other things, requires the approval of the husband or guardian for women who wish to travel abroad. Since travel abroad may prove to be necessary in the context of training or a job, the Committee once again asks the Government to indicate whether a woman still must obtain the approval of her husband or guardian when she must travel abroad for professional or educational reasons.

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)

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 information provided by the Government with respect to the sex-based wage differentials contained in the collective agreements concerning government workers, which were attached to the Government's previous report. The Government indicates that men and women actually perform different jobs: women perform the duties of weeding, bundling and sweeping whereas men perform the more strenuous duties of loading and lifting, thus accounting for the difference in salary scales between men and women. The Committee notes, however, that the classification of these jobs on the basis of sex, rather than criteria relating to the work performed, runs contrary to the principle of equal remuneration for work of equal value. The Committee hopes the Government will be in a position to provide information in its next report on the measures taken to remove these sex-based differentials contained in the agreements' salary scales, to ensure that women and men have access to jobs covered by the collective agreements and to ensure that other such agreements entered into in the future do not include sex-based wage differentials.

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: 1970)

The Committee notes that the Government's report has not been received. It also regrets that the Equal Opportunities Act, 2000, was declared unconstitutional by the High Court of Justice, in its judgement of 10 May 2004 (H.C.A 1526/2003), for reasons relating among others to the establishment and functioning of the enforcement bodies set up under the Act. Recalling that it had welcomed the adoption of the Act which for the first time provided legislative protection from discrimination in employment and occupation, the Committee hopes that the Government will make every effort to draw up new anti-discrimination legislation applying the Convention. Please indicate any measures taken in this regard.

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

Turkey

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)

The Committee notes the communication from the International Confederation of Free Trade Unions (ICFTU) dated 15 December 2003, which relates to issues previously raised by the Committee under this Convention. The Committee will further consider the communication together with the Government's next report and any observation the Government may wish to make in reply.

Further, 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 Government's report, as well as the comments of the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Progressive Trade Unions of Turkey (DISK).

1. TISK states that female employment has increased in the private sector in recent years, while DISK indicates that the problems related to discrimination against women, as previously raised by the Committee, still exist. The Committee notes the statistical information for the year 2000 provided by the Government according to which the level of female literacy and labour force participation remains very low. Noting that the number of illiterate women is still around four times higher than that of men, the Committee observes that illiteracy is not only a problem in rural areas, with 2.4 million illiterate persons out of 6 million living in the cities. The overall labour force participation rate of men is at 73.1 per cent, while that of women is as low as 25.5 per cent. In 2000, female unemployment in urban areas was at 13.1 per cent as compared to 7.9 per cent for male unemployment. The Committee requests the Government to continue to provide statistical data on the situation of women in education and employment and information on measures taken to ensure equality of opportunity and treatment of women in employment and occupation.

2. *Discrimination on the basis of sex and religion.* The Committee recalls the communication dated 9 May 1999 of the Workers' House of the Islamic Republic of Iran, a workers' organization, which stated that a female legislator wearing an Islamic headscarf was treated in a discriminatory manner when she was forced from the hall of the Grand National Assembly without

being sworn in. The comments received from the Workers' House also alleged discrimination in regard to the ban on wearing of headscarves at universities, academic centres and by public servants. The Committee observed that the requirement that public servants and university students uncover their heads would in fact disproportionately affect women wearing headscarves, possibly impairing or precluding altogether their right to equal access to education and employment due to their religious practices. It moreover drew attention to the particular significance the ban on headscarf takes on when viewed in the light of the low level of education of women and their low level of participation in the workforce.

3. In this context, the Committee notes section 56 of the Standing Orders of the Grand National Assembly which states that "in the House, the members of Parliament, the members of the Turkish Senate, the ministers, the officials of the Grand National Assembly Organization and other public officials shall be required to wear jackets and ties. Ladies shall wear suits". The Committee notes that this dress code does not preclude the wearing of headscarves by female legislators and it hopes the Government will take the necessary measures to ensure equal access of women to take up their posts in the Grand National Assembly, irrespective of their sex and religious practice which are unrelated to the inherent requirements of the job.

4. As concerns the ban on wearing headscarves of civil servants in public buildings, the Committee notes that section 5(a) of the Regulations on Dress Code for the Personnel of Public Institutions and Establishments of 16 July 1982 provides that women's heads shall always be uncovered. The regulation applies broadly to all civil servants, personnel under contract and temporary employees and blue-collar workers employed in institutions covered by the general and additional budgets, local administrations, institutions with floating capital and public economic enterprises, as well as bodies and establishments attached to them (section 2). As regards the prohibition of wearing headscarves in universities, the Committee notes the judgement of the Constitutional Court of 7 March 1989 concerning Act No. 3511 of 10 December 1988 amending the Act on universities. In its judgement, the Court declared unconstitutional certain provisions of Act No. 3511 which, as an exception to the general prohibition of covering heads on the premises of universities, allowed the wearing of headscarves for religious reasons. The Court's reasoning is mainly based on the supremacy of the principle of secularism in the Turkish constitutional order, whereas the provisions in question were also found to be in violation of the principle of equality and the right to freedom of conscience and belief. According to the Court, the laws of a secular State had to be free of any religious content in order to protect democracy and fundamental rights. Wearing headscarves in universities would exert pressure on women not covering their heads and was unduly favouring one particular group. According to the Constitutional Court, it was not possible to allow the wearing of Islamic headscarves at the present time in order to secure equality and freedom of conscience and thought for all.

5. In respect of the above, while noting the complexity of the situation, the Committee reiterates its concern that the current broad prohibition for students and civil servants from wearing head coverings may lead to situations incompatible with the principle of equality as envisaged by the Convention. As stated previously, such a requirement would in fact disproportionately affect Muslim women, possibly impairing or precluding altogether their right to equal access to education and employment, due to their religious practices. The Committee deems it necessary to recall that the Government has undertaken to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality and treatment in respect to employment and occupation, with a view to eliminating any discrimination, including on the basis of sex and religion. The Committee also recalls that, in order to be permissible under the Convention, any distinction or exclusion that has the effect of nullifying or impairing equality of opportunity and treatment in employment and occupation must be based on the inherent requirements of a particular job. The Government is therefore requested to consider ways and means to promote and ensure equal access of Muslim women to employment in the civil service irrespective of their religious practice, and to keep the Committee informed of any development concerning this matter. Recalling that the access of women to education is one of the factors determining their participation in the labour force and that the general level of education of women and their labour force participation in Turkey remains very low, the Committee also requests the Government to provide information on measures taken or envisaged to ensure that all women, including Muslim women and girls, enjoy their equal rights to education, including at the university level. The Committee once again requests the Government to provide statistical information on the numbers of women who have been precluded from attending university or from obtaining or maintaining jobs in the public service, due to the ban on headscarves.

6. *Position of public servants dismissed or transferred during the period of martial law.* The Committee refers to its previous comments concerning the reinstatement of victims of discrimination based on political grounds under Martial Law Act No. 1402. The Committee had requested information on the reasons why 753 of the transferred civil servants and 202 of the transferred public employees who had applied for reinstatement had not been returned to their jobs. Subsequently, the Government stated that those who were not reinstated in their jobs either did not apply or no longer met the requirements of the job due to prison sentences handed down under the Penal Code. Recalling its request to the Government to supply detailed information on the percentage of the 955 transferred employees that were not reinstated due to the imposition of prison sentences, indicating for each employee the nature of the criminal charges brought and the penalties imposed, the Committee notes the Government's statement to the effect that the information requested was not available in the records of the relevant ministries and establishments. The Committee reiterates its request and hopes that the Government will make every effort to obtain the necessary information and to provide it to the Committee with its next report.

7. *Amendments to Martial Law Act No. 1402.* The Committee notes that the Government's report contains no new information concerning the need to repeal or amend section 3(d) of Martial Law Act No. 1402. The Committee recalls that section 3(d) of that Act vests martial law commanders with broad discretionary powers to transfer workers and public employees to other areas. In the view of the Committee, this could lead to discrimination in employment on the basis of political opinion in contravention of the Convention. The Committee has previously expressed its hope that appropriate changes would be made so as to ensure that measures intended to safeguard the security of the State are sufficiently defined and delimited so as not to lead to discrimination. Recalling the Government's assurances that the right to appeal concerning section 3(d) of Act No. 1402 exists pursuant to article 125 of the Constitution and to Act No. 2577 concerning the procedures of administrative trials, the Committee once again requests the Government to provide statistical information on the number of appeals that have been lodged over the application of section 3(d) of Act No. 1402 and their outcomes.

8. *Security investigations.* The Committee recalls its previous comments on resolution No. 90/245 of 8 March 1990 of the Council of Ministers and section 1 of Act No. 4045 of 26 October 1990 concerning security investigations. It was concerned that the broad scope of the provisions contained therein may lead to discrimination in employment and occupation on the basis, inter alia, of political opinion. In this context, the Committee notes the adoption of the Regulations on Security Investigations and Investigation of Records of 14 February 2000, which replace the regulations on the same subject as contained in resolution No. 90/245 of 8 March 1990. The Committee notes that security investigations and investigations of records are limited to personnel to be employed in units and departments of ministries and public institutions and bodies holding classified information

or documents, as well as personnel to be employed in the Turkish armed forces, in the security and intelligence organizations, and in prison and detention centres. The Government is requested to provide indications as to which units, departments and functions in ministries and other public institutions have been determined, under section 6 of the Regulations, as units and departments holding classified information. The Committee also asks the Government to explain the meaning and content of the clause “any connection with the police forces and intelligence units” which is a common element of the terms “security investigations” and “investigation of records” as contained in section 4(f) and (g). The Committee notes that a “security investigation” includes, inter alia, an assessment whether the person has engaged in “destructive or separatist activities” or has acted in contravention of Act. No. 5816 on offences committed against Atatürk or of the principles and reforms of Atatürk (sections 4(g) and 11(c)). It notes with interest that the meaning of “destructive and separatist activities” has been limited to “activities aiming to violate the indivisible integrity of the State with its territory and nation and to endanger the existence of the State and the republic or to destroy fundamental rights and freedoms” (section 4(k)). It requests the Government to provide information on how this provision is applied in practice, including indications as to the number and nature of cases involving an exclusion from employment or transferral resulting from the application of section 11(c) in connection with section 4(g) and (k). The Committee also wishes to receive a copy of the duty instructions, under section 12(e) of the Regulations, of the authorities authorized to investigate. Overall, the Committee observes that progress has been made in enhancing the precision of certain terms contained in the previous legislation and in limiting the scope of security investigations. However, the Committee emphasizes the continuing need to ensure that the measures taken by the authorities authorized to request and conduct security investigations are in practice in line with the requirements of the Convention.

9. *The 1991 Anti-Terrorism Act.* The Committee recalls its previous comments on the broad definitions of terrorism in section 1 of this Act and the offence of propaganda contained in section 8. It expressed concern that the definitions used would not appear to lay down sufficient criteria upon which protection against imprisonment, based on political opinion or some other ground mentioned in the Convention, would be ensured. The Committee previously noted the introduction of the element of intent in section 8, thus restricting broad interpretations and the possibility of discrimination and the Government’s statement that section 1 limits the definition of terrorism to violent acts. However, the Committee noted the fact that journalists have been convicted under the Anti-Terrorism Act for expressing their opinions. As the Committee understands that relevant legislative changes have occurred, it requests the Government to provide detailed information on any changes concerning the Anti-Terrorism Act or other legislation that would further restrict the possibility of journalists, writers and publishers being deprived of their employment or occupation for expressing their political opinion. The Committee once again asks the Government, in order to avoid any ambiguity, to consider revising section 1 of the Act to ensure that no provision of the Act would lead to a conviction for expressing political opinions by non-violent means. The Committee also requests the Government to continue to provide information on the number, nature and outcomes of cases under the Act involving convictions pronounced against journalists, writers and publishers.

10. *Non-discrimination on other grounds.* The Government reiterates that equality of all Turkish citizens before the law is guaranteed under Turkish legislation and that they face no discrimination whatsoever as far as their statutory rights are concerned. The Government also states that present-day Turkey contains a multitude of ethnic, religious and cultural elements and that different ethnic identities, including the Kurdish, are acknowledged and accepted. The Committee recalls that while legislative provisions on equality and non-discrimination are an important element of a national equality policy in accordance with *Article 2* of the Convention, they cannot constitute by themselves such a policy. The Convention provides for the elimination of discrimination in law and practice and, to this end, requires proactive measures towards achieving equality of opportunity and treatment of all workers. In this connection, the Committee notes the information provided by the Government on the projects to promote educational opportunities and employment carried out by the South-eastern Anatolia Project Regional Development Administration, including for nomadic/semi-nomadic communities. Noting from information available to it that recent reforms have introduced the possibility of private schools teaching in languages other than Turkish, the Committee asks the Government to provide information on this reform and on any other measures adopted or envisaged to promote equality in employment and occupation, irrespective of race, colour, national extraction and social origin.

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.

Venezuela

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1971)***

1. The Committee notes the Government’s report and the communication from the National Single Federation of Public Employees (FEDE-UNEP), received at ILO headquarters on 2 November 2004 and sent to the Government on 23 November 2004. The Committee will further consider the communication together with the Government’s next report and any observation the Government may wish to make in reply.

2. *Article 1. National extraction as a ground for discrimination.* Referring to paragraph 3 of its previous observation, the Committee reiterates its hope that national extraction will be added to the grounds of discrimination prohibited by the Organic Labour Act and the draft Bill on the subsystem for employment and labour development, so that the prohibition covers all the grounds laid down in the Convention.

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

Zimbabwe

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1989)

Article 1(b) of the Convention. Equal remuneration for work of equal value. Further to its previous comments, the Committee notes with satisfaction the adoption of the Act amending the Labour Relations Act (Chapter 28:1) which for the first time legislatively requires equal remuneration for men and women for work of equal value. Furthermore, the Committee notes that section 5(2a) of the Labour Relations Act as amended, now provides that the Labour Relations Act shall apply to members of the public service. The Committee asks the Government to provide information with its next report on the practical application of section 5(2a) of the Labour Relations Act both in the private and public sectors.

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 with regard to:

Convention No. 100 (*Albania, Bahamas, Bosnia and Herzegovina, Bulgaria, Burundi, Cameroon, Cape Verde, Central African Republic, Comoros, Czech Republic, Democratic Republic of the Congo, Dominica, Egypt, Equatorial Guinea, Eritrea, France, France: New Caledonia, Gambia, Georgia, Ghana, Grenada, Haiti, Israel, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Malta, Mauritania, Mongolia, Morocco, Mozambique, Niger, Nigeria, Norway, Papua New Guinea, Paraguay, Philippines, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tajikistan, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom: Gibraltar, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe*); **Convention No. 111** (*Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belarus, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Cyprus, Dominica, Egypt, Equatorial Guinea, Eritrea, Finland, France, France: French Southern and Antarctic Territories, France: New Caledonia, Gambia, Ghana, Greece, Guinea, Guinea-Bissau, Hungary, Iceland, India, Israel, Italy, Kazakhstan, Kenya, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mauritania, Mongolia, Morocco, Mozambique, Namibia, Niger, Norway, Papua New Guinea, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Togo, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe*); **Convention No. 156** (*Republic of Korea*).

Tripartite Consultation

Albania

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)

1. The Committee notes the information provided by the Government's reports received in September 2003 and 2004 and the comments of the Confederation of Trade Unions of Albania (CTUA), which were forwarded to the Government in April 2004. The CTUA refers to the operation of the National Council of Labour (NCL) and in particular observes that:

- while Decision No. 767 of the Council of Ministers provides that the NCL shall meet not less than once every three months, there have been periods when it has not functioned for a period of more than one year. As a consequence of the lack of continuity of the sessions, some issues become outdated;
- formalism in tackling problems and the presentation of the Government's position is an accomplished fact. The CTUA indicates that consultations in the NCL are without any effect when it meets to discuss subjects on which the Government has already taken a decision;
- the effectiveness of the NCL is minimized either by the Government not attending the meetings or sending representatives at the lowest level;
- the secretariat appointed by the Ministry of Labour and Social Affairs has been kept busy with the regular work of the Department of Labour Relations, and therefore does not fulfil its function as the secretariat of the NCL;
- the Government's report does not include the remarks made by the workers' organizations on the application of ratified Conventions, in particular with regard to the regularity of the meetings of the NCL, the budget to ensure its effective functioning and the assistance of an independent secretariat.

2. In its reply to the CTUA comments, the Government indicates that if the NCL has not met frequently in the past, the reason was the conflict inside the workers' organization. The conflict has been resolved and over the past two or three years the NCL has met at least twice a year. The Government also indicates that consultations have been held in the Permanent Tripartite Committee of the NCL on important issues, including health and safety at work, draft amendments to the Labour Act and the consequences on workers of structural reforms. The Government also declares that it has taken seriously into account the importance and role of the NCL, and that when ministers could not attend the meetings they were replaced by deputy ministers and not by representatives at the lowest level. Concerning the staff of the permanent secretariat of the NCL, the Government indicates that it was recruited in conformity with the rules applied to civil servants, and that it carried out all the tasks set by the NCL correctly and in conformity with the deadlines. Finally, the Government indicates that no comments had been received from workers' organizations on concrete issues when they were invited to do so.

3. As the issues raised above are related to the effectiveness of the consultations required by the Convention, as well as the administrative support required by *Articles 2, paragraph 1, and 4, paragraph 1, of the Convention*, the Committee wishes to emphasize that the Government and the social partners should establish procedures which ensure effective consultations in a manner that is satisfactory to all parties concerned. It asks the Government to provide detailed information in its next report on the measures taken in order to ensure effective tripartite consultation within the meaning of the Convention, including particulars of the consultations held by the NCL on each of the subjects listed in *Article 5*, and to indicate the recommendations made or the measures adopted to resolve the issues raised in this observation.

Algeria

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)

1. *Tripartite consultations required by the Convention.* In a brief report received in August 2004, the Government indicates that the opinion of the social partners is sought in the context of article 19 of the Constitution of the ILO, and on ratified and unratified Conventions and any labour instrument relating to *Article 5 of the Convention*. The Government adds that it regularly and systematically transmits labour documents and instruments to the representative organizations in accordance with article 23 of the Constitution of the ILO. In this respect, the Committee draws the Government's attention to the fact that the obligation of consultation set forth in *Article 5, paragraph 1(d)*, goes beyond the obligation to communicate reports under article 23, paragraph 2, of the ILO Constitution, as it consists of holding consultations on any problems which may arise out of such reports (paragraph 92 of the General Survey of 2000 on tripartite consultation, ILC, 88th Session). The Committee once again requests the Government to provide full and detailed information on the consultations held on each of the matters set out in *Article 5, paragraph 1*, of the Convention during the period covered by the next report, specifying their purpose and frequency and the nature of any reports or recommendations resulting from the consultations.

2. *Effective tripartite consultations.* The Committee recalls the comments that it has been making for several years in which it noted that the Government was envisaging the establishment of a tripartite body specifically entrusted with matters relating to international labour standards. It once again trusts that the Government's next report will indicate that real progress has been achieved in this respect and encourages the Government to consult the representative organizations on the nature and form of the procedures which ensure effective consultations within a tripartite body (*Article 2 of the Convention*).

3. *Free choice of representatives and equality of representation.* The Committee requests the Government to describe precisely the manner in which the representatives of the General Federation of Algerian Trade Unions (UGTA) are chosen for workers, and those of the General Confederation of Algerian Economic Operators (CGOEA), the National Confederation of Algerian Employers (CNPA) and the Algerian Confederation of Employers (CAP) for employers for the purposes of this Convention and to indicate the measures taken to ensure their representation on an equal footing on any bodies through which consultations are undertaken (*Article 3*).

4. *Administrative support.* The Committee recalls that this administrative support includes, among other elements, making meeting rooms available, correspondence and, where appropriate, the assistance of a secretariat (paragraph 124, of the General Survey of 2000 on tripartite consultation) and it requests the Government to describe the manner in which such support is provided, with an indication of the authority that is competent in this field (*Article 4, paragraph 1*).

5. *Financing of training.* 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 provided through appropriate arrangements between the Government and the representative organizations (paragraphs 125 and 126 of the General Survey of 2000 on tripartite consultation). It requests the Government to indicate whether such arrangements have been made and, if so, to describe them (*Article 4, paragraph 2*).

6. *Operation of the consultation procedures.* The Committee recalls that *Article 6* does not impose an obligation to issue an annual report, but it does require tripartite consultations to be held on whether or not such a report should be issued. The General Survey of 2000 indicates in this respect that the annual report could, for example, include information on the composition of the consultative bodies, the number of meetings, their agenda, the proposals made and the conclusions reached (paragraph 131). The Committee requests the Government to indicate whether the representative organizations have been consulted on this matter, with an indication, where appropriate, of the outcome of these consultations.

Barbados

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

Effective tripartite consultations. Following its previous comments, the Committee notes the Government's report received in December 2003 containing the social partners' observations on the operation of the Convention. The Government indicates that there is no tripartite committee as set out in the Convention. The Ministry of Labour and Social Security is, however, in the process of establishing such a committee to deal with the various matters set out in the Convention. The Government also indicates that consultations were held in writing as previously reported. The Barbados Employers' Confederation states that there has been agreement to establish a committee in accordance with the Convention. In the view of the Congress of Trade Unions and Staff Associations of Barbados, the consultation process could be strengthened if a tripartite committee were established to deal with the matters covered by the Convention. The Congress has called on the Government to establish such a committee and has taken the opportunity to comment on the Government's report to renew the call. The Committee hopes that progress will be made in the establishment of a tripartite committee and on the consultations held therein on the matters covered by the Convention (*Article 2 of the Convention*). Please also supply a list of the consultations held during the next reporting period, on each of the matters set out in *Article 5, paragraph 1*, including information as to the frequency of these consultations, and providing examples of any reports or recommendations resulting from the consultations held under the established procedures.

Belarus

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)

1. In response to a direct request formulated in 2001, the Government indicates that the National Council for Labour and Social Issues approved, at its meeting of 4 December 2002, the regulations on the functioning of the tripartite group of experts on the application of ILO Conventions. The Committee also notes that the agenda of the 14 May 2003 meeting of the group of experts included the results of the 286th Session of the ILO Governing Body, the agenda of the 91st Session of the International Labour Conference and the preparation by the Government of reports on ratified Conventions.

2. The Committee noted the report of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the situation of trade union rights in Belarus. The Commission of Inquiry considered, inter alia, that restricting

social dialogue to one trade union federation, whose independence had been called into question, would not only have the effect of further anchoring a de facto state-controlled trade union monopoly, but would also infringe upon the right of workers to form and join organizations of their own choosing, in accordance with Article 2 of Convention No. 87 (paragraph 630 of the report). It also stated that it believed that social dialogue would be enhanced by further efforts to delineate the boundaries between the Government and the social partners, as well as between workers and enterprise directors (paragraph 631 of the report). The Committee trusts that the important measures that the Government is called upon to adopt in order to respond to the recommendations of the Commission of Inquiry will also ensure the effective application of Convention No. 144. It requests the Government to report on the progress made, particularly in the application of *Articles 1, 2 and 5 of the Convention*.

Democratic Republic of the Congo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)

1. *Effective tripartite consultations.* The Committee noted the Government's first report on the application of the Convention, received in June 2004. It notes 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 will be set up. It also notes that, since the procedures are in the process of being established, there have not been any consultations on the matters set out in *Article 5, paragraph 1, of the Convention*. The Committee draws the Government's attention to the fact that each Member which ratifies the Convention undertakes to operate procedures which ensure effective consultations on all aspects covered by *Article 5*. The nature and form of the procedures shall be determined in each country in accordance with national practice, after consultation with the representative organizations, where such procedures have not yet been established. The Committee expresses the hope that the Government will be in a position to provide information in its next report on the operation of procedures established in accordance with *Article 2* and on the content of consultations which have occurred during the period covered by the next report with regard to each of the matters set out in *Article 5, paragraph 1*, stating their frequency and the nature of any reports or recommendations resulting from these consultations. It also hopes that the Government will be in a position to supply information on the administrative support for the procedures provided for in the Convention (*Article 4, paragraph 1*) and on any consultations with representative organizations concerning the working of the procedures (*Article 6*).

2. The Committee recalls that the World Confederation of Labour and the Trade Union Confederation of the Congo referred, in comments sent to the Government in September and October 2003, not only to the efforts made by the Government to implement the Convention but also to the non-application of certain decisions adopted by the National Labour Council in January 2002. Please provide detailed information on the consultations held in the National Labour Council on the matters covered by the Convention.

3. *Free choice of representatives (Article 3, paragraph 1).* In the observations received in June 2004, the Trade Union Confederation of the Congo states that the Government, by means of Ministerial Order No. 12/CAB.MIN/TPS/kf/0111/03, unilaterally raised (from seven to 12) the number of the most representative trade unions for sitting on the National Labour Council. The Committee recalls that the employers' and workers' representatives must be freely chosen by their representative organizations. The principle of free choice is respected if the organizations themselves appoint their representatives directly. In cases where these representatives are formally appointed by the Government, the latter is bound to appoint the persons proposed by the representative organizations (paragraph 44 of the 2000 General Survey). It invites the Government to describe in its next report the way in which the employers' and workers' representatives are chosen for the purposes of the Convention.

Gabon

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1988)

1. *Tripartite consultations required by the Convention.* Further to the Committee's observation of 1998, the Government indicates in its report received in September 2003 that it systematically sends copies of the reports concerning submission to the occupational organizations of employers and the most representative confederations before transmitting the reports to Parliament. These organizations also receive copies of reports on the application of Conventions made under article 22 of the Constitution of the ILO, as well as copies of replies to questionnaires on specific subjects. The consultative bodies, such as the Advisory Labour Commission, are not yet operational. The Committee refers to the comments that it is making on the constitutional obligation of submission and requests the Government to provide information in its next report on the application of Convention No. 144 on the consultations held with representative organizations concerning the proposals contained in reports to be submitted to Parliament (*Article 5, paragraph 1(b), of the Convention*). In particular, it asks the Government to regularly supply reports containing detailed information on the written consultations held on the matters covered by *Article 5, paragraph 1*, of the Convention, with an indication of any activities undertaken by the Advisory Labour Commission.

2. *Operation of the consultative procedures.* The Committee hopes that consultations will be held in the near future with representative organizations on the “working of the procedures provided for in this Convention” (*Article 6*) and that the Government will be in a position to provide information on this matter in its next report.

Guatemala

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1989)

1. *Follow-up of a representation (article 24 of the ILO Constitution).* In its observation of 2003, the Committee noted the conclusions and recommendations of the tripartite committee appointed to examine a representation alleging non-observance by Guatemala of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (document GB.286/19/4, March 2003). The Committee, in the same way as the tripartite committee, observed that the requirement of absolute consensus could lead to a reduction in the effectiveness of the consultations required by the Convention, and suggested that the requirement of unanimity, as set out in the Standing Orders of the Tripartite Commission on International Labour Issues, could have contributed to a reduction in the effectiveness of the consultations carried out in the National Tripartite Commission.

2. The Committee of Experts also examined in detail the information available on the tripartite consultations held in 2002 and 2003 and emphasized that the Government and the social partners should apply procedures which ensure effective consultations, which may include a precise timetable for the consultations. The effectiveness of the procedures would be enhanced if each party stated clearly its objectives for every aspect of the consultations.

3. The Committee took into account the fact that national elections were being held and expressed the hope that tripartite consultation would be enhanced and that social dialogue in Guatemala would reach higher levels.

4. *New rules for effective consultation.* The Committee notes the Government’s report, which includes the detailed summary reports of the meetings held by the Tripartite Commission on International Labour Issues for the period ending September 2004. The Government adds that tripartite consensus was achieved on the preparation of a new Government Agreement for the establishment of the National Tripartite Commission.

5. The Committee notes with interest Government Agreement No. 285-2004 (published in the *Official Bulletin* of 16 September 2004) establishing new rules for the operation of the Tripartite Commission on International Labour Issues. Section 1 of Government Agreement No. 285-2004 provides that the National Tripartite Commission shall be composed of representatives of the Government, and of employers and of workers “through their most representative organizations which benefit from the right to freedom of association to ensure effective consultations and express views in relation to the promotion of the application of international labour standards in accordance with Convention No. 144 of the International Labour Organization”. In addition to the matters set out in *Article 5* of Convention No. 144, the National Tripartite Commission “shall examine matters deriving from labour relations, social insurance and labour administration which the sectors represented upon it agree to address” (section 2). Among other principles, the basic right of the members of the National Tripartite Commission is established to “address and examine matters before decisions are taken on them, for which purpose all relevant documentation shall be forwarded in due time” (section 11(1)).

6. The Committee notes with particular interest that “with a view to guaranteeing the equality of the parties of which the Tripartite Commission on International Labour Issues is composed, its decisions, conclusions and recommendations shall be adopted by consensus” (section 20).

7. The Committee also notes the comments made in September 2003 and 2004 on the application of the Convention by the Trade Union Confederation of Guatemala (UNSI TRAGUA). Among other matters, UNSI TRAGUA complains that it was not called upon to propose its candidates as members of the National Tripartite Commission. In a communication received in January 2004, the Government referred to difficulties in constituting the membership of tripartite bodies. In Case No. 2295, the Committee on Freedom of Association also examined allegations by UNSI TRAGUA relating to the trade union representative status of a civil association. In its recommendations, the Committee on Freedom of Association requested the Government to keep it informed of the use made of objective criteria and to avoid recognizing non-trade union organizations as having trade union representative status (Report No. 334, Vol. LXXXVIII, 2004, Series B, No. 2).

8. Taking into account the fact that Government Agreement No. 285-2004 came into force on 17 September 2004, the Committee hopes that the Government will provide information in its next report on the progress achieved in holding effective consultations (*Article 2 of the Convention*) on the matters set out in *Article 5* of the Convention, including information on the activities of the Tripartite Commission on International Labour Issues, in accordance with Government Accord No. 285-2004.

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 must therefore repeat its previous observation which read as follows:

1. *Article 2 of the Convention.* Please inform the Committee of the consultation procedures in place, and explain the manner in which the nature and form of these consultations guarantee the application of *Article 2*.
2. *Article 4.* Please provide information on any progress achieved in the implementation of the Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF) with regard to the training necessary for the participants in consultation procedures.
3. *Article 5, paragraph 1.* Please provide detailed information on any consultations held on the issues set out in these provisions and information on any reports or recommendations adopted as a result.
4. Finally, the Government is requested to provide any other information relating to the application of the Convention in practice, including in accordance with its normal practice, a copy of any report and of any legislation or documentation mentioned in the report.

[The Government is asked to reply in detail to the present comments in 2005.]

Indonesia

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1990)

Tripartite consultations required by the Convention. In reply to the 2001 observation, the Government reports that it noted the Committee's comment with regard to *Articles 1 and 3 of the Convention*. The Committee referred to the issue of representativeness and to the obstacles encountered in promoting the tripartite consultations covered by the Convention. The Government further indicates that a tripartite committee for ILO matters was established under the Ministerial Decree No. 92/Men/2003. That tripartite committee is now responsible for several matters covered by the Convention and conducts a plenary meeting at least once a year or at any time if its regarded necessary. The Committee hopes that in its next report, the Government will describe in detail the functioning of the tripartite committee for ILO matters in order to ensure effective consultations with respect to all the matters covered by *Article 5, paragraph 1*, of the Convention.

Malawi

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1986)

Tripartite consultations required by the Convention. In its report, received in October 2004, the Government indicates that before the delegation departs for the International Labour Conference, tripartite consultations are held on the items on the agenda of the Conference and on the proposals to be made to the competent authority in connection with the submission of Conventions and Recommendations, pursuant to article 19 of the ILO Constitution. Furthermore, when the Tripartite Labour Advisory Council meets this year, it will consider the unratified Conventions which the Government thinks need to be ratified. Referring to the observation it has been making for several years on the failure to submit to the National Assembly 23 instruments adopted by the Conference between 1995 and 2003, the Committee requests the Government to provide detailed information on the consultations held on all the matters set out in *Article 5, paragraph 1, of the Convention* during the period covered by the next report, specifying their purpose and frequency, and the nature of any reports or recommendations resulting from the consultations.

Nepal

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)

The Committee notes the information provided by the Government in November 2003 and September 2004, and in particular the efforts made to implement tripartite consultations at both regional and local levels. The recommendations formulated by the tripartite committee, recently set up under the auspices of the Director-General of the Department of Labour and Employment Promotion, should enable the application of the Convention to be reinforced in practice. The Government indicates that tripartite consultations are necessary to maintain cordial labour relations and for this purpose it commits itself to institutionalizing this procedure even further. A procedure for revising labour legislation, with which the social partners are associated, is currently in progress. The Committee requests the Government to continue to provide detailed information to allow a detailed examination of the effect given to each of the provisions of the Convention. It would appreciate receiving additional information on the following points.

1. *Effective tripartite consultations.* The Government indicates that it made numerous efforts to ensure effective tripartite consultation on the matters covered by *Article 5, paragraph 1*, particularly by the setting up of numerous tripartite committees or councils, mainly constituted under the auspices of the Ministry of Labour and Transport Management. The Central Labour Advisory Board, which takes care of regular consultations at national level under section 62 of the 1992 Labour Code, plans to organize a second national labour conference. The Committee requests the Government to describe in detail the procedures established to ensure effective tripartite consultations, indicating how the nature and form of these procedures are determined and whether consultations with the representative organizations took place for this purpose (*Article 2 of the Convention*).

2. *Free choice of representatives and equal representation.* The Government indicates that the representatives of employers and workers are freely chosen by their representative organizations and that they are represented on an equal footing in all consultative bodies. The Committee invites the Government to describe how these representatives are chosen, indicating the measures taken to ensure their representation on an equal footing in these bodies (*Article 3*).

3. *Administrative support and training.* The Government mentions the setting up in 2004 of a permanent secretariat at the Central Labour Advisory Board, further to the request made by the representative organizations. The Committee requests the Government to indicate whether this secretariat is responsible for providing administrative support for the procedures covered by the Convention and invites it to provide information on the arrangements made for financing any necessary training of participants in these procedures (*Article 4*).

4. *Tripartite consultations required by the Convention.* The Committee notes that it is now current practice for the Government to consult the representatives of employers and workers before drawing up replies to any questionnaire or submitting any report dealing with the Convention, or making any proposals to the competent authorities. The Government indicates that consultations took place on the matters covered by *Article 5, paragraph 1*, particularly thanks to the assistance of the ILO Kathmandu Office concerning a possible ratification of Conventions Nos. 87 and 105. The Committee notes that the reports to be submitted under article 22 of the ILO Constitution are generally prepared in collaboration with the social partners, except in certain cases where the Government simply communicates to them a copy of the report sent to the Office. In this regard, it recalls that the obligation of consultation laid down in *Article 5, paragraph 1(d)*, goes beyond the obligation of communication of reports under article 23, paragraph 2, of the ILO Constitution as it consists, in this case, in holding consultations on matters that may arise from those reports. Reports that the employers' and workers' organizations may transmit to the Office cannot replace the consultations which have to be held during the preparation of the reports (paragraph 92 of the 2000 General Survey on tripartite consultation). The Committee invites the Government to indicate how observance of this provision is ensured and requests it in general to continue to provide detailed information on the consultations held on each of the matters set out in *Article 5, paragraph 1*, during the period covered by the report, specifying their purpose, their frequency and the nature of any reports or recommendations resulting from these consultations.

5. *Operation of the consultative procedures.* The Committee again requests the Government to indicate whether the representative organizations were consulted with regard to the production of an annual report on the working of the procedures covered by the Convention and, if so, to state the outcome of these consultations. Please communicate a copy of any report drawn up under *Article 6* or any other useful information on the practical application of the Convention.

Netherlands

Aruba

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

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

In the report supplied by the Government of Aruba, received in November 2002, it noted the strong regret of the Committee with regard to denouncing the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Rural Workers' Organisations Convention, 1975 (No. 141), without prior consultation with the employers' and workers' organizations. The Government states that it has taken due account of the Committee's comments. It also indicates that the ILO Matters Tripartite Committee is momentarily non-active as it only convened for the purpose of the Government's reporting obligations for the past reporting period. The Government will make additional efforts to formalize such consultation by means of a state decree and encourage regular and continuous consultations. The Government also indicates that the Tripartite Committee has too many members, which made it difficult for effective consultation meetings. The Committee refers to its 2003 observation on the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), and recalls again that proposals regarding the denunciation of ratified Conventions must, under *Article 5, paragraph 1(e), of the Convention*, be subject to consultations and that under *Article 2, paragraph 1*, the procedures must ensure "effective" consultations, that is, consultations able to influence the decision by the Government. The Committee hopes that the Government will regularly supply particulars of the consultations held on each of matters set out in *Article 5, paragraph 1*, of the Convention, including information on the frequency of such consultations and the nature of any reports or recommendations made as a result of the consultations. Please also provide information on any revision implemented to ensure the effectiveness of the tripartite consultations on each of the matters covered by the Convention.

Pakistan

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

1. *Effective tripartite consultations.* The Committee notes with regret that the Government's report has not been received. It must therefore reiterate its 2001 observation which requested the Government to provide information on any tripartite consultations taking place in the process of revision of the labour legislation and to inform it, where appropriate, of any consultation undertaken on the adoption of a specific tripartite procedure (*Article 2 of the Convention*).

2. *Tripartite consultations required by the Convention.* Please also provide detailed information on the consultations undertaken concerning the questions covered in *Article 5, paragraph 1*, and provide details, where appropriate, on all reports and recommendations arising therefrom.

[The Government is asked to reply in detail to the present comments in 2005.]

Sierra Leone

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1985)

1. *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, in view of the present circumstances in the country, 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*).

2. 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.

Slovakia

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

1. The Committee notes that the Government's report has not been received. With reference to its observation of 2003, in which it noted that in reply to the comments made by the Confederation of Trade Unions of the Slovak Republic (KOZ SR), which emphasized the absence of consultations on draft laws before their submission to Parliament, the Government stated that it did not agree with the facts as indicated which, in its view, did not fall within the scope of the Convention. The Committee recalled in this respect that the fundamental obligation of Convention No. 144 is contained in *Article 2, paragraph 1*, according to which the State Party "undertakes to operate procedures which ensure effective consultations (...) between representatives of the Government, of employers and of workers". As indicated by the Committee of Experts in its General Survey of 2000, for the consultations to be meaningful, they should not be merely a token gesture, but should be given serious consideration by the competent authorities so that they can inform the final decision. In this respect, the Committee noted that "the outcome of the consultations should not be regarded as binding" and that "the ultimate decisions must rest with the Government or legislator, as the case may be". It also recalled the resolution on tripartism and social dialogue, adopted by the Conference at its 90th Session (June 2002), which called for governments and the organizations of employers and workers to promote and reinforce tripartism and social dialogue, which "have proved to be a valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide range of labour issues on which the social partners play a direct, legitimate and irreplaceable role". The Committee once again requests the Government to provide information in its next report on the progress made in the establishment of effective tripartite consultations on the matters covered by *Article 5, paragraph 1*, and particularly on the consultations held in relation to the legislative amendments submitted to Parliament.

2. As the Office forwarded to the Government in October 2004 the new comments made by the Confederation of Trade Unions of the Slovak Republic (KOZ SR) on the application of Convention No. 144, the Committee hopes that the Government will provide its comments in its next report in reply to the matters raised by the KOZ SR.

[The Government is asked to reply in detail to the present comments in 2005.]

Sri Lanka

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

New tripartite procedures and consultations required by the Convention. The Committee notes the information provided in the Government's report received in October 2004 and the comments of the Board of Investment of Sri Lanka (BOI). The Committee notes with interest that the draft statute of the National Labour Advisory Council provided by the Government in the annex to its last report was already the subject of tripartite consultation and that the Government contemplates seeking the approval of the Cabinet. This draft provides that the National Labour Advisory Council shall be competent to deal with matters arising from the replies to ILO questionnaires, and with the ratification, implementation and revision of international labour standards. The Government mentions tripartite consultations in the Council and written communications with the National Tripartite Committee on International Labour Standards with regard to the matters set out in *Article 5, paragraph 1, of the Convention*. The Committee notes the annual report on tripartite consultations relating to international labour standards provided by the Government in the annex to its last report. It invites the Government to continue to provide information on the consultations held on the matters set out in *Article 5, paragraph 1*, during the period covered by the report, stating the nature of any reports or recommendations resulting from them.

United Republic of Tanzania

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

1. *Tripartite consultations required by the Convention.* The Committee notes the Government's statement that tripartite consultations were held within the Labour Advisory Board on proposals for the ratification of Conventions and on the other matters arising from the application of Conventions. Since it does not have any information enabling it to evaluate the application of this priority Convention, the Committee requests the Government to provide detailed information on the consultations held within the competent bodies of the United Republic of Tanzania with regard to all the matters set out in *Article 5, paragraph 1, of the Convention* during the period covered by the next report. It trusts that the Government will communicate a list of the consultations undertaken stating the purpose and frequency of these consultations, and the nature of any reports or recommendations resulting from them.

2. *Administrative support and training.* The Committee also invites the Government to provide up-to-date information on the administrative support and training given to participants in the tripartite consultations, as required by *Article 4* of the Convention.

Togo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

1. *Consultation procedures.* The Committee takes note of the Government's report received in September 2004. It notes in particular the project to create by the end of February 2005 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 keep it informed of the practical effect given to this project.

2. *Tripartite consultations required by the Convention.* The Committee also notes the information supplied by the Government on the activities of the National Labour Council for the period covered by the report. It again notes that the information is not specific enough to enable it to assess the effect given to this priority Convention. It invites 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.

3. The Government states 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.

Turkey

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)

1. *Reinforcing social dialogue.* The Committee notes the detailed information in the Government's report received in October 2004 containing observations made by the Turkish Confederation of Employer Associations (TISK), the Confederation of Turkish Trade Unions (TÜRK-İ), the Confederation of Progressive Trade Unions (DISK), the Confederation of Turkish Real Trade Unions (HAK-IS) and the Turkish Confederation of Public Workers' Associations (TÜRKIYE KAMU-SEN). It also notes the observations of February 2004 by the Confederation of Public Servants' Trade Unions (KESK) and the Government's response thereto of October 2004.

2. The Committee notes that both the Government and the representative organizations of employers and workers report on progress accomplished in the area of social dialogue, thanks to the establishment of a number of tripartite consultative bodies. It notes with interest the Tripartite Protocol, drawn up in June 2001 between the Ministry of Labour and Social Security and TISK, TÜRK-İ, HAK-IS and DISK for the setting up of an "academic council" for the development of social legislation in conformity with international standards. The Committee asks the Government to send information on the activities of this council and also requests it more generally to submit all relevant information on progress achieved in the practical application of the Convention (*Part V of the report form*).

3. *Tripartite consultations called for by the Convention.* The Committee notes with interest the setting up of the Tripartite Advisory Board pursuant to article 114 of the new Labour Act (No. 4857 of 2003). This Board is called upon to "ensure effective solidarity between government and employer, civil servants and confederations of workers' unions, for the purpose of developing labour peace and industrial relations". The Committee notes that the rules and procedures for the operation of the Board, adopted in April 2004, seem to comprise the consultation provided for in the Convention. It also notes that DISK hopes that the Board will fulfil the functions provided for in Convention No. 144 and result in effective tripartite consultation between the Government and the social partners. With reference to the information that the first meeting of the Board was held in May 2004, the Committee invites the Government to continue to provide it with information on the consultations held in the Board during the period covered by the next report, in particular on the matters set out in *Article 5, paragraph 1, of the Convention*.

Ukraine

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

1. The Committee notes the Government's report and the comments made by the Confederation of Free Trade Unions of Ukraine on the application of the Convention, transmitted to the Government in October 2004. It invites the Government to send its observations thereon and to continue to provide information on the following points.

2. *Tripartite consultations required by the Convention.* The Committee notes the general agreement concluded for 2004-05 between the Cabinet of Ministers of Ukraine and the social partners in order to strengthen social dialogue on matters related to national, social and economic policy. It notes in particular that consultations were held to consider ratification of Conventions Nos. 131, 152, 155, 161 and 173. The Committee requests the Government to continue to provide detailed information on each of the matters set out in *Article 5, paragraph 1, of the Convention* during the period covered by the next report, specifying the nature of any reports or recommendations resulting from the consultations. Please also indicate the manner in which the representatives of employers and workers for the procedures provided for in the Convention are chosen (*Articles 1 and 3*).

United Kingdom

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1977)

Effective tripartite consultations. The Committee notes the Government's detailed report for the period ending May 2004 including its reply to the 2002 observation. The Government indicates that in light of comments received from the Trades Union Congress (TUC) the meetings were mainly concerned with practical arrangements; a number of changes to the format have been introduced. The meetings are now firmly focused on the main agenda items to be addressed by the Conference or the Governing Body, and allow for a full exchange of views as well as the early identification of areas of common interest or areas of concern. The Government also held separate ad hoc meetings with the social partners. The Committee welcomes this approach and hopes that in its next report the Government will continue to report on the operation of effective tripartite consultation on the matters covered by the Convention.

United States

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1988)

1. The Committee notes the Government's report for the period 2001-04 and the comments of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), which were attached to the Government's report. The Government indicates that the consultative group met six times during the reporting period and it attached the agendas of those meetings to the report. The Tripartite Advisory Panel on International Labour Standards (TAPILS) did not meet formally during the reporting period but its working group met twice in connection with ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the full panel was consulted through correspondence. Consultations are under way regarding Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), adopted by the Conference at its 91st Session. The report attached also the annual reports to the President on the activities of the President's Committee on the ILO for the fiscal years 2001, 2002 and 2003.

2. The AFL-CIO states that since ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and until the last three years, the work of the President's Committee on the International Labour Organization and its two subgroups, the consultative group and TAPILS, resulted in identification of Conventions for potential ratification, preparation of the necessary reports for submission of those instruments to the Senate and a range of tripartite activities in furtherance of the United States' participation at the ILO. The AFL-CIO states that this process has virtually ground to a halt during the last three periods and also observes that:

- during the last three years, the Secretary of Labor has failed to call even one meeting of the Committee;
- TAPILS has not met at all during this reporting period, nor did TAPILS meet during the period 1999-2001 but its working group met twice and two Conventions were ratified;
- the functioning of the procedures is very slow: in 2002 the ranking member of the Senate Foreign Affairs Committee expressed interest in having the President resubmit Convention No. 111 to the Senate but since then the working group has met only once and documentation proposed by the AFL-CIO was not distributed by the Government. In the opinion of the AFL-CIO the Government has allowed the tripartite process to languish;
- referring to the Government's action preceding the 2004 International Labour Conference, the AFL-CIO indicates that for the first time since 1991, the Government did not convene a full meeting of the consultative group in preparation for the Conference. Instead, a much smaller subgroup met and the full group of workers' and employers' representatives did not have the opportunity to prepare for productive work at the Conference.

Finally, the AFL-CIO recalls that the International Confederation of Free Trade Unions (ICFTU) filed a complaint with the Credentials Committee at the 92nd Session of the Conference 2004, concerning the partial payment of the travel and subsistence expenses of the Workers' delegation of the United States alleging that the Government had violated article 13, paragraph 2(a), of the ILO Constitution. The Credentials Committee concluded that "... the ability of the Government delegation and the Workers' delegation to actively participate in the Conference plenary and technical committees cannot be considered comparable. Noting this imbalance and given the circumstances, the Committee trusts that the Government will cover the expenses of a sufficient number of advisors in the Worker's delegation to ensure that the ability of workers to participate in the committees and the plenary is similar to that of the Government". The Credentials Committee expressed its confidence that the Government and the social partners "will find opportunities to discuss these issues in the course of the consultations leading to the preparation of each session of the Conference" (ILC, 92nd Session, 2004, *Provisional Record* 6C, paragraph 29). The AFL-CIO believes that this illustrates the Government's retreat from full commitment to the tripartite structure and process.

3. The Committee notes that the issues raised in this observation are related to the effectiveness of the consultations required by *Article 2, paragraph 1*, of the Convention. It recalls that, in accordance with this provision, the Government and the social partners should establish procedures which ensure effective consultations in a manner that is satisfactory to all parties concerned. It therefore asks the Government to provide information in its next report on the measures taken to ensure effective tripartite consultation within the meaning of the Convention, including particulars of the consultations on each of the matters set out in *Article 5* and to indicate the recommendations made or the measures adopted to resolve the issues raised in this observation.

Zimbabwe

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1989)

1. *Tripartite consultations required by the Convention.* The Committee notes the detailed information supplied by the Government in its report received in September 2004 on the consultations required under *Article 5, paragraph 1, of the Convention*. It notes in particular that consultations were held to consider ratification of Conventions Nos. 121, 122, 151, 156, 167, 175, 183 and 184, and requests the Government to keep it informed of action taken as a result of the consultations. The Committee requests the Government on a general basis to continue to provide detailed information on

the consultations held on each of the matters set out in *Article 5, paragraph 1*, during the period covered by the next report, specifying the nature of any reports or recommendations resulting from the consultations.

2. *Consultations with representative organizations*. Bearing in mind that the Conference Committee stressed the importance of social dialogue and indicated that such dialogue required full respect of the independence of workers' and employers' organizations and of the principles and procedures of the International Labour Organization (*Provisional Record* No. 24, Part Two, 92nd Session, Geneva, 2004, page 59), the Committee requests the Government to provide information in its next report on progress made in implementing "effective" consultations with "representative organizations" which enjoy freedom of association (*Articles 1 and 2* of the Convention).

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 144** (*Azerbaijan, Bahamas, Benin, Botswana, Bulgaria, Burkina Faso, Burundi, Chad, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Congo, Denmark, Dominican Republic, Egypt, Fiji, France, France: French Polynesia, France: New Caledonia, Grenada, Japan, Kazakhstan, Kenya, Republic of Korea, Latvia, Lesotho, Madagascar, Malaysia, Mauritius, Republic of Moldova, Mongolia, Mozambique, Namibia, New Zealand, Nicaragua, Nigeria, Philippines, Poland, Romania, Sao Tome and Principe, Suriname, Syrian Arab Republic, Trinidad and Tobago, Uganda, Yemen, Zambia*).

Labour Administration and Inspection

Angola

Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)

The Committee observes that the Government's report does not reply to its previous comments. Noting the information in the labour inspectorate reports for the years 2000 and 2003 and the second half of 2000, and in the reports on occupational accidents in 2000 and 2001, the Committee draws the Government's attention to the following points.

Articles 10, 11 and 16 of the Convention. The Committee notes with concern that there are again reports of a lack of human and material resources in the labour inspection services. It notes in particular the scarcity of means of transport and office supplies and the poor state of repair of typewriters in the various regional offices. The Committee further notes the significant decline in the total number of inspections and workplaces inspected, from 2,496 in 2002 to 1,559 in 2003 and from 1,836 in 2002 to 1,417 in 2003, respectively. Stressing once again the social role of labour inspection, the Committee considers that when a country's economic situation does not allow it to apply the provisions of the Convention adequately, government must be at pains to maintain and develop the resources of the inspectorate, for example, through support from international cooperation where possible. The Committee trusts that the Government will promptly take steps to this end and that it will provide relevant information in its next report.

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

Argentina

Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)

1. *Impact of the restructuring on the operation of the labour inspection system.* In its previous comments, the Committee noted the comments made by the Latin American Confederation of Labour Inspectors (CIIT) in a communication dated 20 May 2002 on the application of the Convention, stating that there had been no change in the situation as described in the observations made in 1999. The Committee also noted the explanations provided by the Government on the consequences of the economic and financial crisis on the operation of the labour administration and requested information on developments in the situation with regard to *Articles 1; 3, paragraphs 1(a) and 2; 4; 6; 7, paragraph 3; 10; 11; 14 and 16 of the Convention* which, according to the CIIT, were not applied.

The Committee notes that the Government has replied in part to its previous comments. It notes that Act No. 25.877, of 2 March 2004, maintains the designation of the Minister of Labour, Employment and Social Security as the central authority of the Integrated Labour and Social Security Inspection System (SIDITYSS).

According to the CIIT, the mediation functions assigned to labour inspectors amount to an additional obstacle to the discharge of their supervisory duties of the legislation for which they are responsible, which is rendered difficult by a situation that has already deteriorated markedly, particularly with regard to resources, but also by reason of the dispersion of responsibilities and the disparities, to the detriment of labour inspectors, of the remuneration conditions of public servants. The lack of human resources is even reported in certain provinces to have led to the abolition of any labour inspection system while, in others, labour inspectors are confined to supervising homework, with the majority of the other fields covered by inspection being assigned to contractual employees not covered by the status of public officials, but better paid than the labour inspectors of the Ministry of Labour.

Noting that the provisions of Act No. 25.877 provide responses to certain of the concerns expressed by the CIIT, the Committee requests the Government to provide information in its next report on any text or measure of a practical nature adopted under the provisions of the new Act on labour inspection, as well as a description of the new inspection system throughout the territory and particulars on the impact of the Act on the status and conditions of service and working conditions of labour inspectors (*Articles 6, 7, 10, 11, 14 and 16*); on their fields of competence (*Article 3, paragraphs 1 and 2*); and on any measures adopted to promote cooperation with other institutions engaged in similar activities (*Article 5*).

2. *Labour inspection and child labour.* With reference to its general observation of 1999, the Committee notes with satisfaction that regional training days on the issue of child labour and the role of labour inspectors have been organized for labour inspectors with a view to raising the awareness of provincial administrations on the importance of the issue and the need to establish their own methods of work and special teams to monitor child labour. The Committee also welcomes the structural measures adopted in the context of the measures to combat child labour. These include the establishment by Decision No. 125/003 of March 2003, within the Ministry of Labour, Employment and Social Security, of a child labour inspection unit responsible for ascertaining the working conditions of children, the nature of their activities, the level of risk to which they are exposed, and for analysing and systematically compiling relevant information from the various inspection services and for maintaining coordination with the Federal Labour Council and provincial labour administrations to carry out operations to detect cases of violations in this field. It requests the Government to continue providing information on the outcome of the measures adopted and, in particular, to provide relevant statistical data.

The Committee is addressing a request directly to the Government on certain matters.

Austria

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

Referring to previous comments, the Committee notes with satisfaction that, according to information contained in the Labour Inspection Annual Report for 2002, the Government has given effect to its commitment to take appropriate measures aimed at transferring the control of illegal work to a distinct body, so that labour inspectors could fully perform their principal functions as provided for by *Article 3, paragraphs 1 and 2, of the Convention*. The Committee would be grateful if the Government would provide the ILO with a copy of the relevant legal provision.

Barbados

Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63) (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:

In its previous comments concerning Parts II and IV of the Convention, the Committee asked the Government to make efforts to resume the compilation and publication of statistics of wages and hours of work required under these Parts of the Convention, and to continue to provide information on any progress made in this respect, especially following the technical assistance provided by the Office and the participation of officials from Barbados in the Subregional Workshop on the Development of a Wage Statistics Programme for the Caribbean (November 1996). Noting the Government's indication in its report that the Statistical Department is in the process of improving the response rate and coverage of statistics on employment and earnings, the Committee again requests the Government to provide more information on the abovementioned points.

The Committee again draws the Government's attention, as it did in its general observation of 1988 and general direct request of 1999, to Convention No. 160 concerning labour statistics, adopted in 1985, which revised the present Convention. The Committee recalls the "principles of flexibility and gradualism" of Convention No. 160, and would like to invite the Government to give consideration to the possibility of ratifying Convention No. 160.

Labour Inspection Convention, 1947 (No. 81) (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:

The Committee notes the Government's report in which reference is made to the observations of the Barbados Workers' Union (BWU). According to the above union, the labour inspection services' main problem is the lack of inspectors to deal with the growing number of complaints. The Committee hopes that the Government will not fail to give its views on the matter in its next report.

The Committee is addressing a request directly to the Government concerning other matters.

Belize

Labour Inspection Convention, 1947 (No. 81) (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 takes note of the Government's report as well as the table of labour statistics gathered by the Central Bureau of Statistics for 1996, the table of statistics concerning occupational accidents and diseases covering the period of January 2000-June 2001, and the statistics of complaints and visits by the labour inspection from January 1999-June 2001. The Committee notes that the information communicated by the Government in response to its previous comments does not indicate any improvement in the application of the Convention. As a result, it once again draws the attention of the Government to the following points.

Labour inspection staff and inspection visits. (Articles 2, 3, 10 and 16 of the Convention). The number of inspection visits communicated dropped from 169 in 1999 to three for the first semester of 2001. Indeed, the Government notes in its report that, for reasons of insufficient human resources, inspection visits could not be made in conformity with the Convention. With reference to its previous comments, the Committee once again notes that the staff described in the Government's report is composed of persons designated by the terms "labour commissioner" and "labour officer", and that these terms do not indicate which persons exercise the functions of labour inspection in the sense of the Convention. The Government is requested to provide details in this regard and to clarify how, in conformity with the instrument, legal provisions regarding the conditions of work, as well as provisions regarding hours of work, wages, occupational safety, occupational health and well-being, employment of children and young persons and the protection of workers in commercial and industrial establishments are applied.

Occupational safety and health. As it has in its previous comments, the Committee once again refers to the mission report of an ILO consultant in 1996 which indicated that, from the workers' point of view, it was urgent that questions of occupational safety and health be considered as priorities and that legal measures be taken to ensure a reduction in the worrisome number of occupational accidents and their consequences. The Committee asks the Government to communicate all useful information on measures taken to fill the gaps in legislation and to establish a labour inspection system which includes visits of establishments.

Noting that workers had indicated that the absence of any representative workers' organizations in the important economic sectors constituted a principal obstacle in the improvement of the situation, the Committee would be grateful if the Government

would indicate how it plans to give effect to *Article 5(b)* of the Convention, according to which the competent labour inspection authority should take appropriate measures to encourage the collaboration between labour inspection staff and employers and workers or their organizations.

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

Benin

Labour Inspection Convention, 1947 (No. 81) (ratification: 2001)

The Committee notes with satisfaction from information available at the Office that thanks to technical assistance programme implemented following an institutional diagnosis of the labour administration system, a register of enterprises is now kept in every departmental branch of the labour inspectorate. In the Committee's view, becoming acquainted with the extent of needs is a decisive step towards the effective working of the inspection services and an evaluation of the extent to which the relevant legislation is applied. It observes in this connection that data on the number of workplaces liable to inspection and the activities carried out in them is essential to assessing the human, financial and logistic resources that are needed to meet the important social objectives of labour inspection. Such data are also useful for setting priorities on the basis of the country's economic situation and for backing up the annual application to the competent authorities for budgetary resources.

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

Labour Administration Convention, 1978 (No. 150) (ratification: 2001)

1. *Strengthening the capacities of the system of labour administration with ILO support.* The Committee notes with interest that, according to the information available, following an institutional survey on labour administration in 1999, the technical assistance provided by the ILO made it possible in particular to strengthen the management training of the secretaries-general of the ministries responsible for labour administration, to give a fresh boost to labour inspection activities, to institute the keeping of an inventory of enterprises in each labour inspection department and to carry out an annual programme of inspection visits.

2. *Formulation of a national labour policy.* The Committee notes with satisfaction that the ILO support also assisted the process of formulating a national policy, which is still under way, and particularly that the provisions of the Convention relating to coordination between the various stakeholders in the system of labour administration are already being applied.

3. *Article 3 of the Convention. Direct negotiations between employers' and workers' organizations.* The Committee notes that section 55 of the General Collective Labour Agreement of 17 May 1974 gives effect to this provision of the Convention, which provides that activities in the field of national labour policy may be regarded as being matters which are regulated by having recourse to direct negotiations between employers' and workers' organizations. Under this text, any collective dispute which arises within an enterprise or establishment will be the subject initially of consultation between management and representatives of the staff and, in the event of disagreement, the dispute will be brought before a joint committee, formed within and operating within the enterprise.

The Committee is addressing a request regarding certain points directly to the Government.

Bolivia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)

Further to its previous comments, and referring in particular to the information available to the ILO, the Committee notes with interest 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 previous comments.

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.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1977)

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 with interest, 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.

Bosnia and Herzegovina

Labour Inspection Convention, 1947 (No. 81) (ratification: 1993)

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

Article 12, paragraph 1(a), of the Convention. With reference to its previous comments, the Committee once again reminds the Government that, further to a joint representation made to the ILO on 9 October 1999 under article 24 of the ILO Constitution by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (USIBH) and the Union of Metalworkers (SM), alleging violation by the Government of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the committee entrusted by the Governing Body of the ILO with its examination considered that the facts submitted constituted a violation of *Article 12, paragraph 1*, of Convention No. 81, concerning the right of labour inspectors' to enter freely into enterprises and workplaces liable to inspection. Further to the recommendations of the latter committee, the Committee of Experts made an observation to the Government in 2001 requesting it to adopt, as soon as possible, all necessary measures to repeal from the legislation the requirement that labour inspectors must seek the authorization of a higher authority to enter enterprises and workplaces liable to their inspection. The Committee once again requests the Government to provide the information requested on this matter.

Articles 4, 20 and 21. The Committee would be grateful if the Government would indicate whether the national inspection system is placed under the supervision and control of a central authority, as envisaged in *paragraph 2 of Article 4*, or under that of the authorities of each federated entity.

In any case, the Committee trusts that effort will rapidly be given to the obligation of the central authority, as required by Articles 20 and 21, to publish and transmit to the ILO a general annual report on the activities of the inspection services under its control and requests the Government to provide information on the measures taken for this purpose.

The Government is also asked to provide the information requested by the report form for the Convention under each of its provisions, and in *Parts IV and V*.

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 report and the information sent in reply to its previous comments, and the appended documentation. It notes in particular Act No. 10.593 of 6 December 2002 to reorganize the career of inspector of the national treasury (now "inspector of federal revenue") and to organize the career of inspector of social welfare and that of labour inspector, and Decree No. 4.552 of 27 December 2002 issuing new labour inspection regulations.

The Committee also takes note of the observations made by the National Association of Occupational Safety and Health Workers (ANAHST), the Gaucha Association of Labour Inspectors (AGITRA) and the Association of Labour Inspectors of Minas Gerais (AAFIT/MG) concerning the application of Convention No. 81, received at the Office on 7 January 2004, 2 April 2004 and 21 July 2004 respectively, and the information sent by the Government concerning the observations of the ANAHST.

According to the ANAHST, Act No. 10.593 of 2002 and Decree No. 4.552 discriminate against occupational health and safety workers and are inconsistent with *Article 6 of the Convention*. A technical notice from the Occupational Health and Safety Department of the Ministry of Labour and Employment, giving an opinion on the action that ought to be taken on the claims of the health and safety of workers, finds that the offending legislation does discriminate against these workers because the Act excludes them from the career of labour inspector and the Decree relieves them of duties conferred on them by the old labour inspection regulations and provides for a special occupational card to be issued for this category of workers. The same technical notice states that Decree No. 97.995 of 1989 (supplementing Decree No. 55.851 of 1965) established their integration in the federal labour inspection system as a labour inspection authority on a par with other inspection workers, and that as a consequence they received the same occupational identity card, the training required by law to carry out supervisory duties in the areas of occupational safety and health and labour legislation, and the same transport allowances as other inspection workers. Furthermore, in the Brazilian classification of occupations, their duties are defined according to the same criteria as those of labour inspectors. The technical notice concludes that their claims were warranted and that they should accordingly be covered by Act No. 10.593 of 2002 and recover the duties of which they were relieved by Decree No. 4.552 of 2002.

The Government takes the view that under Act No. 10.593 of 2002 the occupational safety and health workers were never treated as labour inspectors. Decree No. 97.995 of 1989 integrated them in the federal labour inspection system to carry out auxiliary inspection duties, and Decree No. 4.552 of 2002 issuing the new labour inspection regulations merely confirmed this. Furthermore, neither their posts nor the recruitment requirements were covered by the same rules as those for labour inspectors, and the fact that they received transport allowances and training does not alter the auxiliary nature of their duties. As to the Brazilian classification of occupations, the purpose of which is to provide a databank for public consultation and the preparation of labour market policies, it identifies and describes the occupations only roughly. As public employees, occupational safety and health workers are appointed by competition on the basis of their merits, and as labour inspectors have security of tenure. The Government considers that their claim to the career of labour inspector is utterly misplaced, but concedes that their claim to a pay increase could be legitimate and warrants examination.

AGITRA and the AAFIT/MG refer to the murder, on 28 January 2004, of three labour inspectors and a driver of the Ministry of Labour by a farmer in the context of an inspection in connection with forced labour. The Committee notes in this connection that there have been numerous demonstrations expressing indignation by representative organizations of employers and workers worldwide.

One of AGITRA's objections is that the Brazilian Government has shown total lack of commitment to applying the law and providing labour inspectors with even minimum security for the performance of their duties. AGITRA alleges that the labour inspectorate suffers from heavy political interference aimed at preventing inspection: political authorities, who are likewise landowners, have close links with the military police, which protects their interests turning a blind eye to their actions. Furthermore, the labour inspection system is in the process of being dismantled, as reflected by:

- (a) a lack of effective cooperation between the labour inspection services and other government services and institutions, witness the murder of three labour inspectors and the Ministry of Labour driver (*Article 5, paragraph (a)*);
- (b) the insufficient and constantly dwindling staff of the labour inspectorate despite a larger economically active population, and hence less frequent and less efficient inspections (*Articles 10 and 16*);
- (c) the precarious material resources of the labour inspectorate and the freeze on travel allowances for labour inspectors, who are reduced to paying for travel from their own pockets (*Article 11, paragraph 2*);
- (d) breach of the rule that labour inspectors are free to carry out inspections in workplaces liable to inspection (*Article 12, paragraph 1(a)*);
- (e) a cumbersome and therefore inefficient system for legal action and a lack of transparency in the Ministry of Labour's administrative proceedings, and also in the judicial system, allowing the perpetrators of violations to go unpunished (*Articles 17 and 18*).

The AAFIT/MG asserts that the murder of January 2004 is a reflection of the Government's usual non-committal attitude towards officials responsible for enforcing legislation and other state employees, which is also evidenced by the lack of any investment in the public service for decades. According to the organization, a thorough reorganization of the labour inspectorate is urgently needed and there is a policy gradually to dismantle the labour inspectorate and its institutions. Policy-makers see the labour inspectorate as an obstacle to the implementation of political-economic projects and the country's development. There is evidence that the inspectorate is being deliberately dismantled. Labour inspectors are confined to administrative work (*Article 3, paragraph 2*):

- (a) the Minister of Labour uses far too many interns instead of state workers and avoids organizing public competitions thus encouraging political clientelism and a deterioration in the working of institutions. Furthermore, management

posts are ill-paid and managerial appointments in the labour inspectorate go for political reasons to persons outside the inspection system who frequently lack the necessary technical capacity, with negative administrative and operational implications (*Article 6*);

- (b) the number of labour inspectors and labour inspection support workers is highly inadequate (*Article 10*) and central planning of the inspectorate's activities means that visiting cannot be scheduled more specifically to meet local needs (*Article 16*);
- (c) local inspection offices, particularly the Minas Gerais office, are ill-equipped and inadequate and often lack computers, telephones, and even the most basic furniture (tables, chairs) needed by inspectors to carry out their duties (*Article 11, paragraph 1(a)*);
- (d) subsistence allowances for inspectors on mission outside their jurisdiction are absurdly low (*Article 11, paragraph 2*); and
- (e) labour inspectors' duties increasingly involve negotiation to the detriment of supervision and the punishment of violations. All these factors, compounded by a shortage of staff, are conducive to infringements since employers are sure of going uninspected or, at worst, being given time to take remedial action, and in the end go unpunished. Furthermore, the interval between the reporting of an infringement and the start of proceedings is so long that the latter become time-barred (*Article 18*).

The Committee notes that the Government provides in its report information on recent measures to improve the working of the inspectorate and the status and conditions of service and work of inspectors.

It would be grateful if the Government would provide any information or comments it deems useful on the objections raised by the two above organizations, together with any relevant legislative, regulatory, administrative or other relevant texts so that the Committee may examine them at the next appropriate session. It requests the Government to provide any information on the action taken in order to raise safety and health agents' salaries.

Article 5. The Committee notes with interest that the secretariat of the labour inspectorate sent a circular in 2003 to the regional offices recommending closer links with the social partners and the public institutions with a view to inspection activities being planned on the basis of needs. Noting that pursuant to a decree of regional labour delegates providing for the creation of trade union advisory committees on the planning of supervisory activities, such committees have already been formed in almost all the regional offices, the Committee would be grateful if the Government would provide a copy of the abovementioned decree together with information on the subjects addressed in these committees.

Article 10. In its previous comments, the Committee noted that in March 2001 the total number of serving labour inspectors was 3,094 including 308 specialists in occupational medicine and 395 in engineering, in addition to 100 health and safety inspectors, and that the inspection staff was distributed according to the number of inhabitants in each of the 26 states and the federal district. It also noted the Government's view that the staff of the inspectorate was too small in relation to the size of the country and the large population. It was not possible to hold the competition to recruit for the 100 or so vacant posts owing to financial difficulties which required measures to adjust public expenditure, as had occurred with the competition for new recruitment between 1999 and April 2000. On 14 September 1999, the Federal Tribunal issued a decision ordering implementation of a public competition held in 1994 in which some 700 applicants had been successful. The decision prevented the recruitment of new labour inspectors owing to the financial implications of training the successful applicants. The Committee notes that the obstacle to recruitment was nonetheless removed in June 2002, that the 2003 competition to fill 150 vacancies is under way and that 75 more vacancies should shortly be filled pursuant to a decision by the Ministry of Planning. Noting that, according to the inspection reports sent by the Government for the years 2002 and 2003 and the information in the Government's report for 2004, the number of inspectors, which had declined significantly between 2001 and 2003, has increased appreciably in 2004 and is at a level comparable to that of 2001, the Committee requests the Government to account for this recent change in trend, as the figures appear to suggest that the recruitment measures have been implemented successfully.

Articles 13 and 16. With reference to its previous comments, the Committee notes with satisfaction that inspections focusing on occupational safety and health have been conducted in the CEPISA electricity company where a number of irregularities liable to cause serious or fatal accidents have been remedied following the labour inspectors' injunctions. It further notes that the Occupational Safety and Health Department has embarked, in consultation with the social partners, on a review of Regulation No. 10 on electricity installations and services. Since, according to the Government, this text marks an important development in the regulation of preventive measures for occupational risks in the electricity production and supply sector, the Committee would be grateful if the Government would provide a copy of it once it has been adopted.

Labour inspection and forced labour. With reference to its previous comments, the Committee notes with interest the information provided by the Government on measures to combat child labour, including: the partnership with several institutions and bodies; monitoring of supervisory operations by the Public Prosecutor for Labour (as from 2001) and the Federal Public Prosecutor (as from 2003); the launching in 2003 of the National Plan to Eliminate Forced Labour; the creation, in 2003, of the National Committee to Eliminate Forced Labour (CONATRAE) to replace GERTRAF; the list, compiled by the labour inspection secretariat, of the names of landowners/employers who have committed more than one offence in the area of forced labour, whose publication in the media has enabled public institutions to restrict their access

to credit, allowances and social benefits; training on forced labour for labour inspectors, other public employees and the social partners; the mobile inspection handbook produced by the Special Mobile Inspection Unit (GEFM) and the creation of a databank. The Committee also notes the information that, thanks to the GEFM, the number of workers released from forced labour increased between 2001 and 2003 and that decentralization is under way to allow the regional labour offices, particularly those in the localities concerned, to tackle forced labour directly. The Committee would be grateful if the Government would continue to provide figures concerning the activities of the labour inspectorate to combat forced labour, and on their results.

Labour inspection and child labour. With reference to its previous comments, the Committee notes with interest that a card of indicators of labour by children and young persons has been produced and published; a list of the worst forms of child labour has been drawn up; data and information have been sent to the Ministry of Protection and Social Assistance with a view to the grant of scholarships on a priority basis to children and young persons engaged in activities considered to be among the worst forms of child labour; an order (*Instrução normativa* No. 1 of 23 March) has been drafted and published to prescribe the procedure to be followed by labour inspectors in coping with child labour in the formal and informal economies and in the family; a decree has been adopted on activities and premises that are unhealthy and unsafe for minors; GECTIPAS has been given the necessary computer tools for planning, recording and monitoring supervisory activities; cooperation agreements (*termos de compromisso*) have been signed between the Ministry of Labour and Employment and the ABRINQ foundation for the rights of children and young persons, with production companies, for implementation of activities to prevent and eliminate child labour and to protect adolescent workers; a technical cooperation agreement has been signed by the Ministry of Labour and the Ministry of Welfare and Social Assistance, on joint action for the execution, monitoring, evaluation and publication of data on activities conducted under the Child Labour Eradication Programme (PETI); a cooperation agreement has been signed with the Ministry of Health for joint activities in the area of occupational safety and health; a technical cooperation teaching programme “Teaching workers of the future” is being implemented with municipal education secretariats to train teachers and provide material and includes training activities for children and young persons; activities have been undertaken by the Inter-ministerial Committee to Combat Violence and the Sexual Exploitation of Children and Young Persons, with participation by the labour inspection secretariat and in cooperation with the police, with medical supervision in establishments suspected of such sexual exploitation of children and young persons.

The Committee would be grateful if the Government would ensure that figures on the supervisory activities related to combating child labour and the results of such activities are included in the annual inspection report in future.

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

Bulgaria

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

1. *Information on labour inspection and the evaluation and improvement of its functioning.* The Committee notes with satisfaction the detailed and full report provided by the Government and the annual report on labour inspection for 2003, which includes an evaluation of the effectiveness of the labour inspection system as information on the difficulties encountered. The Committee notes with interest the further information provided on the implementation of ILO project BUL/98/Mo3/FRG on integrated labour inspection, with the participation of the social partners, the occupational safety and health in construction BUL0020 (FEU+7-programme) project, in which Denmark is participating, and project BG 2003/004 937.05.01, which is part of the PHARE 2003 programme, on meeting the pre-accession commitments of Bulgaria in the field of occupational safety and health.

2. *Cooperation and collaboration in the field of labour inspection (Article 5 of the Convention).* The Committee welcomes the indication that cooperation has increased between the labour inspectorate and various public sector authorities, such as the Agency for Small and Medium-Sized Enterprises and the State Agency for Child Protection (a). Furthermore, it notes the cooperation agreement concluded at the national level with the representative organizations of employers and workers with a view to conducting joint inspections at the enterprise level, intensifying the activities of tripartite bodies at the regional level and organizing joint consultations for the development of annual national programmes of action that the “General Labour Inspectorate” Executive Agency (EAGLI) will carry out at the national level, in addition to other cooperation activities (b).

3. *The provision of adequate human and financial resources to ensure progressively the effective discharge of inspection.* The Committee notes with interest the steadily increasing number of inspections (up to 32,271 in 2003), the increase in labour inspection staff (about 80 newly appointed inspectors), in the necessary financial and material resources and the activities undertaken to improve their skills. The Committee also notes the significant decrease in the number of industrial accidents and cases of occupational diseases. The Committee further observes that inspections are focussed on the control of SMEs (49.8 per cent), information campaigns have been launched at the national level in the construction, manufacturing and employment sectors, and that local campaigns are being undertaken with a view to the elimination of asbestos, and the use of a broad media policy.

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

Burkina Faso

Labour Inspection Convention, 1947 (No. 81) (ratification: 1974)

The Committee notes the Government's report, which replies in part to its previous comments.

1. The Committee once again asks the Government to provide information on the following matters.

Reimbursement of travelling and incidental expenses necessary to the performance of duties of labour inspectors. With reference to its previous comments and noting the information supplied by the Government for the period ending May 2000 concerning the increase in the number of regional labour directorates and the forthcoming expansion of their equipment and means of transport, the Committee once again asks the Government to provide information enabling it to ascertain whether the allowances granted to inspectors under Decree No. 95-395 of 29 September 1995 are adequate to cover the travelling and incidental expenses in accordance with *Article 11, paragraph 2, of the Convention* which they need to conduct inspection visits as frequently as prescribed by *Article 16*.

3. *Free access of labour inspectors to workplaces liable to inspection.* The Committee would be grateful if the Government would supply information on the measures announced in a previous report to bring into line with the Convention the legislation allowing labour inspectors free access to workplaces in accordance with *Article 12, paragraph 1(a)*, at any hour of the day or night to any workplace liable to inspection and *paragraph 1(b)*, by day to any premises which they may have reasonable cause to believe to be liable to inspection.

2. *Annual reports on the work of the inspection services.* Referring to its previous comments, the Committee notes the indication that annual reports covering the period 1994-99 are available and will soon be transmitted to the ILO. The Committee reminds the Government that, in accordance with *Article 20* of the Convention, annual labour inspection reports should be published within a reasonable time, and in any case, within 12 months after the end of the year to which they relate (*paragraph 2*), and that copies of such reports should be transmitted to the ILO within a reasonable period after their publication and in any case within three months (*paragraph 3*). The Committee asks the Government to take appropriate measures to give full effect to these provisions of the Convention.

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1974)

The Committee takes note of the Government's report. It notes that it does not fully reply to the previous comment. It must therefore repeat its previous observation, which read as follows.

The Committee notes the Government's replies to the points raised in its previous comments, which indicate that in agricultural enterprises the labour inspectorate operates with the same human and material resources and according to the same methods as in other branches of activity. In theory, this is not contrary to the prescriptions laid down in the Convention as to the general principles which should be the foundation of any labour inspection system. However, to meet the standard of effectiveness required by the ILO instruments concerning labour inspection, the Committee deems it essential for labour inspection services to be duly adapted to the specific features of each of the economic sectors covered. In this case, by taking into account the particularities of agricultural workers and agricultural enterprises, the Convention aims to ensure the necessary degree of compliance with the legislation on the working conditions of agricultural workers and their protection while engaged in their work.

An appreciation of the effectiveness of the labour inspection system in agriculture is therefore necessarily based on the knowledge of the needs in this area and on periodical updating of the relevant information. The obligation for inspection units to provide periodical reports on their activities in agricultural enterprises (*Article 25*) is specifically intended to enable the central inspection authority to follow, supervise and, if necessary, adjust their activities, as well as the inclusion of information on the items listed in *Article 27* which are specific to the agricultural sector in the general annual report on inspection activities required by *Article 26*. No such report has been provided to the ILO for around ten years and the number of agricultural enterprises liable to inspection has never been communicated. In its report of 2000 on the application of the Labour Inspection Convention, 1947 (No. 81), concerning labour inspection in industry and commerce, the Government announced the publication and communication of annual reports for the period 1995-99 without following up on it. Consequently, the Committee still lacks the data needed to make even a rough assessment of how far this Convention is applied in practice and is therefore unable to fulfil the supervisory duty vested in it. It wishes to point out to the Government that, as it stated in its General Survey of 1985 on labour inspection, the publication of an annual report is not an end in itself but gives the national authorities significant data on the application of the national labour legislation and any gaps in the legislation which may be instructive for the authorities in the future, on the one hand, and, on the other hand enables employers and workers and their organizations to react, through its publication, with a view to improving the effectiveness of inspection services (*paragraph 273*). The Committee recalls that, when a member State is unable to fulfil the requirements of a Convention it has ratified due to its economic situation, it may request the technical assistance of the ILO and international financial aid.

Noting that, according to the Government, the available general indicators made it possible, when formulating projects and programmes to combat child labour, to establish that this phenomenon is found mainly in the agricultural sector, including animal husbandry, and that labour inspectors are assigned an important role in this context, the Committee is of the view that the Government would be well advised to take advantage of the implementation of these projects to initiate measures to reactivate the labour inspection services in agricultural enterprises. As a preliminary and objective assessment of the situation in this sector is highly desirable for this purpose, the Committee would be grateful if the Government would ensure that the labour inspection services have access to data on the number and geographical distribution of agricultural enterprises and workers employed therein, and to provide the ILO with any relevant information, including information on the composition and distribution of inspection staff in geographical terms and according to their fields of competence.

The Committee hopes that the Government will communicate detailed information on how it has given effect to each of the provisions of the Convention. The Government is also asked to keep the ILO informed of any difficulties encountered and of any steps taken to overcome them.

Cameroon

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

The Committee notes the Government's report, which responds in part to its previous comment. It also notes that observations were formulated by the General Union of Cameroon Workers (GUCW), dated 27 August 2004, and by the Confederation of Public Service Unions (CSP), dated 2 September 2004, with regard to *Articles 5, 6, 11, 13, 16 and 18 of the Convention*. The International Labour Office sent these comments to the Government on 8 and 11 October 2004, respectively, in order to invite it to submit any observation which it might wish to make with regard to the points raised. The Committee will examine at its next relevant session the points raised in the abovementioned comments and the information sent in response by the Government.

The Committee is addressing a direct request regarding certain points to the Government.

Cape Verde

Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)

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 Government's report and the partial information provided in reply to its previous comments. It also notes Legislative Decree No. 90/97 of 31 December 1997 approving the new conditions of service of the general labour inspectorate, and Legislative Decree No. 55/99 of 6 September 1999 respecting safety and health conditions at the workplace. The Committee draws the Government's attention to the following point.

Publication and transmission of an annual inspection report (Articles 20 and 21 of the Convention). Noting once again the failure to apply these provisions of the Convention, and with reference to the Government's statement that an annual inspection report is currently being prepared, the Committee wishes to emphasize the need to publish an annual inspection report, as set out in the provisions of the Convention. The objective of such publication is to enable employers and workers and their representative organizations, as well as any other interested party, to be informed of the means, activities and effectiveness of the inspection services, as well as the difficulties that they may encounter in their duties and to seek their reactions for constructive purposes. The annual publication of practical and detailed information, in accordance with the guidance provided in *Paragraph 9 of Recommendation No. 81* which supplements the Convention, on each of the matters set out in *points (a) to (g) of Article 21*, and their transmission to the ILO within the time limits prescribed in *Article 20*, would also enable the international supervisory bodies to evaluate the level of application of the Convention and provide useful guidance for its improvement. The Committee trusts that the Government will make every effort to give effect to these two essential Articles of the Convention and will not fail to provide relevant information with its next report.

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

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)

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 Government's reports and the attached documentation. It also notes the observations made by the Christian Confederation of Workers of the Central African Republic (CCCT), of 26 August 2002, received by the Office on 22 October 2002, concerning the lack of facilities of the labour inspection services which are necessary to discharge their duties. The Committee requests the Government to provide information on the issue raised by the CCCT and additional information on the following points.

Articles 10, 11 and 16 of the Convention. The Committee notes with interest the recruitment of ten new labour inspectors, including one occupational medicine inspector and 11 labour supervisors. It also notes that the building housing the offices of the labour inspection services in Bangui Centre has been rehabilitated. However, the Committee notes with concern the repeated indications by the Government drawing attention to the lack of material resources of the labour inspection services and, in particular, the shortage of office supplies and the absence of transport facilities. Furthermore, no measures have been taken, as required by *Article 11, paragraph 2*, for the reimbursement to labour inspectors of any travelling and incidental expenses necessary for the performance of their duties. These shortcomings, in practice, by the Government's own admission, constitute serious obstacles to the application of the Convention. The economic and social value of labour inspection and the social costs of reducing its effectiveness have been emphasized by the Committee in paragraph 214 of its 1985 General Survey on labour inspection. Noting that the Labour Department is prepared to accept any financial and material support in order to overcome this situation, the Committee trusts that the Government will make every effort to obtain assistance through international cooperation and with the technical support of the ILO with a view to fulfilling the essential prerequisites for the application of the Convention. The Committee hopes that the Government will provide information in the near future on any measures taken for this purpose, and the results achieved.

Articles 20 and 21. The Committee notes with regret that 38 years after the ratification of the Convention, no annual inspection report, as envisaged by these Articles of the Convention, has been provided to the ILO. The Committee recalls that the publication by the central inspection authority and the communication to the ILO of a report on the activities of the services under its control are two essential obligations and that the ILO's technical assistance may be requested with a view to their fulfilment. The Government is therefore requested to make every effort and to take all the necessary steps to give effect to the two above provisions of the Convention and to provide information on the measures taken for this purpose.

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

Chad

Labour Inspection Convention, 1947 (No. 81) (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 the Government's report for the period ending September 2000, and the report on the activities of the inter-prefectoral labour inspectorate for the northern zone for the period December 1998-November 1999. It notes that the Government's report due for the Committee's present session has not been received.

Material resources of the labour inspectorate and effectiveness of its activities (Articles 11 and 16 of the Convention). The Committee notes that, due to the absence of adequate material resources for its work, the inspection services are unable to discharge their duties. According to the information contained in the report on the activities of the inter-prefectoral inspectorate referred to above, which covers eight prefectures, there is only one service vehicle, in a poor condition, for all inspectors. As a result, no inspection could be made outside N'Djamena. The Committee had already noted in its 1985 General Survey on labour inspection the hope expressed by the National Union of Workers of Chad that, with international assistance, a solution could be found to the material difficulties preventing the operation of the inspectorate, and particularly the lack of transport facilities and equipment. In previous reports, the Government announced that efforts would be made to improve the situation. The Committee hopes that the Government has indeed taken the appropriate measures to seek and obtain in the context of international cooperation the funding necessary for the renewal of inspection activities and that it will provide information in its next report on developments in the situation.

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

It is addressing directly to the Government a request concerning certain points.

China

Hong Kong Special Administrative Region

Labour Statistics Convention, 1985 (No. 160) (notification: 1997)

1. *Tripartite consultation on statistics of occupational injuries, occupational diseases and industrial disputes.* The Committee notes with satisfaction that effect has been given to its previous comments and that, in accordance with *Article 3*, the tripartite Labour Advisory Board (LAB) has been consulted on the application of the Convention on the collection and compilation of statistics of occupational injuries and occupational diseases (*Article 14*) and of industrial disputes (*Article 15*). The Government indicates in this regard that the representatives of employers' and workers' organizations on the Board are familiar with the definitions and methodology used in collecting and compiling these statistics. It adds that the Labour Department will consult the LAB if any revision entailing significant changes in the mode of compiling these statistics is to be proposed.

2. *Publication and dissemination of labour statistics.* The Committee notes with interest that the statistics on occupational injuries and diseases and on industrial disputes are now also disseminated on the web site of the Labour Department (<http://www.labour.gov.hk/eng/public/>) (*Article 5*).

The Committee is addressing a request directly to the Government on certain matters.

Colombia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

The Committee notes the Government's partial responses to its previous comments, and the documentation provided in annex.

It notes in particular the merger, under the terms of Act No. 790 of 2002, of the Ministry of Labour and Social Security and the Ministry of Health into a single ministry called the Ministry of Social Protection, the objectives, structure and functions of which are determined by Decree No. 205 of 3 February 2003. The Committee notes with interest that, under resolution No. 0004283, of 23 December 2003, determining the new jurisdiction of labour inspection offices, the jurisdictions of the labour inspectorates are redistributed so as to extend the coverage of the inspection services to the whole of the national territory and to improve their operation, as well as distributing resources on the basis of certain criteria, such as: the political and administrative divisions of the country; the number of municipalities per department; the size of the department; the total population, the working-age population and the economically active population; the

unemployment rate; the underemployment rate; the number of enterprises; the distances between municipal areas; and the communication and transport facilities and workload.

The Committee notes that the labour inspection system is placed under the central authority of the new Ministry, that it is structured at the central level into the Special Inspection, Surveillance and Control Unit; at the regional level, into 32 territorial directorates distributed among the main towns of the department, with the possibility of creating special offices by ministerial decision on the basis of the political, economic and social needs in a specific region, and at the local level in municipal labour inspection offices, the headquarters and jurisdiction of which are to be determined by the Minister. According to the Government, in technical terms, the regional and local structures are under the responsibility of the Deputy Minister of Industrial Relations and, in administrative terms, the Special Inspection, Surveillance and Control Unit.

The Government is requested to provide information on the impact of the recent reorganization of the labour administration on the effectiveness of the activities of the labour inspectorate, together with copies of resolutions Nos. 002 and 0951 of 2003 of the Minister of Social Protection, which were referred to in the Government's report, and of any other text adopted under Decree No. 205 relating to the subjects covered by the Convention.

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) ***(ratification: 1976)***

The Committee notes the Government's partial replies to its previous comments and the attached documents. It draws the Government's attention to the following points.

1. *Security and the particular conditions of service of labour inspectors operating in agricultural enterprises located in dangerous areas.* In its previous comments, the Committee reiterated its concerns regarding the exposure of labour inspectors operating in agricultural undertakings to the risks inherent in the climate of insecurity prevailing in certain regions. It hoped that the Government would contemplate the possibility of adopting measures to guarantee inspectors an appropriate level of protection and hoped that the relevant information would be communicated. Noting that no mention of this subject is made in the Government's report, the Committee urges the Government to adopt adequate protection measures with regard to these officials and to keep the Office informed in this regard.

2. *Article 17 of the Convention. Association of labour inspectors in preventive controls in agricultural undertakings.* The Committee notes that the information provided by the Government under this provision to the effect that all undertakings employing more than ten workers must have a joint committee on industrial safety (COPASO) under the national legislation. This committee, composed of employers' and workers' representatives, is responsible, inter alia, for proposing the adoption of measures for developing prevention activities; for periodically visiting workplaces and undertaking controls of the working environment, machinery, equipment, appliances and activities of workers in all sections of the enterprise; and informing the employer of the existence of sources of danger and suggesting corrective and supervisory measures. Undertakings employing less than ten workers would have a look-out designated by joint agreement of the employer and workers. This information does not meet, however, the specific request of the Committee concerning the measures taken to give effect to the provision of the Convention. The Government is therefore requested to refer to the guidance given on this subject by Paragraph 11 of Recommendation No. 133 supplementing the Convention, and to provide information on any cases or circumstances in which, if appropriate, the legislation provides that the labour inspection services shall be associated with the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety. It would be grateful, in the absence of legislation on this subject, if the Government would take the necessary measures to rectify this deficiency and to provide relevant information in this regard.

3. *Article 19. Notification of occupational accidents and cases of occupational disease and association of the inspectorate with inquiries.* The Committee notes with interest the announcement of the drawing up of a training plan on occupational safety and health for the territorial departments with a view to strengthening inspection, surveillance and control activities. The Committee welcomes this measure which gives effect to *Article 9, paragraph 3*, and hopes that additional information will be provided on its impact on the results of inspection activities. It observes, however, that the Government still does not indicate whether, firstly, the legislation stipulates the circumstances and the manner in which the labour inspectorate in agriculture shall be notified of occupational accidents and cases of occupational disease (*Article 19, paragraph 1*) or, secondly, whether inspectors shall be associated with any inquiry on the spot into the causes of the most serious occupational accidents or occupational diseases (*Article 19, paragraph 2*). The Committee hopes that the Government will provide the requested information or, if no effect has been given to these provisions, adopt the necessary measures to this end and keep the Office informed in this regard.

4. *Articles 25, 26 and 27. Obligation to submit periodical reports and annual inspection reports.* Referring to its previous comments, the Committee notes that the statistical tables attached to the Government's report do not contain specific data on inspection activities in agricultural undertakings. It also notes that, according to the Government, the central inspection authority does not publish an annual report on the activities of the labour inspection services, but that the territorial directors submit to the Special Inspection, Surveillance and Monitoring Unit quarterly reports containing, inter alia, information on the undertakings visited and penalized. The Committee reminds the Government of its obligation

arising from the ratification of the Convention to ensure that the central authority publishes and communicates to the ILO, in the form and within the time limits prescribed by *Article 26* and on the basis of periodical reports which must be submitted under *Article 25* by inspectors or local offices as appropriate, an annual report on labour inspection activities in agricultural undertakings containing information on each of the subjects listed in *Article 27*.

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

Comoros

Labour Inspection Convention, 1947 (No. 81) (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:

Referring also to its previous observation, the Committee notes that the Government reiterates its request for technical assistance with a view to strengthening the capacity of the labour administration. It also notes that the Government has communicated the observation formulated by the Union of Autonomous Comorian Workers' Organizations (USATC) concerning the implementation of the Convention as well as the Government's reply to the issues raised.

According to the USATC, the Government is not granting the labour inspectorate the status it deserves in view of the importance of its task. It stresses, in this regard, the need to grant a larger budget to the labour inspectorate in order to make it operational. The union also suggests that specific projects should be prepared and implemented with support from the ILO and the Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF), in order to strengthen the human resources capacity of the labour inspectorate and social partners.

The Government recognizes the relevance of the USATC observation regarding the need to strengthen organizational capacity and boost the training of labour inspectors and social partners. The Committee notes the Government's hope of achieving this through technical assistance from the ILO and from PRODIAF. The Committee hopes that the Government has taken the necessary steps to this end and that it will provide information in its next report on the results achieved. It would also be grateful if it would gather and communicate to the ILO, as expressed in its previous observation, data available on legislation and on human and material resources available to the labour inspectorate, and indicate the state structures and, where appropriate, private structures exercising direct competence in the field of inspection or cooperating therein.

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

Congo

Labour Administration Convention, 1978 (No. 150) (ratification: 1986)

With reference to its previous comments, the Committee takes note of the Government's report. It notes Decree No. 2003-219 of 21 August 2003 to organize the Ministry of Labour, Employment and Social Security, and Decree No. 2000-29 of 17 March 2000 on the composition of the National Technical Committee on occupational safety and health and occupational risk prevention.

1. *Financial obstacles to the implementation of the Convention.* The Committee notes that, although financial constraints have prevented adoption of special regulations for the management and staff of the labour administration and any meetings of the abovementioned Technical Committee, the Government welcomes the benefits drawn from the technical seminars organized with support from the ILO and the African Regional Centre for Labour Administration (CRADAT), and would like this type of training to be continued.

2. *Organization and working of the administration system.* The Committee would be grateful if the Government would provide further information on the current working of the labour administration system; provide a copy of the Decree setting out the powers of the new Ministry; indicate the number, types and terms of reference of any tripartite consultative bodies reporting to the Ministry; describe the bodies comprising the Ministry both at central level and in external departments; indicate any other bodies accountable to the Ministry; provide copies of any legal texts, reports or other documents pertaining to the composition, terms of reference and working of the bodies comprising the labour administration system (*Articles 1, 4, 5 and 6*).

The Government is requested also to provide information on the composition of the Technical Advisory Committee on international labour standards and all the matters on which consultations were held in the Technical Committee (*Article 8*).

3. *Financial resources for meeting the obligations of the Convention.* Noting with concern that the working of the labour administration is still severely affected by a lack of resources and that, despite technical assistance from the ILO, no new resources have been assigned to it, the Committee requests the Government to consider seeking further financial assistance through international cooperation with a view gradually to covering the human, material and logistical resources the labour administration needs in order to carry out its functions, as defined in *Article 6*. It would be grateful if the Government would keep the Office informed of any steps taken to this end and on any measures taken or envisaged to apply the provisions of the Convention in law and in practice, and to provide copies of any relevant texts.

Costa Rica

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

The Committee notes the information provided in reply to its previous comments and the attached documentation. It draws the Government's attention to the following points.

Adapting resources to the needs of the labour inspectorate and the impact of additional duties on the effectiveness of inspection activities. The Committee notes the information that the Government has been constrained, due to the economic situation in the country, to implement an austerity programme for public expenditure leading to budgetary restrictions which have affected state services as a whole. The Committee however notes with interest the Government's commitment, despite the difficulties referred to above, to make all the necessary effort to reinforce the human resources of the National Labour Inspection Directorate for the effective discharge of its duties. It also notes that the annual activities planned have been undertaken. The Committee joins with the Government in hoping that decisions of a budgetary nature will be taken with a view to providing the inspection system with the resources required to meet its needs in terms of personnel, equipment and logistics. It also wishes to emphasize that the effective discharge of functions that are as numerous and complex as those deriving from its principal functions, set out in *Article 3, paragraph 1, of the Convention*, is only possible where inspectors are not also called upon to undertake other duties such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers (*Article 3, paragraph 2*). With reference to its previous comments, the Committee therefore requests the Government to keep the ILO informed of any developments in this respect and of any decision of a budgetary nature adopted with the purpose of giving effect to each of the relevant provisions of the Convention (*Articles 7, 9, 10, 11 and 16*), and of any progress achieved.

Conditions of service of labour inspectors. The Committee notes the agreement concluded between the Administrative Director-General of the Ministry of Labour, the National Director of the Labour Inspectorate and the President of the National Association of Labour Inspectors (ANIT) relating to the transfer of labour inspectors. According to this agreement, the National Director of the Labour Inspectorate will be empowered by decree to establish, under certain conditions, a system of the six-monthly rotation of labour inspectors by sector of activity and within the same administrative area. Furthermore, the transfers denounced by ANIT may be either maintained or revoked based on the results of the consultations held with the inspectors concerned. The Committee requests the Government to indicate the reasons for the envisaged regulations, any provisions adopted and the conclusions reached by the consultations.

Publication and communication of an annual inspection report (Articles 20 and 21). The Committee notes with regret that, since the ratification of the Convention in 1960, no inspection report as provided for by these provisions of the Convention has been communicated to the ILO. With reference to paragraphs 272 and 273 of its General Survey of 1985 on labour inspection, the Committee recalls that these reports constitute valuable sources of information from two points of view. From the national point of view, they are essential for an assessment of the practical results of the activities of labour inspectorates. Moreover, these reports give the national authorities significant data for the application of labour legislation and may also reveal gaps in the legislation which may be instructive for the future. The publication of annual inspection reports should also provide information to employers and workers and their organizations and illicit their reactions in a constructive spirit. From an international point of view, the communication of such reports to the ILO, within the time-limits set out in *Article 20*, is intended to enable the ILO's supervisory bodies to follow developments in the application of the Convention and provide useful guidance on the efforts made by member States to raise progressively the level of the achievement of the social objectives pursued by the instrument. Annual reports also make it possible for the Committee to assess the extent to which the international labour Conventions ratified by the various countries are applied. The Committee therefore trusts that the Government will take the necessary measures for the purposes referred to above and that it will provide information in its next report on the progress achieved with a view to the publication and communication to the Office of such reports, the form and content of which are set out in the above Articles of the Convention.

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)

Referring to its previous comments, the Committee notes the information concerning the economic situation of the country and the implementation of the public expenditure austerity programme entailing budgetary restrictions for the whole of the State apparatus. It notes, however, that the Government's report does not contain the additional information requested concerning the matters raised in a comment from the National Association of Labour Inspectors (ANIT) specifically concerning the agricultural sector, with regard to the inadequacy of human resources, material means and conditions of service of the inspection services, as well as the consequences of these deficiencies on compliance with the legal provisions concerning conditions of work in agricultural undertakings which are liable to inspection. The Committee therefore requests the Government to provide specific information on the agricultural sector, referring to the requests also made to the Government in its observation under Convention No. 81.

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

Cuba

Labour Administration Convention, 1978 (No. 150) (ratification: 1980)

The Committee notes the Government's report for the period ending 31 May 2004 and the information provided in reply to its previous comments.

According to the Government, the economic, financial and trade difficulties that the country has been confronted with for more than four decades are the principal obstacle to the purchase of the materials and equipment necessary for the computerization and systematic operation of social security and other fields covered by the Ministry of Labour, and to the establishment of a computer network. With reference to its previous comments, the Committee however notes with interest that the establishment of the Ministry of Labour and Social Security improved the operation of the labour administration system, particularly in the field of employment policy; the coverage of the social security system; the provision of guidance and social prevention for families, young persons and the disabled; and the extension of social protection to working mothers. The Committee hopes that the Government will be in a situation to provide information in its next report on further progress achieved in the operation of the labour administration system.

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

Democratic Republic of the Congo

Labour Inspection Convention, 1947 (No. 81) (ratification: 1968)

The Committee notes that the Government's report has not been received. It notes the comments on the application of the Convention communicated to the ILO by the Confederation of Trade Unions of Congo (CSC) by a letter of 31 May 2004, which were forwarded by the ILO to the Government on 16 July 2004, supported by a statement by the World Confederation of Labour (WCL) of 28 July, forwarded to the Government on 16 August 2004.

According to the CSC: (i) the Government has not sent any report to workers' organizations; (ii) in exchange for financial inducements to labour inspectors, employers are allowed to dismiss workers on the occasion of both individual and collective disputes; and (iii) a number of labour inspectors divide their working day between the role of heads of personnel in an enterprise in the morning and labour inspectors in the afternoon.

The Committee would be grateful if the Government would provide any comments that it considers useful on the points indicated above in relation to the provisions of article 23, paragraph 2, of the Constitution of the ILO and *Articles 6 and 15(a) of the Convention*. The comments of the CSC and the WCL will be examined together with any clarifications that the Government wishes to make at the next appropriate session of the Committee.

The Committee is once again addressing directly to the Government its request of 2002 on certain matters.

Djibouti

Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)

The Committee notes with regret that the Government's report has not been received. It must therefore once again repeat its previous observation as concerns the following points:

The Committee notes the Government's report and the documentation attached, as well as the partial information provided in reply to its previous comments. With reference to the Government's statements, which have been repeated on many occasions, to the effect that measures would be taken to prevent, in accordance with *Article 3, paragraph 2, of the Convention*, the conciliation duties discharged by labour inspectors interfering with their principal duties, as set out in *paragraph 1* of the same Article, the Committee notes, however, that the situation has deteriorated still further in this respect. Indeed, the information provided shows that, far from having its human and material resources strengthened, the single inspection service suffers from ever more inadequacies in all respects. According to the Government's report, the number of inspections has continued to fall due to the economic crisis, which has resulted in a freeze on the recruitment of labour inspectors and the reduction in their professional means of transport. As they cannot devote themselves to their principal duties, inspectors are therefore principally confined to discharging administrative tasks. The statistics on the activities of the inspection services provided in the annex to the Government's report reflects this situation. Noting the request by the Government for technical assistance, particularly with a view to the publication of an annual inspection report, in accordance with *Articles 20 and 21*, the Committee hopes that this request will be examined favourably, and that such a report will be duly published and transmitted to the ILO in the near future.

In any event, the Government is requested to provide information on the current staffing of the labour inspectorate, the number of workplaces liable to inspection, the number of workers employed therein, with details on the manner in which workplace inspections are carried out (*Article 10(a), (b) and (c)*). Please also describe the means of transport available to labour inspectors for their professional travel (*Article 11, paragraphs 1(a) and 2*).

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

Dominican Republic

Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)

The Committee notes the information communicated by the Government in response to its previous comments and the attached documents. It draws the Government's attention to the questions which have been the subject of comments for a number of years and requests it to provide relevant information as required by point (c) of the "Subsequent reports" heading of the practical guidance for drawing up reports (report form on the Convention).

Article 12, paragraph 1(a) and (b), of the Convention. The Government continues to state that section 434 of the Labour Code conforms with these provisions. The Committee considers the wording of this section insufficiently precise in this regard and therefore requests the Government to follow the guidance contained in paragraphs 160-165 of its 1985 General Survey on labour inspection for taking measures to enable inspectors to have express authorization on a legal basis to enter at any hour of the day or night (as provided for by the Convention), or more generally "at any time", any workplace liable to inspection (*subparagraph (a)*), and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection (*subparagraph (b)*). The Committee hopes that the Government will not fail to keep the Office informed of any progress in this regard.

Article 12, paragraph 1(c)(iv). The Committee notes the Government's indications to the effect that labour inspectors and inspectors from the Department of Industrial Safety of the Secretariat of State for Labour take and remove in practice samples of substances and materials used in workplaces. Underlining the need, as it did in paragraphs 177 and 178 of its 1985 General Survey on labour inspection, to stipulate this entitlement expressly in a legal text and to observe certain guarantees in its implementation, the Committee again requests the Government to ensure that effect is given to these provisions of the Convention in the legislation and to keep the Office informed of any progress in this regard.

Article 18. The Government's attention must again be drawn to the need to ensure that financial penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties are established taking account of the dissuasive purpose that they are to fulfil despite any monetary fluctuations and that these penalties are effectively enforced. The Committee requests the Government to keep the Office informed of any measure taken to this end and of any difficulties encountered.

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

El Salvador

Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)

Labour inspection and child labour. The Committee notes with interest the activities carried out in the context of the International Programme on the Elimination of Child Labour. It notes in particular the establishment of a National Committee for the Elimination of Child Labour and the formulation of a National Plan based on: the collection of information; the adaptation of the legislation; education; the creation of productive alternatives for the parents of working children; support; awareness-raising; and the determination of a list of the worst forms of child labour. The Committee also notes the implementation of a programme of which the objective is the elimination within a decade of the worst forms of child labour. The general strategy of this programme is to provide education to the children concerned, support the families of working children to improve their capacities and promote the creation of micro-enterprises with a view to improving the income of the families of these children so that they do not have to have recourse to the work of children for survival. The Committee would therefore be grateful if the Government would provide detailed information on the role assigned to labour inspectors in the strategy to combat child labour and if it would provide statistics on the results of the inspection activities carried out in this area.

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1995)

Further to its previous comments, in which it noted the Government's report for 2002 and took note of comments made by the Inter-union Commission of El Salvador, received by the ILO on 13 September 2002 and forwarded to the Government, the Committee notes the information sent by the Government in reply to these comments in a letter of 20 December 2002, and in its simplified report for 2004.

The Inter-union Commission raises a number of objections to the manner in which the Government discharges its obligations deriving from the ratification of Conventions in general and of this Convention in particular.

The abovementioned organization regrets that a copy of the reports on the application of instruments under article 22 of the Constitution are not sent to it systematically, as required by article 23(3) of the Constitution. The commission states that unions are neither consulted on nor informed of measures, projects, actions or activities envisaged to ensure systematic inspection of agricultural enterprises. Furthermore, the labour administration even tends to favour the employer in the context of inspections, illicit practices having been identified in this area. The commission is of the view that the Government either breaches the Convention or fails to apply it.

In response to the commission's comments, the Government refers to various programmes and projects, and in particular the technical and financial support provided under the MATAC/ILO project to modernize labour administration, which includes a labour inspection sub-project. The Government states that a diagnosis of the inspection service was prepared by an independent consultant enabling strengths and weaknesses to be identified. A reform of the organization and functions of the inspectorate was embarked on to make the labour inspection system more flexible, rational and professional with a view to covering the immediate and long-term needs and meeting the challenges of globalization. During the period up to May 2003, the General Directorate of the Inspection Service carried out 20,000 inspections of workplaces in all sectors and by the end of June 2004, 10,000 additional visits should have been conducted, covering some 170,000 workers. Relevant legal sanctions were applied to offending employers reluctant to heed the advice and instructions given by labour inspectors; "comprehensive" inspections targeting application of the social security and pensions system were carried out in coordination with the Social Insurance Institute and the Pensions Supervisory Authority; the number of inspectors increased from 40 in 2002 to 60 in 2003 and was to be increased further by the recruitment of nine new inspectors in 2004.

The Government also refers to the implementation of strong "zero tolerance" anti-corruption measures.

The Committee observes that the information supplied by the Government concerns the general labour inspection system and supplies no details of use to an assessment of its working in the agricultural sector, covered by the present Convention. Nor does it reply to the matters raised by the Inter-union Commission. The Government is therefore asked to provide specific and separate information on the effects of its reported efforts on the ethics of the labour inspectorate (*Articles 8 and 20 of the Convention*), its human resources (*Articles 9, paragraph 3; 10 and 11*), its financial and logistical resources (*Article 15, paragraphs 1(b) and 2*), and on the supervisory activities of labour inspectors in agricultural enterprises (*Articles 6, paragraph 1(a) and (c), and 21*) and on employers, workers and their respective organizations (*Articles 6, paragraph 1(b) and 13*).

The Government is also asked to provide specific and detailed information on developments regarding the extent to which the legislation supervised by labour inspectors is applied, and on the nature of the corrupt practices detected and the administrative and judicial measures taken to sanction them and prevent or contain them.

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

Finland

Labour Inspection Convention, 1947 (No. 81) (ratification: 1950)

The Committee notes with interest the Government's report replying to its previous comments and to the comments made by the Central Organization of Finnish Trade Unions (SAK). It also notes SAK's further observations attached to the Government's report.

1. *Review of the legislation.* The Committee notes with interest the legislative amendments enacted to improve working conditions, including the obligation for employers to conduct obligatory risk assessments and to eliminate risks at the workplace, arrange occupational health care for employees, train occupational safety and health professionals and experts and to draw up occupational health-care plans (the Occupational Health Care Act, which came into force on 1 January 2002, and the Occupational Safety and Health Act (No. 738/2002), which came into force on 1 January 2003). It also notes with interest the creation of a committee in May 2003 by the Ministry of Social Affairs and Health to consider the Act on the supervision of occupational safety and health and specifically to draft a proposal for changes in the Act on the supervision of occupational safety and health and appeals in occupational safety and health matters. This committee was required, among other matters, to examine the role of occupational safety and health delegates, as defined in collective agreements in general and in civil service collective agreements. Noting that the work of this committee ended in June 2004, and that the amendments that it recommended have already been taken into account, such as the adoption of a provision prescribing the obligation of employers to train an occupational safety and health delegate, the Committee would be grateful if the Government would provide information on any further legislative changes and supply copies of the relevant texts.

2. *Articles 1, 4 and 5 of the Convention. Restructuring of labour inspections and administrative improvements.* The Committee notes with interest the Government's intention to give effect to the proposals of the tripartite working group to improve the skills of labour inspectors, supervision methods, the choice of targets and to facilitate the monitoring of the activities of labour inspectors. According to the Government, occupational safety and health inspectorates have already been geographically restructured and their number has been reduced to eight by Decree No. 1035/2003, which came effect at the beginning of 2004, without transfer of personnel. The Committee requests the Government to provide a copy of Decree No. 1035/2003 detailed information on the and legal provisions adopted, the organizational measures taken and the results achieved.

3. *Articles 5(a), 7, 10 and 11 of the Convention. Staff of the labour inspectorate and cooperation with other government bodies.* According to SAK, the resources devoted to occupational safety and health inspection are inadequate and should be increased to meet the needs of the enforcement of the new legislation. The Government indicates in this respect that the skills of labour inspectors have been upgraded and adapted to the new legislation and the new problems in

working life. It adds that, although the human resources have remained the same, the financial resources have been increased in recent years and have been allocated to selected areas, such as psychosocial phenomena, which has made it possible to improve the prevention of occupational accidents and diseases.

In response to the alleged lack of resources for the extension of the scope and duties of labour inspection, and particularly, the control of the employment of foreign workers, the Government indicates that labour inspectors cooperate with a new police unit set up in 2004. The Committee would be grateful if the Government would provide further details on the legal and practical arrangements made to ensure such cooperation.

4. *Article 9. Collaboration of technical experts and specialists.* The Committee notes that the Government has not fully replied to SAK's comments on the shortage of medical expertise and specialists in chemistry and occupational psychology in the occupational safety and health inspectorates. The Committee requests the Government to indicate the geographical distribution of inspectors specialized in these areas.

5. *Articles 10, 13, 16 and 17. Number, scope and frequency of inspections and the measures adopted.* SAK emphasizes that few inspections are carried out in the service sector, in commerce and trade. The Committee hopes that inspections of small enterprises and the construction sector will be intensified, as will enforcement of the Working Hours Act, and particularly, with regard to emergency work, which has been increasing in volume.

Noting that in 2002, 23,393 inspections were carried out, compared with 30,028 in 1999, 27,936 in 2000 and 24,242 in 2001, the Committee would be grateful if the Government would indicate the reasons for this continuing decrease and provide figures on these inspections by objective, sector and size of establishment. It also requests the Government to indicate the number and the type of measures taken in relation to the nature of the infringements identified.

6. *Articles 13, 14 and 21. Notification of employment injuries and cases of occupational diseases.* Noting SAK's allegation that interventions by labour inspectors are inadequate and the procedures inappropriate for the notification of cases of occupational diseases and other work-related diseases, which are insufficiently diagnosed, the Committee would be grateful if the Government would provide full information on the effect given to *Article 14* in law and practice. It also requests the Government to ensure that data on occupational accidents and cases of occupational diseases are included in the annual report under *points (g) and (f) of Article 21*, and, if possible, to ensure that the report is prepared in the manner described in Part IV of the Labour Inspection Recommendation, 1947 (No. 81).

7. *Article 8. Women inspectors to deal with specific issues.* According to SAK, the number of women labour inspectors remains insufficient and does not correspond to the numbers of working women. The Committee notes with interest the Government's indication that the percentage of women inspectors has been increasing continuously and account for 29.3 per cent of the staff with women representing the majority of newly recruited inspectors. The Committee emphasized paragraph 217 of its General Survey on labour inspection that the principle of maintaining an adequate presence of women in the labour inspection staff is more than ever necessary with the current growth of women's participation in the labour force. It would be grateful if the Government would provide information on trends in the percentage of women in the inspection services.

8. *Articles 20 and 21. Annual reports on the activities of the labour inspection services.* Noting that, according to SAK, annual reports on the activities of the labour inspectorate do not appear to be published, the Committee notes that no annual report has been sent to the ILO. The Committee requests the Government to take the necessary measures to ensure that an annual report is soon published and communicated to the ILO, as prescribed by *Articles 20 and 21*.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1974)

Referring also to its observation under Convention No. 81, the Committee notes the Government's report in reply to its previous comments and those made by the Central Organization of Finnish Trade Unions (SAK). It also notes the new comments made by SAK, which were forwarded by the Government in its report.

The Committee notes with interest the efforts undertaken to improve occupational safety and health at work by enacting and envisaging the adoption of relevant legislative provisions.

1. *Articles 9, paragraph 3, 14, and 21 of the Convention. Weakness of labour inspection in the agriculture sector.* According to the SAK: (i) no inspectors are specifically appointed to focus on inspections of agricultural workplaces; (ii) there are still too few inspectors and inspections in the agriculture sector; (iii) provisions in collective agreements relating to minimum pay and working hours are violated particularly frequently. In this regard, the Committee notes that between May 2002 and April 2004, 724 inspections were carried out in the agricultural sector, compared with 1,168 inspections during the period 2000-02. Moreover, according to the Government, there are only one or two inspectors specializing in agriculture in each inspectorate. The Committee would be grateful if the Government would provide an explanation for the substantial decline in the supervision of agricultural enterprises during the period of organizational and legislation change and, if it would indicate the number of agricultural workplaces liable to inspection and the numbers of workers occupied therein, as well as data on the nature of infringements reported and the resulting measures taken by labour inspectors.

It also requests the Government to describe any initial and continuous training provided or envisaged to meet the specific needs related to labour inspection in the agricultural sector.

2. *Articles 25, 26 and 27. Obligations to produce a report.* The Committee notes that, according to the Government, annual labour inspection reports are not drawn up on regular basis. The Government adds that the generation of final statistics relating to occupational accidents and diseases is rather slow. Referring to its previous comments, the Committee urges the Government to take the necessary measures to give full effect to these Articles and hopes that an annual report will soon be published and made available to the ILO.

Labour Administration Convention, 1978 (No. 150) (ratification: 1980)

The Committee notes with interest the detailed information provided by the Government on developments in the law and practice of the system of labour administration, which have been welcomed not only by employers' organizations but also by the Central Organization of Finnish Trade Unions (SAK), in the comments included in the Government's report. The latter organization welcomes in particular the fact that the Employment Service has been replaced under Act No. 1295 of 2002 by a system which comprises both labour research centres and manpower service centres and has the capacity, owing to a form of inter-occupational cooperation, to deal with cases of unemployment for certain categories of persons and facilitate their return to work.

The Committee also notes with interest the adoption of Act No. 301/2004, under which the procedure for issuing work permits to foreigners is replaced by the issuing of a residence permit comprising the right to work.

Labour Statistics Convention, 1985 (No. 160) (ratification: 1987)

The Committee takes note of the Government's report containing information which replies in part to its previous comments, as well as the indication that the new Statistics Act was enacted on 23 April 2004. It would be grateful if the Government would send a copy of this Act.

The Committee also notes the observation made by the Central Organization of Finnish Trade Unions (SAK) on the application of *Articles 9 and 11 of the Convention*.

Article 9. SAK supplements its 1999 statement and points to the lack of consistency between statistics of hours of work compiled by Statistics Finland on the basis of the labour force survey, and statistics of earnings, which are produced mainly from employers' surveys. The SAK indicates that cross-tabulations by industry, sector, etc. are problematic. In its opinion, statistics based on weekly and/or annual hours of work (i.e. implicitly, from employers' surveys) would supplement the present statistics in the way presumed by this Article (*paragraph 1*).

Considering in this regard that, statistics of hours of work should ideally be compiled at the same time as earnings from the structure of earnings surveys (SES), the Committee refers to its previous comments and once again asks the Government whether it intends to compile and publish statistics of average hours of work (normal hours and hours paid for) and statistics of wage and salary rates, which would be derived from the annual structure of earnings survey and would be compatible with the corresponding earning statistics. The Committee also draws the Government's attention to the fact that this question, as well as the possible introduction of questions on annual hours of work, should be discussed by all the partners involved in the collection of these statistics, namely Statistics Finland, employers' and workers' organizations and the Ministry of Labour.

The Committee also notes that statistics of time rates of wages and normal hours of work by occupation (*paragraph 2*), which used to be communicated to the ILO for publication in the *October Inquiry*, seem to be no longer available. It asks the Government to indicate whether such statistics are still compiled and published and, if so, from which source. It further requests the Government to keep the ILO informed of any developments in this field.

Article 11. The SAK emphasizes that the labour cost statistics (LCS) compiled in 1990, 1996 and 2000 are not representative of the economy as a whole since in 2000 they covered less than half of wage and salary earners. The Committee noted previously that the representativity of labour cost statistics in terms of employee coverage has been a constant concern to EUROSTAT and member States for a number of years. It should be noted that it is often more difficult to collect data on labour costs in the services sectors than in the industrial sectors. The revision of the EC Regulations provides for harmonized definitions of LCS and structure of earnings surveys (SES). The Committee is of the opinion that, as a consequence, the results of both the SES and the LCS should gain in representativity.

The Committee is addressing a request directly to the Government concerning certain points.

France

Labour Inspection Convention, 1947 (No. 81) (ratification: 1950)

With reference to its previous observation, the Committee notes the following information provided in reply to the comments made by the General Confederation of Labour-*Force ouvrière* (CGT-FO), dated 18 February 2002.

1. *Delays in the publication of annual labour inspection reports.* Efforts are being made so that in future the report is communicated earlier. The 2002 report should already have been available since July 2004, while the 2003 report should be transmitted in February/March 2005.

2. *Staff of the inspectorate (Article 10 of the Convention); material resources (Article 11); and number and frequency of inspections (Article 16).* The staff and material resources, particularly in terms of information technology

and transport, available to inspection personnel are continually progressing. However, while the absolute number of inspections is increasing, their frequency in relation to the workplaces liable to inspection has in practice been considerably reduced over the past two decades, with the ratios (of theoretical value) having fallen between 1987 and 2002 from one inspection every two years to one inspection every 4.2 years for workplaces with 50 or more workers and from one inspection every 4.6 years to one inspection every 20 years for workplaces with fewer than 50 workers. The Government explains the objective reasons for this trend, which include: the regular increase in the number of workplaces to be covered; a relative stagnation in the number of inspection units; the increasing volume and complexity of the legislation covered and the increase in the number of collective agreements; the weakening of staff representation, leading to a multiplication of individual claims; and the reduction of the working week to 35 hours. The Government nevertheless indicates a significant increase in the number of coordinated activities involving inspection staff.

3. *Causes of industrial accidents at high-risk workplaces.* The procedure established for the notification of industrial accidents results in certain accidents, which are not classified as being serious, not being immediately notified to the inspection services. This is not the case for serious or mortal accidents, when the police and the *gendarmerie* take responsibility for notifying them immediately. Inspectors are generally called upon to carry out in-depth investigations and to implement legal prevention and/or repression measures to prevent the recurrence of accidents, although the Ministry of Labour has no data on the causes of industrial accidents in high-risk sites. The Committee however notes with satisfaction, following the effects of the accident in the AZF chemical factory on 21 September 2001, the decisions communicated on the implementation and strengthening of systematic inter-institutional collaboration with a view to the prevention to occupational risks, namely: (i) the joint note of the Ministers responsible for labour and the environment, of 14 December 2001, affirming the need, at the local level, for collaboration between the labour inspectorate and the inspectorate of classified installations, respecting the specific functions and prerogatives of each of these inspection bodies (*Article 5(a)* of the Convention); (ii) the Circular of the Directorate of Industrial Relations (DRT), of 14 February 2002, to prevent the consequences of subcontracting, intended to improve the capacities for intervention of staff representatives in “SEVESO II AS” establishments and the development of risk evaluation through, *inter alia*, the involvement of the penal responsibility of the employer and the development of social dialogue within the enterprise; and (iii) Circular No. 2003-04, of 12 March 2003, providing guidance for a labour policy, including important components related to the functions of the labour inspectorate and giving many reasons why working structures and methods should be fundamentally adaptable, particularly in relation to the prevention of occupational risks with deferred effects.

The Committee hopes that the efforts made to improve the effectiveness of the inspection system will be continued and that their results will be reflected in the forthcoming annual reports under *Articles 20 and 21*, of which the time required for their publication and communication to the ILO should be improved through the development of the new information technology system SITERE announced by the Government. It requests the Government to provide information in its next report on the practical measures adopted to implement the action set out in the above circulars in relation to risk evaluation, as well as information on the impact of the implementation of technical instruction DAGEMO/MICAPCOR No. 2002-03 of 28 March 2002 concerning the reports of infringements drawn up by the labour inspectorate on the relations of inspectors with employers and workers or their organizations.

It also hopes that data on the causes of industrial accidents and cases of occupational diseases in all categories of workplace liable to inspection will soon be accessible to the inspection services to facilitate their prevention functions.

The Committee further notes with interest that a working group has been established in the Ministry of Labour, under the direction of MICAPCOR (Central Support and Coordination Mission for the External Labour and Employment Services), to examine, with the technical support of the ILO, issues relating to the professional rules for discharging the function of labour inspection and the means for preparing young inspection officials to manage certain situations which may involve risks for their physical safety or psychological health.

Finally, the Committee notes that the Government's report indicates in a preliminary remark that it covers Metropolitan France, the four overseas departments (Guadeloupe, Guiana, Martinique, Réunion) and the community of St. Pierre and Miquelon. The Government is requested to indicate the manner in which it is envisaged, where appropriate, that the statistics required by *points (c) to (g) of Article 21* are to be published and communicated to the ILO separately for each of these territories in future annual inspection reports under *Article 20*.

French Guiana

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

With reference to its previous comments, the Committee also draws the Government's attention to its comment under Convention No. 81 concerning labour inspection in industrial and commercial workplaces.

1. *Organization, staffing and operation of the labour inspection system (Articles 7 and 14 of the Convention).* According to the information provided by the Central Support and Coordination Mission for the Decentralized Labour, Employment and Vocational Training Services (MICAPCOR) in 2002 concerning the difficulties encountered in the application of the present Convention in the overseas territories, the qualified inspection personnel for all economic sectors was composed, for each of the two constituent units, of one inspector and two controllers. MICAPCOR did not consider the specialization of an inspection unit in the agricultural sector as being an absolute necessity and considered

that the operation of labour inspection in agricultural enterprises in Guiana would be more effective if the staff of the inspection units were strengthened by labour controllers. The Committee notes that, according to the report of the Government of France for the period ending 31 December 2003 on the application of Convention No. 81 (in which it emphasized that labour inspection in agriculture in overseas territories is placed under the control of the central authority that is competent for the industrial and commercial sectors), the staff of labour inspection units was composed of seven officials, including two inspectors and five controllers, which would appear to indicate that the action to promote vacancies as indicated by the MICAPCOR to address the inadequacy of the inspection staff appears to have achieved at least its quantitative objective. The Government of Guiana nevertheless considers that, taking into account such objective conditions as the extent of the territory and the lack of road infrastructure, the specialization of an inspection unit equipped with appropriate logistical resources should be envisaged. Indeed, it points out that, in view of these specific conditions, a whole section of agricultural activity is neglected by the labour inspection services, the attention of which is monopolized by the secondary and tertiary sectors, which are principally established along the coast. According to the information available for 2002, only four agricultural enterprises were inspected, with one of the inspections being undertaken with the police services in the context of the COLTI (Operational Committee to Combat Illegal Employment) which was intended to enforce legal provisions on illegal employment, rather than on conditions of work.

2. *Form and content of the information necessary to assess the level of application of the Convention (Articles 26 and 27).* Despite the statement contained in the annual report of the Government of France for 2002 under the above Articles of this Convention, according to which statistics on the work of overseas services are kept by the ministry responsible for labour, the Committee notes that such statistics are not available. It notes with regret that the figures provided by the Government of Guiana on the work of the inspection services do not allow any distinction to be made with regard to agricultural enterprises, where appropriate, and that in any case these figures do not comply in their form or their substance with the requirements of *Articles 26 and 27* of the Convention and could not provide the basis for any sort of assessment at either the national or international level of the extent of application of the present Convention, which the Committee emphasizes specifically addresses labour inspection in agricultural enterprises. Furthermore, these figures do not appear to have been published so that they can be brought to the attention of the representative organizations of employers and workers of the territory and in France, with a view to eliciting their reactions and suggestions as to how to improve the application of the Convention.

Nevertheless, the Government of France regularly places emphasis on the application of the same legislation in relation to inspection in metropolitan France and the overseas territories.

The Committee trusts that measures will be taken to rationalize the management and organization of the labour inspection services in Guiana, strengthen the personnel responsible for enforcing the legal provisions on conditions of work, ensure the provision of adequate material and logistical resources for the specific conditions of the territory concerned and provide the necessary training so that the obligations deriving from the ratification of the present Convention can be fulfilled effectively and properly. The Government is requested to provide relevant information and, in any case, based on the implementation of the new electronic information system, to ensure that an annual inspection report on the work of the inspection services in agriculture is soon published and communicated to the ILO, in accordance with *Article 26* of the Convention, and that it contains the information required under each of the items of *Article 27*.

French Polynesia

Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)

Referring to its previous comments, the Committee notes with satisfaction the substantial developments with respect to statistics which have taken place in recent years and which generally meet the requirements of the provisions of the Convention. It would be grateful if the Government would maintain its efforts in this regard and continue to ensure that the relevant data will be published regularly.

Labour Inspection Convention, 1947 (No. 81)

1. *Articles 1, 4 and 6 of the Convention. Transfer of competence with regard to labour inspection and status of labour inspectors.* The Committee notes Organic Act No. 2004-192 of 27 February 2004 concerning the autonomous status of French Polynesia and amending the distribution of competence between the latter and the State. The Government indicates that, although labour law is now under the sole competence of French Polynesia, the labour inspectorate remains formally a service of the State as long as the relevant decree implementing the Act has not been published. However, pursuant to an agreement signed on 2 June 2004 between the representative of the State and the President of French Polynesia, the transfer of labour inspection activities to French Polynesia is already a reality as far as the exercise of competence in labour law matters is concerned. According to the Government, this transfer of competence remains a source of concern in certain regards: it states that the social partners expressed the wish to continue to have inspectors from the national inspection corps until French Polynesian officials have been sufficiently trained and their number is such that there is a satisfactory rotation of staff. With regard to controllers, training in various areas of labour inspection competence and the venue for their training (on the spot or in metropolitan France) should be the subject of examination

and appropriate measures. Finally, the new relationship between the inspection service and the labour service might necessitate restructuring in the long term. The Committee would be grateful if the Government would keep the Office informed of any development in this regard.

2. *Articles 3, paragraph 1(b), 5, 14 and 21(f) and (g). Cooperation between the inspection service and other public institutions in monitoring conditions of work.* The Committee notes with interest that the development of cooperation links between the inspection service and the Social Security Fund (CPS), the compulsory insurer of enterprises for occupational accidents and diseases, culminated in the creation of a service for the prevention of occupational risks within which the labour inspectorate is represented in an advisory capacity.

The Committee also notes that coordinated actions against undeclared labour undertaken with the Ministry of Public Affairs, the police and gendarmerie and the monitoring service of the CPS have enabled a significant number of current infringements to be recorded in several sectors of activity. It would be grateful if the Government would state whether the recorded infringements recorded also included infringements of the legal provisions relating to conditions of work and the protection of workers, the monitoring of which is a matter for the labour inspectorate pursuant to *Articles 1 and 3, paragraph 1(a)*, irrespective of the situation of workers vis-à-vis the regulations. If so, the Government is requested to provide information on the nature of these infringements and on the measures applied by the inspectors with regard to employers found guilty of irregularities.

3. *Articles 3, paragraphs 1 and 2; 9, 10 and 16. Matching human resources and the needs of an effective labour inspectorate.* The Committee notes that in 2002 the inspection service had two full-time control officials (50 per cent of the working time of four controllers being occupied by other tasks) to inspect 6,395 enterprises employing 61,444 workers scattered over several island groups covering a surface area comparable to that of Europe. In addition, the Government deplores the fact that the vacant post of medical inspector, the conditions of which were not sufficiently attractive, was not filled and underlines the gravity of this crucial lack of competence for developing actions to prevent occupational risks, as well as for monitoring occupational medicine in a context characterized by insufficient observance of health and safety rules. Recalling that, under the Convention, the labour inspection system is concerned with enforcing the legal provisions relating to conditions of work and the protection of workers while engaged in their work, the Committee notes that monitoring illegal employment occupies a large part of the working time of inspection officials in relation to requirements regarding health and safety at work. It hopes that, given the limited numbers of labour inspection staff in relation to the extent of the territory covered and in order to promote the process of reorganization, relieving them of this task might be envisaged so that they can devote themselves fully to their duties in the areas covered by *Article 3* of the Convention.

The Committee notes with interest that, alongside the reactive measures which are central to their work, inspection officials will undertake activities identified as priorities for 2004, particularly in the field of health and safety in building and public works and in the area of staff transport. Referring to its previous comments regarding the random nature of the procedure for reporting occupational diseases, the Committee notes in the labour inspectorate's 2002-03 activity report that the number of occupational diseases reported (between three and six per year) is clearly below the real number, which should increase significantly in the next few years. It would be grateful if the Government would indicate whether measures have been taken to improve and systematize the procedure for the reporting of occupational diseases, and to provide any relevant text or information on developments in this regard.

4. *Articles 20 and 21. Relevance of the periodic evaluation of the labour inspection system for the purpose of improving it.* The Committee notes with interest that the analysis of the results of inspection activities by the central authority enabled a number of conclusions to be reached on the causes of defects in the inspection system and on the negative impact of inadequate legislative controls (unfair competition profitable to employers committing infringements; economic and social cost of the frequency of occupational accidents; frequency and economic cost of collective disputes; damage caused to social protection schemes by the non-declaration of wage employees or hours of work). It notes that clear guidelines have been formulated for achieving the appropriate objectives, the Government considering that it is necessary to:

- (i) step up the on-site presence of inspectors and controllers by means of a rational restructuring of services and strengthening of staff numbers, particularly by the recruitment of a medical inspector, but also by the appointment of four new controllers in order to triple the current monitoring capacity;
- (ii) develop appropriate judicial means for the purpose of achieving effective controls: obligation to declare employees prior to their recruitment, in order to facilitate the recognition of undeclared work; improving procedures for declaring the opening of worksites and provisions for achieving greater transparency in cases of pyramid subcontracting; conferring a power of injunction on labour inspectors enabling them to take immediate and direct action in situations entailing a serious and imminent risk to the health or safety of workers; and possibly imposing administrative sanctions applicable in the event of non-observance of certain labour law provisions;
- (iii) strengthen existing partnerships (with the CPS, Ministry of Public Affairs, the gendarmerie and the police) by cooperation with environmental services with regard to the prevention of occupational risks in classified establishments; involve the social partners and administrations concerned in discussions regarding the prevention of occupational risks, in particular within the Technical Advisory Committee; launch awareness campaigns on specific

subjects, using appropriate information media, including on activities which have already been undertaken, in order to achieve a cumulative effect;

- (iv) increase efficiency and speed by using the most powerful computer tools, to develop an information exchange network, standardizing all procedures and carrying out real-time follow-up to inspection visits.

The Committee welcomes the relevance of the means which have been defined in relation to the objectives pursued and their appropriateness with regard to the requirements of the Convention. It would be grateful if the Government would continue to provide information on any progress made or any obstacle encountered and to ensure that annual inspection reports, which are regularly communicated to the Office under *Article 20*, contain the information required on each of the matters covered by *Article 21*.

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

The Committee refers the Government to its observation on Convention No. 81, particularly with regard to developments in the labour inspection system arising from the transfer of competence for labour law to French Polynesia, and notes with satisfaction the report sent by the Government in response to its previous comments which shows the efforts made in sending specific information on the operation of the inspection system in agriculture.

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

Guadeloupe

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

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 Government's report for the period ending in June 2002. It notes the Government's view that a report on this Convention would either serve no purpose because the Department of Labour, Employment and Vocational Training is not responsible for this matter, or it should be under the responsibility of the Ministry of Agriculture, which provides the inspector assigned to supervise agricultural enterprises.

With reference to its comments in 1998, reiterated in 1999, the Committee notes that apart from the indication that there was only one labour inspector for all the agricultural enterprises on the island, the requested information was not provided, and that an annual report on the inspection activities in the agricultural sector, as required by *Articles 26 and 27 of the Convention*, has still not been provided. The Committee is bound to remind the Government once again of its obligations arising from the provisions of the Convention, to request it to take all the appropriate measures for their implementation and to provide the Office with any relevant information, including the information specified by *points (c), (d), (e), (f), and (g) of Article 27*.

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

St. Pierre and Miquelon

Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)

The Committee notes the information provided by the Government in reply to its previous comments, particularly regarding its general observation calling once again upon member States bound by this Convention to consider the ratification of the Labour Statistics Convention, 1985 (No. 160). While reaffirming that it is not in a position to provide statistics of wages and hours of work for St. Pierre and Miquelon, the Government states that, if Convention No. 160 was ratified, it would therefore envisage availing itself, with regard to St. Pierre and Miquelon, of the option offered in Article 17 which provides that a Member may limit initially the scope of the statistics covered. The Committee nevertheless wishes to remind the Government that, until it takes the above action, it remains bound by the present Convention and it asks the Government to indicate any measures adopted or envisaged in relation to the obligations deriving therefrom and, where appropriate, to report any progress towards the ratification of Convention No. 160.

Gabon

Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)

Further to its previous observation, the Committee notes with satisfaction that, contrary to the statement in the report to the effect that no legislative or regulatory measure has been adopted for applying the provisions of the Convention, an important Decree was adopted on 8 January 2002 providing for the active involvement of labour inspectors in both research and reporting of cases of child labour and in the procedure for placing the children concerned under protection. The organization of a workshop in 2003 to train trainers of labour inspectors for combating the trafficking and exploitation of children and of a seminar for strengthening the capacities of labour inspectors in this area are measures which, from the Committee's point of view, bear witness to the Government's real determination to make the necessary efforts to put the relevant legal provisions into practice.

The Committee also notes with interest that, in the context of the country's economic and financial difficulties, practical measures have nevertheless been taken since 1999 to overcome the inadequate quality and numbers of inspection staff, particularly in the form of training at the Administrative Career Training School (EPCA) for non-permanent employees of the central labour administration having a certain seniority, in order to incorporate them in the inspection staff as labour controllers.

The Committee is addressing a request concerning certain points directly to the Government.

Germany

Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)

The Committee notes the Government's statement that there has been no change in the application of the Convention during the reporting period. It also notes the observation made by the German Union of Civil Servants (*Bund der Technischen Beamten, Angestellten und Arbeiter im Deutschen Beamtenbund*) and the documents attached, dated 30 March 2004, which were forwarded to the Government on 22 June 2004, as well as of the Government's partial reply to the points raised by the union.

According to the German Technical Civil Servants', Employees' and Workers' Association, which is a member of the German Union of Civil Servants (*Bund der Technischen Beamten, Angestellten und Arbeiter im Deutschen Beamtenbund*), the Act to reform administrative structures and justice and to extend the negotiating power of local government in Baden-Württemberg state, which will come into force on 1 January 2005, does not comply with the requirements of the Convention in several areas, and particularly with *Article 4*, in conjunction with *Articles 10* and *16*.

1. *Articles 4, 10 and 16 of the Convention. Control and supervision of the labour inspection system by a central authority; appropriate human resources and effectiveness of labour inspection.* The above union expresses concern that the dissolution of the former separate labour inspectorates in Baden-Württemberg and their merger into the German common administrative structure will limit the extent of supervision by the central authority and prejudice the effectiveness of labour inspection within the jurisdiction of the *Land*. The reasons invoked include the distribution of the former labour inspection staff to regional districts (*Regierungsbezirke*) and subregional districts (*Landkreise/Stadkreise*), which does not, as required in *Article 10* of the Convention, take into account the number of enterprises covered or the size of each of the subregional districts. According to the union, this is likely to result in disparities in the frequency of inspections, thereby considerably affecting the effectiveness of labour inspection (*Article 16*) in the subregional districts. One-third (269.5) of the labour inspection staff will be located in regional district offices covering 1,000 enterprises, while two-thirds (500) will have to cover 290,000 enterprises in subregional districts.

With regard to the changes introduced by the new Act in the structure of the labour inspection system in the *Land* of Baden-Württemberg and their impact on effectiveness of labour inspection, the Government indicates that the supervision and control of the labour inspection system, as envisaged by the law, will remain fully guaranteed, since the Ministry of Internal Affairs of the *Land* will be entrusted with the role of the central authority referred to in *Article 4, paragraph 2*, of the Convention. While the Committee agrees that, in itself, the integration of the labour inspection system into the common administrative structure of the *Land* is not an infringement of the Convention, it however notes that the Government has not commented on the other point raised by the union, namely, the risk that the unbalanced reallocation of the staff of the former labour inspection system might jeopardize the application of *Article 16*, particularly in certain subregional districts. The Committee would therefore be grateful if the Government would indicate its views and make any other comments in this regard, and indicate whether measures have been taken to ensure that the enforcement of the new Act will not prejudice the application of the fundamental principles set out in the Convention with respect to the definition of the scope and principal functions of the labour inspection system (*Articles 1* and *3* of the Convention), the need for an appropriate distribution of the inspection staff based on the established criteria (*Article 10*), the status and conditions of service of the labour inspection staff (*Article 6*), their qualification level (*Article 7*), their powers (*Articles 12, 13* and *17*) and their obligations and duties (*Articles 15* and *19*).

2. *Articles 20 and 21. Annual inspection report.* The Committee notes with interest the detailed labour inspection reports submitted. However, referring to its previous comments of 2000, it once again hopes that the Government will envisage sending to the ILO a consolidated annual labour inspection report summarizing the content of all the annual reports of the *Länder*, including those that have still not been received by the Office.

Greece

Labour Administration Convention, 1978 (No. 150) (ratification: 1985)

The Committee notes with satisfaction the information provided by the Government, which bears witness to the institutional efforts made during the period covered by the report to develop a system of labour administration including the delegation of certain activities to entities which are separate from the public labour administration. The Committee also notes with interest the information provided in response to its previous comments, in particular the full text of a national collective agreement covering various areas of labour legislation.

The Committee notes the setting up of a number of structures under Act No. 2874 of 29 December 2000:

- a department responsible for employment issues in each district of the country;
- an advisory council of experts on employment and social security at the Ministry of Employment and Social Protection.

As a result of the restructuring of the Organization for Employment of the Workforce (OAED) under Act No. 2956 of 6 November 2001, three agencies have been set up. One is responsible for facilitating the entry or reintegration of workers into the labour market; another is responsible for dispensing vocational training, including further training; and the third is responsible for carrying out research and studies with a view to providing the OAED and other bodies concerned with technological information and support.

Under Act No. 3144/2003 on social dialogue, two new committees have been set up at the Ministry of Employment and Social Protection: the National Tripartite Committee for Employment for promoting in particular employment and social protection, combating unemployment and delivering opinions on the national plan of action for employment and, in general, on employment policy and labour legislation issues; and the National Advisory Committee for Social Protection for combating poverty and social exclusion, which is responsible for social integration issues.

In addition, a social protection department has been set up to promote equality of opportunity, the national plan of action for social integration and the reintegration of persons belonging to particular population groups.

The Committee would be grateful if the Government would continue to provide information on any development in the system of labour administration and, in particular, any general observations considered useful on the manner in which the Convention is applied, by communicating documents or extracts of documents as requested by *Part IV of the report form* of the Convention, which refers in this regard to the guidelines contained in the Labour Administration Recommendation 1978 (No. 158), Paragraph 20.

Guatemala

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

The Committee notes the Government's report in partial reply to its previous comments, and particularly the points raised by the Trade Union Federation of State Workers Unions (FENASTEG) and the Trade Union Confederation of Guatemala (UNSITRAGUA).

In addition, the Committee notes the further comments on the application of the Convention submitted by UNSITRAGUA on 27 October 2002 and 25 August 2004, which were forwarded by the ILO to the Government on 18 December 2002 and 2 September 2004, respectively. The Government has not provided information in reply to these comments.

1. *Articles 5(a) and 18 of the Convention. Inter-institutional cooperation for the effective application of appropriate penalties.* The Committee notes in particular with interest the information supplied on the manner in which Decree No. 18-2001 ensures the effective application of appropriate sanctions for non-compliance with the legal provisions covered by labour inspection. The Committee notes that labour inspectors are now empowered to impose financial penalties and to fix their amount based on the gravity of the violation by multiplying the minimum wage by between two and 12 times. Moreover, the effective application of sanctions is ensured by the possibility for labour inspection to have orders of executory force made rapidly by judicial means. The Committee would be grateful if the Government would provide a copy of any court decision giving executory force to a penalty imposed by the labour inspection authority.

2. *Article 6. Status and conditions of service of labour inspection staff.* Referring to the comments made by FENASTEG on the status of labour inspectors relating to the lack of stability of their employment, the level of their remuneration and their poor working conditions, and particularly the abusive working hours, the Committee notes that, according to the Government, labour inspectors are governed by the Civil Service Act, which ensures their stability. The Government states that, while overtime work by inspectors is not remunerated, a scheme is used to compensate for overtime through a rest period that is double the overtime worked. They are also granted financial and social benefits. The Committee requests the Government to provide a full copy of the legal provisions providing the basis for the compensation of overtime work and the other social benefits granted to inspection staff, as well as a copy of any document which illustrates their application in practice.

3. *Article 11. Adequacy of resources for an effective labour inspection.* With regard to FENASTEG's comments on the insufficiency of resources, logistical means and transport facilities, and the level of remuneration of labour inspectors, which is further diminished by the failure to reimburse their professional travel expenses, the Government emphasizes that labour inspectors who are based in the premises of the Ministry of Labour and Social Security have modern, appropriate and well-equipped offices. The Ministry of Labour adds that means necessary for the performance of all of its functions, including labour inspection, are acquired frequently and that travel and incidental expenses are covered by allowances to inspectors, either in the form of advances or reimbursement afterwards. The Committee asks the Government to provide further information, particularly on the situation of external labour inspection services and offices, the quality and

equipment of their offices, the transport facilities available to inspectors and the travel allowances granted to them. It asks the Government to provide copies of any relevant legal texts and any documents illustrating the effect given to them in practice.

4. *Article 15(c). Obligation of confidentiality as to the source of complaints.* With regard to the allegations of UNSITRAGUA concerning the incapacity of labour inspectors to protect workers from reprisals by the employer, the Government indicates that all the complaints made by workers are dealt with in the same manner by the labour inspection, including those relating to reprisals as a result of a denunciation of a violation of an employer's obligations. The Committee is bound to emphasize in this regard that, pursuant to *Article 15(c)* of the Convention, labour inspectors should treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions, subject to such exceptions as may be made by national legislation, and should give no intimation to the employer or her or his representative that a visit of inspection was made in consequence of the receipt of such a complaint. The Government is urged to take appropriate measures with a view to ensuring, both in law and practice, the confidentiality of sources of complaints in accordance with this provision, which is of crucial importance for the collaboration of workers during inspection visits. It is also requested to provide practical information, such as copies of decisions taken against employers who made use of reprisals or copies or extracts of decisions protecting workers threatened by dismissal in such circumstances. The Government is also asked to indicate any exceptional cases in which it is provided in the legislation that the obligation of confidentiality may be raised.

5. *Article 3, paragraph 1(b). Provision by labour inspectors of technical information and advice on the application of the legislation.* In its comments of October 2002, UNSITRAGUA refers to cases of enterprises which set production targets for workers who, in order to earn the minimum wage, have to work in excess of the ordinary hours of the working day, with the additional hours being unpaid. As the labour inspectorate, by decision No. LPR/ahd 6133-2002 dated 25 July 2002, refused to take a position on this matter, UNSITRAGUA appealed to the hierarchical authority, namely the Ministry of Labour and Social Security, on 19 September 2002 for this decision to be declared unlawful. As the appeal was unsuccessful, this forced labour practice has been continuing with impunity and the indifference of the competent labour inspectorates.

6. *Scope of the labour inspection system.* UNSITRAGUA moreover drew attention to the conditions of recruitment of state employees belonging to the budgetary category 029. It appears that this category was established to allow the recruitment of skilled professional and technical personnel for specific products and periods. These workers do not have the status of public employees and their contracts are renewed for as long as funds are available. The workers do not have the right to the statutory benefits to which permanent employees are entitled and are not paid for the hours worked in excess of the normal working day. The Committee asks the Government to indicate the branches of the economy in which category 029 workers are employed. If they are engaged in industrial or commercial activities, the Committee urges the Government to take the necessary measures to ensure that they are adequately protected by the labour inspection system.

7. In its observations of 2004, UNSITRAGUA reiterates and develops the questions previously raised and focuses in particular on issues relating to: the inadequate coverage of the labour inspectorate; the incompatibility of the status and conditions of service of labour inspectors with the principles of independence, impartiality, probity, discretion and confidentiality, which are indispensable for the proper performance of the functions of labour inspection; the inadequacy of the training of inspectors and their material conditions of work; the paucity of transport facilities and ineffectiveness of the measures to penalize violations of the labour legislation (*Articles 2, 3, 6, 7, 11, 12, 15(a), 17 and 18*).

The Committee requests the Government to provide any information that it considers appropriate with respect to the points repeatedly raised by UNSITRAGUA and to support such information with any relevant documentation.

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) ***(ratification: 1994)***

The Committee notes the Government's report in response to its previous comments and the documentation attached. It also notes the observations of the Trade Union Confederation of Guatemala (UNSI TRAGUA) submitted on 27 October 2002 and 25 August 2004, which were forwarded to the Government on 18 December 2002 and 2 September 2004 respectively.

Referring to its previous comments, the Committee notes the following points.

1. *Language skills of inspectors necessary for their missions in certain agricultural regions.* The Committee notes with satisfaction Decree No. 19-2003 issuing the National Languages Act. This Act is a very encouraging response to the point repeatedly raised by UNSITRAGUA, to which the Committee drew the Government's attention, requesting it to take measures with a view to solving the language-related impediments to the discharge of inspection duties in agricultural undertakings in regions where Spanish is not understood by the indigenous populations. Indeed, in previous comments the Committee has considered it indispensable for labour inspectors to be able to interact sufficiently with the employers and agricultural workers concerned to ensure the effective discharge of their preventive and repressive duties. The objective of the above Act is the recognition, respect, promotion and development of the use of the languages of the Maya, Garifuna and Xinca peoples and to secure the use of these languages in the public and private sectors, as well as in educational,

academic, social, economic, political and cultural circles. Pursuant to section 9 of the new Act, all legal provisions have to be translated by the Maya Languages Academy and disseminated in Maya, Garifuna and Xinca. Section 14 of the Act places the obligation upon the State to ensure that goods and services in the public sector are provided in the language of the linguistic community concerned and to promote this practice in the private sector. The Committee notes in particular that candidates for posts in the civil service should, pursuant to section 16, preferably have, in addition to Spanish, language skills facilitating the necessary interaction with the regional population. Measures are envisaged in the same section to achieve these objectives for the recruitment of public servants, in coordination with the Maya Languages Academy. The Committee notes with interest that, despite the financial difficulties involved in the application of this Act, the Ministry of Labour and Social Insurance has signed an agreement with the Maya Languages Academy, and courses in Quiché (one of the Maya languages) have already been commenced for the public servants concerned, including labour inspectors. The Committee requests the Government to continue to provide information on the measures adopted under the National Languages Act, and particularly on their impact on the effectiveness of the labour inspectorate.

2. *Adequate training for labour inspectors in agriculture (Article 9, paragraph 3).* The Committee notes with interest the strengthening of the skills of inspectors during their initial training in workshops and seminars covering, inter alia, agricultural workers. The Government is requested to provide detailed information on the periodicity of these training activities, their content and their impact on the functioning of labour inspection in agriculture. The Committee asks the Government to indicate whether inspectors subsequently benefit from further training in the course of their employment.

3. *Transport facilities and arrangements for the reimbursement of the travel expenses of labour inspectors in agriculture (Article 15, paragraphs 1(b) and 2).* The Committee notes the Government's indication concerning the efforts made to provide labour inspectors with the necessary transport facilities and to grant travel allowances covering their travel expenses. The Committee asks the Government to provide details of the transport facilities allocated to labour inspectors operating in the agricultural sector and who, according to the Government, face particular difficulties in this regard. It also requests the Government to provide any relevant supporting documentation, including copies of provisions relating to the allocation of travel expenses.

4. *Cooperation between labour inspection services and government institutions for the effective application of appropriate penalties (Articles 12 and 24).* The Committee notes that the Government has not provided any information in its report on the measures necessary to ensure cooperation between inspection services and other competent government bodies for the effective application of appropriate sanctions. It notes that, under section 144 of the Labour Code, specific regulations are to be adopted for the agricultural sector in this regard. The Government is requested to provide copies of the regulations adopted under the provisions of section 144 and of any other text laying down the procedure for reporting offences relating to conditions of work in agricultural enterprises and the imposition of appropriate penalties.

The Committee also asks the Government to provide details on the manner in which it is ensured that the support of the competent public bodies is provided to labour inspectors, who are facing obstructions in the discharge of their duties in certain regions, such as the hostility of employers.

The Committee notes with interest that, under section 2 of Ministerial Order No. 364-2003 of 12 August 2003 establishing the Indigenous Peoples Department in the Ministry of Labour and Social Insurance, the labour inspectorate and the Office of the Labour Ombudsperson cooperate under the coordination of the new Department to ensure compliance with the rights of indigenous workers. The Committee requests the Government to provide information on the practical measures taken to give effect to this ministerial order, which involves labour inspection in agriculture.

Moreover, referring to the points raised in UNSITRAGUA's further comments received by the ILO, the Committee notes the following.

5. *Conditions of work in agricultural enterprises producing for multinational enterprises.* UNSITRAGUA refers to cases of enterprises which set production targets for workers in such a way that, in order to earn the minimum wage, these workers have to work in excess of ordinary working hours, with the additional hours being unpaid. According to UNSITRAGUA, "such cases are occurring with greater frequency in agricultural concerns producing bananas as independent producers for the United States multinational fruit company Chiquita, operating in enterprises in the municipality of Morales, in the department of Izabal, and on the southern coast of Guatemala". UNSITRAGUA also refers by way of illustration to the "El Real and El Atlántico ranches in the district of Bogos, municipality of Morales, department of Izabal, where the employers refuse to negotiate unless it is first accepted that piecework is not subject to normal working hours, in violation of the provisions that are in force".

In reports in 2000 and 2001 on the corporate responsibility of Chiquita Brands International, it is emphasized that in Guatemala "hourly workers and administrators sometimes work over 60 hours" and that "workers exceeded the maximum number of overtime hours".

According to UNSITRAGUA, the Ministry of Labour has given full latitude to the employers concerned, in the framework of collective agreements, to impose the exemption of piecework from the legislation on overtime work. The labour inspection is reported to have refused to take a position on the matter (Resolution No. LPR/ahd 6133-2002, dated 25 July 2002). UNSITRAGUA indicates that the appeal lodged by UNSITRAGUA with the Ministry of Labour and Social Insurance, as the hierarchical authority, on 19 September 2002, calling for this resolution to be declared unlawful,

was not successful and the practice of forced labour has continued with impunity and the indifference of the labour inspection services.

In comments received in the ILO in August 2004, UNSITRAGUA indicates that the Ministry of Labour has not instigated or even envisaged an investigation by the labour inspectorate to verify the cases reported and control independent production enterprises which use a remuneration system based on piecework or impose production targets as a mechanism to extend ordinary daily working hours without remuneration.

6. *Shortcomings of the labour inspection in system agriculture.* The Committee notes that, in its comments received in August 2004 on the application of the present Convention, UNSITRAGUA deplors in particular the deficiencies of the labour inspection system in agriculture (insufficient coverage, lack of suitable training, particularly in the specific fields of occupational safety and health in agriculture, lack of the necessary equipment for inspections).

The Committee will examine at its next appropriate session the points raised in these observations, together with the Government's next report, including any information and documents which the Government considers useful to submit in reply.

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

Guinea

Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)

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

The Committee notes with regret that the Government has not replied to its previous comments and has once again sent a report and documentation that the Committee already examined at its previous session. It would accordingly be grateful if the Government would provide the information requested on the material situation of the inspection services in each regional and local facility, indicating the measures taken or envisaged for their improvement (*Article 11 of the Convention*), as well as information on the measures taken or envisaged to publish and forward to the ILO an annual report on the activities of the labour inspection services (*Articles 20 and 21*).

The Committee reminds the Government that, where necessary, ILO technical assistance may be sought to facilitate fulfilment of the obligations arising from this Convention. It hopes that steps will be taken to this end and that relevant information will be provided.

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 must therefore repeat its previous observation which read as follows:

The Committee notes the Government's report and the annual reports on the activities of the Labour Department for 1998, 2000 and 2002.

Articles 26 and 27 of the Convention. While noting with interest the information included in the annual reports on the activities of the Ministry of Labour on inspection in agricultural enterprises and the data on employment accidents in agriculture provided by the Government, the Committee once again emphasizes the importance, from both a national and an international point of view, of the publication and communication to the ILO of an annual report of the activities of the labour inspectorate. It therefore once again hopes that the Government will take the necessary measures in practice to ensure that the central inspection authority fulfils this obligation set out in the Convention. In this respect the Committee draws the Government's attention to the various forms that the report may take in accordance with *Article 26*, while emphasizing the need to include information that is as detailed as possible on each of the items covered by *Article 27*, with specific reference to the agricultural sector.

The Committee is 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.

Haiti

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

The Committee once again 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. It must therefore repeat its previous observation which read as follows:

The Committee notes the comments made by the Trade Union Federation of Haiti (CSH) regarding the application, by the Government, of Convention No. 81. According to the Federation, while the legislation would be in conformity with the

provisions of the Convention, the political will to take the necessary measures for their application was not there. The Office has transmitted the comments of the CSH to the Government on 21 October 2002. The Committee hopes the Government will provide information on each point raised by the trade union for its examination at its next session.

The Committee is again directly addressing its request for information contained in its previous comments.

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

Honduras

Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)

The Committee notes the information provided in reply to its previous comments, and the attached documentation.

1. *Modernization and strengthening of the inspection system.* The Committee notes with interest that, following the finalization in June 2003 of the technical assistance for the modernization and strengthening of the labour administration system in the context of the ILO/MATAC project, technical assistance focusing on the formulation and establishment of a polyvalent and unified inspection service was obtained from the Department of Labour of the United States (USDOL). This assistance is intended to improve the inspection system by extending its coverage, particularly through staff training and the development of material resources. The Government adds that a preliminary framework Bill of the Secretariat of State for Labour and Social Security, containing provisions respecting the structure and operation of the polyvalent inspection system, has been submitted for adoption to the National Congress.

The Committee also notes with interest the action taken under the auspices of the Inter-American Agency for Cooperation and Development (IACD) and the Organization of American States (OAS) with a view to strengthening inspection through the training of labour inspectors.

Further referring to the information provided previously concerning the actions planned in the context of the project for the reinforcement of labour rights in Central America (*Centroamérica cumple y gana*, 1998-2002), one of the objectives of which was to improve the effectiveness of inspection systems and the training of labour inspectors and to establish a system for the organization of data to accelerate the processing of inspection files, the Committee would be grateful if the Government would provide detailed information on the results achieved in the above fields. The Committee hopes that the Government will be in a position to provide information in its next report on the expected impact of the various measures referred to above on the improvement of the labour inspection system and the progress achieved in terms of effectiveness.

2. *Conditions of service of labour inspectors and guarantees that they have no direct or indirect interest in the enterprises under their supervision (Articles 6 and 15(a) of the Convention).* Taking the opportunity of the announcement by the Government of a draft revision of the Labour Code, the Committee once again emphasizes the need to take measures with a view to the adoption of legal provisions to secure for inspection staff status and conditions of service such as to assure them of independence of any improper external influences (*Article 6*) and prohibiting inspectors from having any direct or indirect interest in the enterprises under their supervision (*Article 15(a)*). The Government is requested to keep the Office informed of the progress in relation to the adoption of the new Labour Code and the progress achieved with a view to giving effect to these provisions, the objective of which is to guarantee the impartiality and integrity that are indissociable from the inspection function.

3. *Publication, communication and content of the annual inspection report (Articles 20 and 21).* With reference to its previous comments, the Committee draws the Government's attention to paragraphs 272 et seq. of its General Survey of 1985 on the subject of the value at both the national and international levels of the annual inspection report and it once again hopes that the Government will soon be in a position, in the light of the clarifications offered by the General Survey, to ensure the publication and communication to the ILO by the central inspection authority of an annual report on the work of the services under its control in the form and within the time limits set out in *Article 20*, containing the information required in *Article 21(a) to (g)* and formulated insofar as possible in accordance with the guidance provided by Part IV of Recommendation No. 81, which supplements the Convention.

The Committee notes with interest that a number of labour inspectors participated in a training workshop on the subject of combating child labour. It notes the tables of inspections carried out in 2003 and 2004 with a view to identifying cases of child labour and the report on the cases identified in the various enterprises. The Government is requested to ensure that relevant data are regularly included in the annual inspection report.

The Committee is addressing a request directly to the Government on certain matters.

India

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

The Committee notes the Government's report containing replies to its previous comments, as well as the documentation attached. It also notes the Centre of Indian Trade Unions' (CITU) comments, sent to the ILO on 4 April 2004, the Government's reply to these comments, as well as the further CITU comments received on 14 October 2004.

The CITU deplors the multiple restrictions of the right of labour inspectors to enter workplaces freely, the lack of human resources and material means, the inappropriate level of penalties in relation to their objective of dissuasion and the lack of cooperation with trade unions on the occasion of inspection visits.

1. *The right of labour inspectors to enter workplaces freely (Article 12 of the Convention)*. In reply to the Committee's observations, the Government insists that section 9 of the Factories Act, 1948, and section 4 of the Dock Workers (Safety, Health and Welfare) Act, 1986, are in conformity with *Article 12* of the Convention. The Committee notes, however, that the legislation mentioned does not explicitly provide for the right to enter workplaces freely and without prior notification.

The Government also indicates, in response to the comments made previously by Hind Mazdoor Sabha (HMS) alleging the abolition of labour inspectorates in a number of states, that this allegation is unfounded. However, according to the CITU, measures have been taken to prevent labour inspectors from having access to workplaces liable to inspection. The Government states that it does not yet have at its disposal the relevant information, although a copy of the order (No. ST/4/2001/S497 S36) issued by the State Haryana under which inspections are prohibited, unless on the basis of prior approval by the highest state office, represented by the Labour Commissioner, has been communicated to the ILO by the CITU.

Furthermore, according to the CITU, inspectors are not allowed to enter export processing zones (EPZs) and special economic zones (SEZs) without the permission of the Development Commissioner, the administrative authority in the zones concerned. The Government strongly contests this point.

According to the CITU, in the field of information technology and IT-enabled service establishments (ITES), general exemptions from all labour laws are granted through executive orders, inspections are no longer carried out and violations of labour legislation are no longer detected or prosecuted. In reply to these observations, the Government affirms that the labour legislation is still applicable to this sector.

Referring to its 2001 observation, the Committee recalls that, pursuant to *Article 12(1)(a)*, labour inspectors should be empowered to enter freely, without previous notice at any hour of the day or night, any workplace liable to inspection. No prior authorization may therefore be required. The Committee also recalls the Government's obligation to ensure a precise and coherent legal framework to be respected throughout the country, thereby excluding the possibility for federated states to establish prohibitions or restrictive legal or practical measures in the area of labour inspection. According to the Government, the terms "as he thinks fit" and "reasons to believe" in section 9 of the Factories Act, 1948, and section 4 of the Dock Workers (Safety, Health and Welfare) Act, 1986, imply that labour inspectors may use their discretion in the use of their powers, including the right of free entry without prior notice. The Committee considers that section 9 and section 4 of the above Acts may give rise to variations in the interpretation of the scope of labour inspectors' duties and powers and could result in different legal provisions and practices in the various states. The Committee therefore urges the Government to take measures to ensure the conformity of its law and practice with the wording and spirit of the Convention and to inform the ILO about any progress made to this end.

Furthermore, the Committee notes that, according to section 19 of the Minimum Wages Act, 1948, section 7(b) of the Payment of Gratuity Act, 1972, section 27 of the Payment of Bonus Act, 1965, section 15 of the Maternity Benefit Act, 1961, and section 14 of the Payment of Wages Act, 1936, labour inspectors may enter the workplace at "a reasonable time" to perform inspections. The Committee emphasizes that, pursuant to the Convention, the right to freely enter workplaces liable to inspection should be granted at any hour of the day or night, without taking into consideration any other condition (*Article 12, paragraph 1(a)*). It requests the Government to take the necessary measures to amend the legislation to this end and to keep the ILO informed.

The Committee asks the Government to indicate whether the Weekly Holidays Act, 1942, and the Sale Promotion Employees (Conditions of Service) Act, 1976, are still in force and under the control of labour inspectors.

The Committee also requests the Government to provide the ILO with the more recent statistics related to the information technology (IT) sector, including the number of inspections carried out in this sector, the number of enterprises and workers liable to inspection, the number of labour inspectors responsible for controlling this sector, the number of violations recorded and penalties imposed, and the number of occupational diseases and accidents reported.

The Government is also requested to provide the same statistics for EPZs and the SEZs.

2. *Obligation to produce a report (Articles 20 and 21)*. Referring to the CITU's comments, the Committee notes the detailed labour inspection reports. However, the Committee observes that the statistics on the activities of State Labour Departments and factory inspectorates are not complete. The reports often indicate that data for certain states have not been transmitted. Furthermore, these statistics relate to the enforcement of various acts and do not therefore allow a general picture to be built up of labour inspection activities throughout the country. Referring to its previous comments, the Committee requests the Government to provide more detailed statistics and information on the distribution of the various factory inspectorates in each state, the number of inspectors in each inspectorate, the number of inspections carried out, the number of entities and workplaces covered by the various State Labour Departments and the various factory inspectorates under the Factories Act.

With regard to the statistics of occupational diseases and accidents, the Committee urges the Government to take measures rapidly to ensure that they are communicated by each of the inspectorates for inclusion in future annual reports.

The Committee recalls in this regard the obligations set out in *Articles 20 and 21* of the Convention, which also apply to federated states under the terms of *paragraph 2 of Article 4*. It therefore requests the Government to take the necessary measures to improve the data collection system and to keep the ILO informed of any progress in this respect.

3. *Effectiveness of labour inspection; sanctions and fines.* The Committee notes the CITU's comments on the annual report (2002-03) alleging that the loss of effectiveness of the labour inspectorate is due to the lack of human and material resources and to the diminished infrastructure compared to the growing number of establishments liable to inspection, in particular in the "central sphere". The CITU also deplores the paltry nature of the sanctions in relation to the objective of dissuasion. The Government indicates that during the year 2002-03, 42,391 inspections were conducted in the "central sphere" and that, despite the many constraints, effectiveness is still guaranteed.

The Committee recalls that, pursuant to *Article 10*, the number of labour inspectors should be sufficient to secure the effective discharge of their functions with due regard to the importance and complexity of their duties and the material resources available. Moreover, in accordance with *Article 11*, labour inspectors should be provided with suitably equipped local offices and transport facilities. The Committee hopes that the Government will gradually improve the working conditions of inspectors and that relevant information will soon be sent to the ILO.

The Committee notes that the penalties established by section 95 of the Factories Act, 1948, section 14 of the Dock Workers (Safety, Health and Welfare) Act, 1986, and section 15 of the Environment (Protection) Act, consist of sentences of imprisonment and fines, the amount of which may be increased in the event of repeat offences. Referring to paragraph 263 of its General Survey on labour inspection, 1985, the Committee emphasizes that penalties should be fixed at a sufficiently high level to have a dissuasive effect and should therefore be periodically reviewed. It urges the Government to take the appropriate measures for this purpose and to keep the ILO informed.

4. *Cooperation with trade unions and employers' organizations.* The CITU deplores the lack of cooperation between trade unions and the inspection services. It indicates that the trade unions are often not informed of inspections and are not involved in the labour inspection process. In response to these allegations and to the Committee's previous comments on this subject, the Government indicates that labour inspectors usually consult trade union representatives during inspections on the application of labour law provisions, but that there is no statutory requirement for the involvement of trade unions in the inspection process. It adds that cooperation with employees' representatives takes the form of joint tripartite Dock Safety Committees, headed by the Chief Inspector of Dock Safety, under the Dock Workers (Safety, Health and Welfare) Act, 1986, and bipartite Safety Committees, under the Factories Act. The Committee notes that, according to the Government, union representatives also participate in Dock Safety Week, periodic meetings have been held between labour inspectors and trade union leaders, and dockworkers participate in investigations and training programmes.

The Committee recalls that, in accordance with *Article 5(b)*, officials of the labour inspectorate should collaborate with employers and workers or their organizations. It draws the Government's attention to the guidance provided by Part II of Recommendation No. 81 on the possible forms of such collaboration. Although the involvement of trade unions in inspection visits is not provided for under the Convention, the Committee considers that the association of workers' representatives with inspection visits is very beneficial. It would be grateful if the Government would indicate if measures have been taken or are envisaged to this end.

Latvia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)

The Committee notes with satisfaction the manner in which effect is given to the provisions of the Convention by numerous laws and regulations adopted in recent years, including the Law of 22 September 2000 on the public service, the Laws of 20 June 2001 on labour protection and on labour, Regulation No. 293 of 9 July 2002 implementing section 13 respecting investigation procedures and the recording of accidents at work, of 9 July 2002, the Law of 28 December 2001 on state labour inspection and its implementing Regulation No. 158 of 16 April 2002 determining certain powers of labour inspectors. These instruments contain provisions on each of the matters covered by the Convention: the structure of the labour inspection system; the functions of the labour inspectorate; cooperation and collaboration between inspection services and other interested parties, such as institutions engaged in similar activities and organizations of employers and workers; the status, conditions of service, powers and duties of inspection staff; and the resources made available to them for the discharge of their functions. Furthermore, the Committee welcomes the quality and detailed nature of the information contained in the Government's reports and in the annual inspection reports for 2001, 2002 and 2003. It further notes with interest that the results of inspection activities are examined by the central authority with a view to their analysis and the identification of solutions to improve the inspection system for better enforcement of the legislation. In the view of the Government, even though efforts still have to be made, particularly in relation to the supervision of occupational safety and health conditions in a climate dominated by a high level of economic competitiveness, the updating of the census of workplaces has made it possible to extend the supervision of the labour inspectorate to many activities which fell outside such supervision up to the present. The Committee considers that the achievement of the objectives set out in the labour inspection instruments necessarily involves exhaustive knowledge of workplaces, which in turn involves the regular updating of their registration. It hopes that the publication of the annual report will not fail to

give rise to reactions by the representative organizations of employers and workers and that any points of view expressed by them can be brought to the knowledge of the Office in accordance with the relevant procedures.

Madagascar

Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)

The Committee notes with interest the Government's detailed replies to its previous comments. It also notes the organization in September 2004, under the direction of the ILO Regional Office in Antananarivo, in collaboration with the Government, and with the active participation of representatives of the Government and of the social partners and non-governmental organizations concerned, of a series of events aimed at strengthening tripartism in the context of labour administration. The Committee notes in particular with interest: (i) the holding of a tripartite monitoring workshop focusing on the definition of a suitable methodological approach for carrying out a study concerning observance of the fundamental rights and conditions of work of workers in "free enterprises" (*entreprises franches*); (ii) a workshop for the validation of a study on forced labour and the adoption of a relevant plan of action; and (iii) a day of work focusing on labour inspection, which was attended not only by representatives of the Government and the social partners but also by managers, inspectors (40 in service and 20 receiving training at the National School of Administration) and labour controllers. According to the information available to the ILO, the importance of the role of the labour inspection system was recognized by all categories of participants in the abovementioned meetings. In addition, the Committee notes with interest the existence of high-level competence in the labour administration, as well as the expression of a genuine political will on the part of the Government to set up an effective labour inspection system. It notes, however, that a critical lack of material and financial means is currently a major obstacle to achieving this objective.

The Committee notes that the imbalance between available resources and needs is accentuated even further by the extent of the duties and areas of competence of the labour inspection system pursuant to the legislation. Noting that a draft Labour Code is currently being promulgated, the Committee hopes that a copy will be sent to the ILO and that measures will be taken to ensure that the texts necessary for the application of its provisions in relation to the matters covered by the Convention meet the requirements of the latter, and that needs are covered in a progressive manner, in the light of available resources and priorities adopted, in all legislative areas which come under the competence of the labour inspectors. The abovementioned measures should be taken with regard to the following matters:

- (i) the principle functions of the labour inspection system (controls, technical advice and information and contributing towards improving the legislation covered by the Convention);
- (ii) methods and means of control and supervision by a central authority;
- (iii) measures promoting spheres of cooperation with other public and private institutions, as well as methods of collaboration with the social partners and the development of procedures for: (a) notifying the labour inspectorate of industrial accidents and occupational diseases; (b) making an inventory of workplaces which are legally liable to inspection; and (c) communicating judicial decisions handed down with regard to employers found guilty of contraventions;
- (iv) the status and conditions of service of labour inspectors;
- (v) enhancing and developing the competencies of labour inspection staff;
- (vi) the provision of appropriate logistical and financial means to services;
- (vii) the scope of inspectors' powers and their obligations;
- (viii) the effective application of dissuasive sanctions with respect to those responsible for contraventions.

The Committee hopes that the Government will communicate to the Office practical and legislative information (acts, decrees, regulations, circulars and instructions) concerning the development of the labour inspection system vis-à-vis the provisions of the Convention and inform it of any measures taken, where appropriate, to obtain international financial aid for this purpose and of any difficulties encountered.

The Committee also notes with satisfaction the information indicating that section 5(2) of Decree No. 61-226 of 19 May 1961, which established "protective" discrimination with regard to women concerning eligibility for the occupation of labour inspector, has fallen into disuse in practice. It would be grateful if the Government would state the measures contemplated to give legislative effect to this social step forward.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

1. *Labour inspection activities in agricultural enterprises and annual report.* With reference to its observation on the Labour Inspection Convention, 1947 (No. 81), which covers industry and commerce, the Committee takes due note that the Government is not in a position to provide activity reports on labour inspection in the agricultural sector covering periods that have long since elapsed. It would nonetheless point out in this connection the importance of providing such reports in future in one of the forms prescribed by *of Article 26, paragraph 1, of the Convention* within the time limits prescribed by *paragraph 2* of the same Article. It would further draw the Government's attention to the fact that the

central authority is required to publish the annual report and that there is a purpose to proper discharge of this obligation. The first object of publication is to make the report available to employers and workers and their representative organizations so that they have an opportunity to express their views on the working of the inspection system and make proposals for its improvement in order both to protect the workers and to enhance the productivity of enterprises. Noting with interest that a subregional seminar on the representativeness of employers' and workers' organizations was organized in September 2004 by the Office, the Committee hopes that as an outcome of the seminar labour relations in the agricultural sector will, as anticipated, develop along these lines.

2. *Human resources; specific skills and logistical resources of labour inspectors responsible for supervising agricultural enterprises.* The Committee also notes with interest that a number of inspectors working in agricultural areas participated in the one day course on labour inspection, organized jointly in September 2004 by the Office and the Ministry of Labour. It nonetheless notes from information available at the Office, that financial and logistics problems together with shortcomings in the legislation, already a serious obstacle to labour inspection in the industrial and commercial sectors, have even more worrying repercussions on supervision of working conditions and hence on the social, economic and health situation of workers in the agricultural sector.

The Committee notes that, in reply to its previous comments, the Government indicates that the courses needed to qualify as a labour inspector in the agricultural sector should shortly be provided at the *Ecole nationale de la magistrature*, and that the agricultural sector is open to free enterprises in certain parts of the country for the cultivation of grains and horticultural products. The Committee would be grateful if the Government would provide the following information in its next report: (i) the number of inspectors covered by the abovementioned training and their geographical distribution; (ii) the type and nature of the training; (iii) the number and the activities of the abovementioned free enterprises; (iv) the categories and numbers of the workers employed therein. Please also provide copies of any special legal provisions governing working conditions in free enterprises in the agricultural sector including wages, hours of work, safety and health, and any arrangements for the accommodation of workers and their families and the schooling of their children. Please send copies of legal provisions on supervision of the application of such legislation.

The Committee also requests the Government to provide all available information on labour inspection in agricultural enterprises in general, with reference to the matters raised in the observation on Convention No. 81.

3. *Combating child labour in agricultural enterprises.* The Committee would be grateful if the Government would provide information on the role assigned to, and actually assumed by, labour inspectors in the implementation of the ILO/IPEC programme to combat unlawful child labour in the agricultural sector, and on infringements reported and any administrative or legal action taken on them.

Malawi

Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)

The Committee notes the Government's report in reply to its comments and the copy of the annual report for 2000-02 of the Ministry of Labour and Vocational Training.

1. *Strengthening of staff and skills and improvement of supervisory activities (Articles 7, 10, 11 and 16 of the Convention).* According to the Government, labour inspection has been strengthened and more labour inspectors have been recruited and trained. The Government states that it is intended to recruit eight additional labour inspectors in the area of occupational safety and health. The Committee observes that, according to the Government, 4,000 inspections were performed by the Labour Services Department and 297 inspections by the Occupational Safety and Health Directorate from 2000 to 2002, and financial allocations to the Ministry of Labour and Vocational Training have been increased. It notes that inspections in the area of occupational safety and health have increased from 75 in 2000 to 143 in 2002. Moreover, the Committee notes with interest the Government's efforts indicated in its report to provide training to labour inspectors on the job.

The Committee would be grateful if the Government would keep the ILO informed of further developments and results of the strengthening process. It also asks it to provide a copy of TEVET Act No. 6 of 1999, referred to in the annual report of the Ministry of Labour and Vocational Training.

2. *Labour inspection and child labour.* Referring to its 2003 comments under Convention No. 182, the Committee observes with interest the ongoing progress in instituting several programmes to combat child labour, launched since 2001. According to the Government, 55 labour officers have been specially trained to enable them to supervise compliance with relevant legislation.

3. *Lack of financial resources.* According to the Government, sufficient resources are still not available to implement the Convention fully. The Government also indicates in its report on Convention No. 129 that there are shortages of human resources and infrastructure. The Committee notes from the Government's report received in 2001 that only one vehicle was then available inspectors in the southern region to carry out inspections throughout all the districts in the Region. Referring to its 2002 observation, the Committee strongly encourages the Government to envisage the possibility of seeking international financial cooperation with a view to strengthening the resources of the labour inspectorates to enable them cover needs progressively throughout the country.

4. *Notification of industrial accidents and cases of occupational disease (Article 14) and occupational safety data (Article 21(g)).* According to information communicated in the annual report of the Ministry of Labour and Vocational Training (2000-02), accidents have to be reported if they incapacitate workers from performing their normal employment for 14 days or more. On the other hand, under section 66 of Occupational Safety, Health and Welfare Act 1997, accidents occurring at the workplace disabling any person from carrying out normal duties at the workplace should be immediately notified in written form to the director of the Occupational Safety and Health Inspectorate. The Committee therefore asks the Government to indicate the relevant legislation applicable to the procedure of notification and to provide a copy with its next report.

The Committee notes the increasing number of accidents reported between 2000 and 2002. It would be grateful if the Government would provide explanations in this regard. It also asks it to indicate any impact on the activities of the labour inspectors of the implementation of the social security scheme following the adoption of Workers Compensation Act No. 7/2000.

5. *Annual report covering the labour inspection services (Articles 20 and 21).* The Committee notes with satisfaction the information contained in the annual report (2000-02) of the Ministry of Labour and Vocational Training on: the administrative structure of the Ministry as the central authority responsible for labour inspection; the number of ongoing projects; and statistics relating to occupational accidents, employment structure, labour complaints, the number of inspections and the workforce. The Committee encourages the Government to continue its efforts to compile data, taking also into consideration the other requirements set out in *Article 21*, such as the number of enterprises liable to inspection, cases of occupational diseases and the number of inspection staff, with an indication of their distribution by service, grade, region and gender.

New Zealand

Labour Statistics Convention, 1985 (No. 160) (ratification: 2001)

The Committee notes with satisfaction the information contained in the Government's first report and available from other national and international sources referred to in the report, showing that full effect is given to *Articles 7 to 15 of the Convention*.

The Committee also notes the detailed information provided by the Government in a letter of 17 November 2003 replying to comments by the New Zealand Council of Trade Unions (NZCTU) on the application of the Convention.

According to the NZCTU, the wage statistics collected by Statistics New Zealand for its Quarterly Employment Surveys (QES) use a different methodology and produce different figures from the wage data used in the Labour Cost Index, which are taken from the Household Labour Force Survey coordinated by the Department of Labour. In the view of the NZCTU, this inconsistency makes it more difficult to compare and use the data and it would be desirable for the two Government agencies to coordinate more and use more standard measures and methodologies for the collection of wage data.

The Committee notes in this respect that the wage data used in the Labour Cost Index are not drawn from the Household Labour Force Survey, but from a quarterly survey from employers, such as the Quarterly Employment Survey and, secondly, that the two surveys are conducted by Statistics New Zealand. In its reply dated 17 November 2003, the Government provided, inter alia, detailed information on the various measures of wages produced by Statistics New Zealand with regard to their objectives, source, scope and methods. These details supplement and confirm the information that it provided in its first report and that is available to the ILO. The Committee accordingly considers that there is no contradiction, but rather complementarities between these measures. It notes that, according to the Government, Statistics New Zealand can provide further information on the difference between these wage measures and the most appropriate source for the needs of users, and that full methodological information is also available on the Internet site of Statistics New Zealand.

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

Norway

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

The Committee notes the communication by the Government of the comment made by the Norwegian Confederation of Trade Unions (LO) concerning the application of the present Convention and of Convention No. 129. The Government is asked to communicate in its next report to the ILO, for examination by the Committee at its next session, any information which it considers useful with regard to the points raised by the Organization, and with regard to those raised in the observation of 2003.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

The Committee notes the communication by the Government of the joint comment made by the Norwegian Federation of Trade Unions (LO) on the application of the present Convention and Convention No. 81. The Government is requested to provide in its next report to the ILO, for examination by the Committee at its next session, any information that it considers useful concerning the matters raised by the LO, together with the document requested in its 2003 observation.

Pakistan

Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)

The Committee once again notes that the Government's report has not been received. It is therefore bound to repeat its previous observation, which read as follows:

Legislative amendments. With reference to its previous comments on the observations made in 1994 by All Pakistan Federation of Trade Unions of Pakistan (APFTU) especially with regard to the urgent need for a revision of a few laws which were no longer relevant, the Committee notes with interest the information contained in a presidential press release dated 30 April 2001, by virtue of which the amendment of a few legislative texts were adopted. The amendments were made to the following Acts: Occupational Accidents Act of 1923; Payment of Wages Act of 1936; Mines Maternity Benefits Act of 1941; Employees Social Security Ordinance of 1965; The Companies Profits Workers Participation Act of 1968; Workers Welfare Fund Ordinance of 1971; and Employees Old-Age Benefits Act of 1976. Recalling the Federation's (APFTU) view that it was equally urgent to review the Factories Act of 1934, the Committee would be grateful if the Government would transmit to the ILO copies of the new texts as well as information on the revision of the Factories Act.

Noting further that a new set of amendments is envisaged, the aim of which is to restructure labour legislation; strengthen the labour judiciary; review the minimum salary; and extend the coverage of labour legislation to agriculture, and other activities of the informal sector, the Committee would be grateful if the Government could continue to provide information on any developments in this field, and to communicate to the ILO a copy of any relevant text.

With reference to its previous comments, and based on the information contained in the aforementioned press release respecting the new legislative provisions, and on the Payment of Wages Act, which indicate that salaried workers whose salary is less than 3,000 rupees are entitled to seek remedy in a court of law to be paid delayed salaries and to dispute unauthorized salary deductions, the Committee would be grateful if the Government would provide precise information on the application of this law vis-à-vis workers employed in the brick kiln industry and undertakings whose workers are maintained in numbers lower than the threshold level specified in the Factories Act.

Labour inspection and inspection of child labour. Articles 7, 16, 17 and 18 of the Convention. The Committee notes with interest the measures taken to reinforce labour inspection so as to combat child labour efficiently, in collaboration with the International Programme on the Elimination of Child Labour (IPEC). It notes in particular the objectives, the national policy strategy, as well as the plan of action on the intensive training of labour officers, especially labour inspectors. The aim of such a measure is to strengthen the monitoring mechanism in the application of the law through adequate logistical means provided to the competent authorities, and the formulation of monthly reports on the level of application of the legal provisions on child labour. It notes that the Task Force set up to evaluate the situation of child labour has solicited views on the directions of work in each province, with respect to the different elements which could be part of a strategy to combat child labour, and that the provincial governments had set in place training programmes on labour inspectors focusing on government policy and legislation on child labour as well as a robust programme of the labour inspection services in this field. The Committee notes with interest the institutionalization of compulsory primary schooling by the governments of the Punjab, and the North West Frontier Province (NWFP).

Noting that the above national policy and action plan are carried out in collaboration with the social partners, and in cooperation with the various ministerial departments concerned with the problem of child labour and that they involve the undertaking of a number of analytical studies on specific sectors of activity, but equally divided by region, in view of the mobility of working children, the Committee would be grateful if the Government would provide information on the results of the above work, and the measures which have been taken or are envisaged to follow up on the recommendations which transpired. In this regard, the Committee notes that the study on child labour in the carpet industry should have been completed in September 2001.

With reference to its previous observations, the Committee would be grateful if the Government would supply precise information on the role played by labour jurisdictions in combating child labour, and to transmit to the ILO the conclusions which have been so far reached as a result of the adoption of the new measures.

Publication of the annual inspection report and its communication. Noting that the ILO has not received any annual report since the last report covering the year of 1995, the Committee hopes that the Government will ensure that the central inspection authority fulfil its obligation as specified under the Convention, which consists in publishing within the time lines established in *Article 20* of the Convention an annual inspection report containing information on each of the subjects enumerated under *Article 21*. The Committee requests the Government to also ensure that statistics on child labour be regularly included in the annual inspection report.

The Committee hopes that the Government will make every effort to rapidly take the necessary measures.

Furthermore, the Committee notes the communication of the All Pakistan Federation of Trade Unions (APFTU) of 9 July 2003 which emphasizes the need to develop training services not only for labour inspectors but also for workers and points out the possible risks involved in the recent transfer of the functions of labour inspection to the local authorities. This observation was forwarded to the Government in September 2003 so that it may provide the information it may wish to submit in reply for examination by the Committee. It would be grateful if the Government would do so in due course.

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

Paraguay

Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

The Committee once again 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. It must therefore repeat its previous observation which read as follows:

The Committee notes the observations made by the Latin American Confederation of Labour Inspectors (CIIT) of 20 May 2002. These observations, which are supplementary to those provided by the same organization in 1999, were forward by the ILO to the Government on 22 July 2002. In the view of the organization, the situation denounced in 1999 persists and the operational capacity of the inspection services is continuing to deteriorate. The comments made by the CIIT concern matters relating to the establishment of an inspection system, the functions of the labour inspection system, the status and conditions of service of labour inspectors, their training and activities related to the inspection of workplaces.

Furthermore, the Committee takes note of the Government's report received by the Office on 8 November 1999. It also notes the observations by the Latin American Confederation of Labour Inspectors of June 1999 alleging in particular the inadequacy of the number of inspectors and of inspection visits which are conducted mainly following complaints and not following a pre-established programme, as well as the absence of means of transport and the non-reimbursement of expenses.

The Committee notes that, according to the statistics transmitted by the Government, the number of inspectors (73) and visits (1,005) in 1998 is insufficient if compared to the number of undertakings (30,000) liable for inspection. These statistics show that each inspector carried out an average of 1.15 inspections monthly, that is a decrease of about 30 per cent in relation to 1996 when the number, although low in absolute terms, was higher. The Government acknowledges that the inspection services lack means of transport, but that certain expenses are reimbursed.

The Committee takes note with interest of the manual on labour inspection, approved by resolution No. 159 of 30 April 1998, relating in particular to the functions and powers of inspectors and to the inspection procedures; its annex reflects the text of the ILO Conventions on labour inspection, as well as the essential national provisions. It also notes a document of September 1999 sent by the Government on the preparation of programmed visits. Noting however that the Latin American Confederation of Labour Inspectors refers to the absence of a manual or guide for inspectors, the Committee asks the Government to indicate the measures contemplated to disseminate the above manual among inspectors.

The Committee hopes that the various initiatives taken by the Government will contribute to improving the activities of the labour inspectorate and that it will take the necessary measures to make available to the inspectorate the resources needed to increase the number of inspectors and the frequency of inspection visits, including programmed visits. It requests the Government to provide information on the progress made.

The Committee hopes that a report will be provided for examination at its next session and that it will contain full particulars on all the points raised.

The Committee is also once again addressing its previous 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.

Peru

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

Further to its previous comments, the Committee notes that the Government has still not communicated any of the many documents indicated as being attached to its replies communicated to the ILO in November 2003 to the observations formulated in September 2003 by the Union of Labour Inspectors of the Ministry of Labour and Employment Promotion (SIT) on the application of the Convention. The Committee is therefore bound to recall its previous comments concerning the points raised by the SIT, which read as follows:

According to the SIT, labour inspection is not a priority for the Government and does not therefore benefit from the necessary support from the public authorities. It adds that the establishment of a trade union by labour inspectors with a view to defending the interests of the occupation has been punished by a series of intimidation measures against its leaders and members.

Functions, status, conditions of service and safety of labour inspectors. According to the SIT, over half of labour inspectors, including the leaders and members of the trade union, have been affected by transfers to other duties and unannounced evaluations which may be assimilated to direct or tacit threats of dismissal. The personal safety of labour inspectors is not guaranteed, as they are not even covered in the event of employment accidents and no measures are taken to collaborate with the forces of order in the event of obstructions to the discharge of inspection duties.

The SIT adds that the direction of the labour inspectorate has endeavoured to dissuade labour inspectors from joining the trade union by indicating tacitly, during a meeting concerning the allocation of training grants, that they would be provided to inspectors favourable to the administration, which did occur in practice.

According to the Government, transfers of labour inspectors are not a new development related to the establishment of the trade union. It indicates that they are dictated by the requirements of the service and, more recently, to respond to the training needs of the labour inspectorate, in accordance with the new policy of the Ministry. Certain inspectors, for example, have been made responsible for examining collective redundancies in state enterprises, public sector bodies and local governments. The Government states that the transfers of inspectors to which the SIT refers were prior to the establishment of the trade union and are not therefore related to it. It adds that the new duties are related to the functions for which the inspectors were recruited and do not therefore jeopardize the principle of the employment stability of inspectors. This employment stability is guaranteed by the nature of their employment relationship, which is covered by permanent contracts in the context of the General Act respecting labour inspection and the protection of workers. In the view of the Government, the dismissal of inspectors is subject to the conditions set out by the Act and is undertaken on the grounds of a grave professional fault.

The Government emphasizes the particular interest of the national directorate of labour inspection for the training of inspectors, particularly in the fields of safety and health in industrial activities, and it refers to a training project in the framework of an annual plan involving the selection of candidates on the basis of their professional qualifications and experience, to the exclusion of any other discriminatory criteria.

With regard to the personal safety of labour inspectors, the Government states that labour inspectors are protected and that the relevant criminal procedures are initiated whenever the situation so requires. In response to the allegation of the SIT that no measures have been taken to ensure the support of the police forces for inspectors in the event of difficulties in the discharge of their duties, the Government states that such support is envisaged in section 7(b) of the General Act respecting labour inspection and the protection of workers and that, in addition, the directorate of the labour inspection recently addressed the relevant communications to police stations.

Human resources, material resources, transport facilities and the reimbursement of travel expenses. The SIT indicates that the lack of support from the central government for the inspection services is reflected in the first place in the derisory nature of the budget allocated to the labour inspection services. It indicates that inspectors are obliged to cover personally their professional travel expenses, the reimbursement of which is subject to a complex and burdensome procedure, including for inspections of distant workplaces. In the view of the Government, these allegations are without foundation, as the labour inspectorate benefits from a legal status and conditions of employment that are such as to guarantee the objectivity and professionalism of its personnel, as well as measures to strengthen the human and material resources of the services, despite the budgetary restrictions and other austerity measures affecting the whole of the public sector. The Government nevertheless acknowledges that Act No. 8034 of 2003 respecting new austerity measures has imposed restrictions on the use of service vehicles, with the labour inspectorate having at its disposal a single vehicle. Nevertheless, according to the Government, it has recently decided to allocate labour inspectors a budget to cover their professional travel expenses, including their accommodation and incidental travel expenses for inspections of distant workplaces. With regard to office equipment, it indicates that it will be a case of the inspection services being allocated a monthly budget. Furthermore, in the context of a project for the modernization of the labour inspectorate, with the support of the ILO Regional Office, the purchase is envisaged of new computer equipment, vehicles and furniture, as well as training at the national and international levels for labour inspectors.

The Committee notes that the numerous documents which the Government indicated as being attached, in support of the information provided in reply to the matters raised by the Organization, have not been received by the Office. It hopes that they will be provided in the near future and that they will permit a complete examination of the situation at the Committee's next session.

The Committee reminds the Government of the list of documents as attached to the communication of November 2003:

1. Communications dated 11 July 2003 to several police stations in Lima.
2. List of labour inspectors.
3. List of labour inspectors with an indication of the method of recruitment.
4. Copy of an employment contract between the Ministry of Labour and labour inspectors.
5. Decision of the Secretary-General No. 059-2002-TR/SG approving Instruction No. 003-2002-TR/SG on the training programme of the labour inspectors and their temporary duties in other areas.
6. Instruction No. 003-2002-TR/SG referred to above.
7. List of training activities carried out in 2002-03 and participants in these activities.
8. Copy of order forms for the purchase of equipment necessary for labour inspectors.
9. Copy of mission authorizations indicating the corresponding financial allowances.
10. Copies of memos authorizing staff travel.
11. Copy of the 2003 annual public sector budget Act (No. 27829).
12. Copy of Act No. 28034 of 22 July 2003 adopting additional austerity measures to rationalize public expenditure.
13. Copy of Ministerial Decision No. 241-2003-TR dated 26 September 2003, authorizing the public prosecutor, on behalf of the Ministry of Labour, to initiate legal proceedings against the aggressors of a female inspector.

Article 12 of the Convention. Right of inspectors to enter workplaces freely. Referring to its previous comments on the implementation of the provisions of this Article, the Committee notes the adoption on 20 July 2004 of Act No. 28292 amending the General Labour Inspection and Worker Protection Act and Presidential Decree No. 010-2004-TR amending the regulations implementing the above Act.

In particular, it notes with interest that section 7 of the General Labour Inspection and Worker Protection Act and section 11 of these Regulations have been amended with a view to extending the period during which inspectors are authorized to carry out, freely and without prior notice, inspections of workplaces. This period now not only comprises normal working hours day and night in workplaces, but also at night outside normal night working hours, to allow controls relating to clandestine work, the technical inspection of machines and equipment which cannot be carried out while they are operating and inspections that are necessary in the case of imminent danger to the safety and health of workers.

The Committee notes, however, that certain legal provisions of the above Act and regulations, as amended, are in contradiction not only with the principle of the right of inspectors to enter workplaces freely, as set out in the new legislation, but also with the relevant provisions of *Article 12* of the Convention.

Indeed, section 9(c) of the Act and section 39(A) of the Regulations drastically restrict the right of inspectors to initiate inspections by providing that (except in cases of risks to the safety and health of workers), all inspections are

subject to prior written authorization by the administrative labour authority (AAT). Moreover, pursuant to section 37.1 of the Regulations, such authorization should define and limit the scope of the investigations authorized following a complaint.

Section 40(b) of the Regulations prescribes that the presence of the employer or her or his representative at the workplace is imperative for an inspection to be carried out, without which the inspector is obliged to postpone the inspection and notify the employer of its date. Moreover, section 40(f) of the Regulations requires the inspector to be accompanied by the employer and workers during the whole inspection, except during interrogations.

The Committee draws the Government's attention to the comments that it made in its General Survey of 1985 on labour inspection (paragraph 168 et seq.) on the importance which should be attached to the inspectors' right of free access to workplaces and their right to free control during the visits. While acknowledging the value of the planning and targeting of inspections by the central inspection authority, depending on the means available, the economic background and the priorities selected based on the assessment of the needs (paragraph 243 of the Survey), the Committee nevertheless pointed out that excessive bureaucracy, such as the requirement of special permits for each inspection, could prejudice the efficiency of inspections. With regard to the written authorization required from the AAT to carry out inspections based on complaints, the Committee considers that this requirement is in any case contrary to the principle set out in *Article 15(c)* of the Convention under which labour inspectors should be prohibited from revealing to the employer the reason for the visit.

With regard to the obligation for inspectors to be accompanied during inspections by the employer and workers, this is bound to limit the freedom of expression and spontaneity of workers, thereby jeopardizing the effectiveness of the inspection. The Convention is explicit on this point, since *Article 12, paragraph 2*, establishes the right of the inspectors to derogate from their duty to notify the employer or her or his representative of their presence during inspections where they consider that such notification might be prejudicial to the effectiveness of the inspection.

The Committee therefore urges the Government to continue its efforts to extend the scope of the right of inspectors to enter and inspect workplaces liable to inspection freely, in accordance with the letter and the spirit of the Convention; and to take appropriate measures to remove any obstacles to the exercise of these rights established by laws and regulations, namely: the requirement of prior authorization from the central labour inspection authority to carry out any inspection for any reason whatsoever; the obligation to postpone an inspection in the event of the absence of the employer or her or his representative; and the obligation for inspectors to be accompanied by the employer and workers during inspections. The Committee hopes that relevant information will be provided to the ILO.

Cooperation for the establishment of an effective inspection system. The Committee notes, according to the information available to the ILO, the action taken in the context of the regional multilateral ILO technical cooperation project, FORSAT, financed by the Ministry of Labour and Social Affairs of Spain for the strengthening of labour administration services. In particular, the Committee notes with interest that the strengthening of labour inspection is an important component of the project and that it involves vocational training for inspection staff and working methods and procedures. Expressing the hope that the measures taken through the FORSAT project will facilitate the production of an annual labour inspection report, in line with *Articles 20 and 21* of the Convention, the Committee would be grateful if the Government would provide information on the implementation of the project and its impact on the operation of the labour inspection system in the light of the provisions of the Convention and the points raised in the Committee's previous comments.

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

Romania

Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)

The Committee notes the Government's report and the attached documentation, including Act No. 53/2003 of February 2003 issuing the Labour Code. It notes with interest the detailed information on the various activities undertaken by the labour inspectorate to combat child labour, which involve raising the awareness of all the parties concerned, including children themselves. Noting that agreements have been concluded between the labour inspectorate, public bodies and non-governmental organizations in this field, the Committee would be grateful if the Government would provide copies of these agreements.

The Committee further notes the comments made by the National Trade Union Bloc (BNS) on certain points relating to the application of the Convention, which were forwarded to the Government by the ILO on 12 January 2004, and the Government's reply to these comments received on 23 April 2004.

1. *Structure and operations of the labour inspectorate.* The Committee notes that section 256 of the Labour Code provides that a special law shall regulate the establishment and organization of the labour inspectorate. However, it notes that Act No. 108 of 1999 and Government Order No. 767 of 1999 have not been repealed by the Labour Code. According to the information provided by the Government in its report, the restructuring of government institutions has already affected the labour inspectorate under the terms of Government Decisions Nos. 737 and 745 of 3 July 2003. The Government adds that, in the context of the project to strengthen the administrative capacity of the labour inspectorate,

which forms part of the Consensus III programme undertaken in partnership with the Swedish Work Environment Authority, labour inspection methods have been reviewed in the light of European Union Directives. The Committee would be grateful if the Government would provide the Office with copies of Government Decisions Nos. 737 and 745 referred to above and keep it informed of any amendment of the texts governing the organization and operation of the labour inspectorate.

2. *Articles 13 and 17 of the Convention. Powers of labour inspectors to issue orders and institute proceedings.* According to the BNS, although the law establishes a series of penalties ranging from the imposition of a fine to the closure of the workplace, it claims that inspectors confine their action against employers in violation of the legal provisions relating to working conditions, including cases of repeat offences, to mere notifications which are without effect.

The BNS also deplors the fact that legal proceedings for violations relating to additional hours of work cannot be initiated due to the difficulties of obtaining proof and the pressure exerted upon workers in this respect.

The Government confirms that labour inspectors are empowered to impose fines on employers in breach of the legislation respecting hours of work and rest periods. However, it indicates that Act No. 53/2003 does not establish applicable penalties and that amendments to this Act will be proposed to supplement it in this respect. With reference to sections 20 to 24 of Act No. 108 of 1999 establishing and organizing the labour inspectorate, the Committee notes that fines are indeed established not only for any obstruction of the discharge of their duties by inspectors, but also to penalize violations of the provisions relating to conditions of work, and that infringements of occupational health and safety standards may, in the case of repeat offences, result in the offender being struck off the commercial register. In the absence of an annual report on the work of the inspection services, as required under *Articles 20 and 21* of the Convention, the Committee does not have at its disposal relevant practical information enabling it to ascertain the real situation and scope of the allegations made by the BNS. It would be grateful if the Government would provide, firstly, statistical information on the exercise by labour inspectors of their powers as entrusted to them by the legislation that is in force to initiate legal proceedings and, secondly, to provide information on the nature of the proposed amendments to the legislation referred to in its report.

3. *Article 15(c). Confidentiality of the source of complaints.* With reference to the comments made by the BNS concerning the pressure that is allegedly exerted upon workers to prevent them seeking and obtaining adequate protection against the abuse of additional hours, the Government confirms that, in the absence of complaints, proceedings are not initiated in practice against the employers concerned. In this respect, the Committee draws the Government's attention to the need to ensure full compliance by labour inspectors with the principle of the absolute confidentiality of the source of complaints to prevent those making complaints being exposed to the risk of reprisals by their employer. The Government is requested to provide information on the manner in which it is ensured or it is envisaged that it will be ensured in law and practice that those making complaints concerning abuses of additional hours are not exposed to such risks.

4. *Article 18. Adequate penalties.* The Government indicates in its replies to a previous comment by the Committee that the level of financial penalties applied to employers by labour inspectors for violations of the provisions of the legislation is not adjusted to take into account the inflation of the currency. In its General Survey of 1985 on labour inspection (paragraph 263), the Committee considered in this regard that it would be decidedly regrettable if employers preferred to pay fines because they found them more economical than taking often costly occupational safety and health measures or paying workers' wages on time. For this reason, in the view of the Committee, where the penalty consists of a fine, the rate of the fine should be periodically reviewed, particularly in economic situations that are characterized by inflation. The Government is therefore requested to take measures to ensure that the legislation gives full effect to *Article 18* of the Convention and to keep the ILO informed of any progress in this respect.

5. *Article 11, paragraph 2. Professional travel allowances.* Further to a previous request, and noting that, according to the Government, the amount of the allowances paid to labour inspectors for their professional travel is adjusted by the Ministry of Public Finance on the basis of fluctuations in the consumer prices of basic foodstuffs where they increase by over 10 per cent, the Committee would be grateful if the Government would provide a copy of the Decision of the Minister of Public Finances No. 1467/2002, referred to by the Government in its report on the application of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), as revising Order No. 543/1995 on the reimbursement of travel expenses and professional expenses to labour inspectors.

6. *Articles 7, 10, 11, 20 and 21. Training of labour inspectors, results of inspection activities and annual inspection report.* The Committee notes with interest the detailed information provided concerning the measures adopted to reinforce the training and facilities available to labour inspectors, including: the establishment of a further training and education centre by Decision No. 537 of 7 June 2001; the substantial increase in the number of labour inspectors (from 1,234 in 2001 to 1,482 in 2003); the purchase of professional materials (nine vehicles and 847 computers); the preparation of a manual for labour inspectors and the development of methods and strategies for controlling the health conditions of workers exposed to certain harmful chemical substances; the preparation of a good practice guide for employers for reducing the exposure of workers to harmful chemical agents; and an awareness-raising campaign on occupational risks. Also noting the number of inspection visits, the workplaces inspected and the number of workers covered during the period covered by the report, the Committee reminds the Government that, so that it can provide a basis for assessing the level of application of the Convention, this information should be supplemented by information on the other matters

covered by *Article 21* of the Convention and be presented, insofar as possible, in the manner advocated by the Labour Inspection Recommendation, 1947 (No. 81) (*Part IV*). It expresses the firm hope that the impact of the efforts made by the Government to strengthen the labour inspectorate can be made visible through the annual inspection report, the communication of which was announced by the Government.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) ***(ratification: 1975)***

The Committee notes the Government's reports and the attached documentation, and refers to its observation under the Labour Inspection Convention, 1947 (No. 81), and particularly the points raised by the National Trade Union Bloc (BNS) in a comment which also concerns the present Convention. While noting the specific information concerning the composition of the staff and the number of labour inspection visits in agricultural enterprises, the Committee would be grateful if the Government would provide the information requested in its observation under Convention No. 81, in so far as it applies to labour inspection in agricultural enterprises, under each of the following points:

- (1) the powers of labour inspectors to make orders and institute proceedings (*Articles 18 and 22 of the Convention*);
- (2) the confidentiality of the source of complaints (*Article 20(c)*)
- (3) adequate penalties (*Article 24*);
- (4) the training of labour inspectors, the results of the work of the inspectorate and the annual inspection report (*Articles 9, 14, 15, 26 and 27*).

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

Sierra Leone

Labour Inspection Convention, 1947 (No. 81) (ratification: 1961)

Referring to its previous reiterated comments, the Committee notes once again that, according to the Government, the peace having now returned, it is planned to recruit labour inspectors and to request technical assistance from the ILO to ensure the improvement of the labour inspection services throughout the country.

The Committee hopes once again that the Government would not fail to supply any available information requested in the report form under each of the provisions of the Convention; to indicate the areas where technical assistance is needed and to keep the ILO informed on any step taken in view to obtaining such assistance as well as on results reached.

The Committee is addressing a request directly to the Government concerning certain points.

Sweden

Labour Inspection (Agriculture) Convention, 1969 (No. 129) ***(ratification: 1970)***

The Committee notes that on 24 March 2004 the Government sent an observation by the Swedish Trade Union Confederation concerning: (i) possible contradictions between the requirements of this Convention and those of the Safety and Health in Agriculture Convention, 2001 (No. 184), as regards the presence and role of women on the staff of the inspectorate for agriculture; and (ii) the proportion of their duties that work environment inspectors devote to labour inspection in the agricultural sector.

The Committee also notes that the Government forwarded explanations regarding point (ii) above sent by the Work Environment Authority. The Committee will examine, together with the Government's next report on the application of the Convention, the information sent in reply to its previous comments, the content of the organization's observations, and any further explanations the Government sees fit to send on the points raised by the organization.

Uganda

Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)

The information supplied by the Government in its report again brings to light the following two facts:

- (1) The labour inspection system, already seriously affected by the country's economic difficulties before decentralization, continues to deteriorate owing to the persistence of the economic downturn and to the manner in which decentralization is being implemented.
- (2) Being based on the principle of a labour inspectorate placed under the control of a central supervisory authority, the existing legal framework governing the powers, organization and working of the labour inspection service is no longer practicable and cannot be applied because, with decentralization and the transfer of powers to the districts, the central authority has yielded to the districts control over their budgetary resources.

1. *Decentralization and labour inspection.* With reference to its previous comments and the discussions in the Conference Committee at the 2001 and 2003 sessions of the International Labour Conference, the Committee notes that the country is currently engaged in an in-depth reform of its institutions which appears to aim ultimately at decentralizing many state functions. However, as the Government itself observes, decentralization does not comply with *Article 4 of the Convention* and a central authority is needed to supervise and to control the labour inspection system.

The information given by the Government shows that the central labour inspection authority is now devoid of all substance: the little authority that the Ministry retains in law cannot be exercised for want of the necessary structure and resources and some heads of districts take the attitude that to maintain or establish local labour inspection services serves little purpose.

All this is particularly worrying in terms of the Convention's social and economic objectives, to which the Government subscribed formally through the solemn act of ratification. The Committee accordingly urges the Government to reconsider, if not the principle of a decentralized labour inspectorate which now appears firmly to be a part of the overall national project, at least the methods and means of implementing decentralization. One necessary principle is that the labour inspection system should come under a central authority, within the meaning of *Article 4 of the Convention* taken as a whole – the restructuring in Uganda seems to be moving towards a kind of “federalism”, in which the districts are like the “federated units” referred to in *paragraph 2* of this Article. The Committee points out that the obligations laid down under article 2 of the ILO Constitution that the Government assumed on ratifying the Convention must in any event remain the responsibility of the State. It is a duty of the State to ensure that the conditions needed to apply the Convention exist nationwide. National laws and regulations must ensure that authority for labour inspection is shared between the central bodies of the labour administration and the decentralized authorities, and there must be uniform legislation governing the status, conditions of service and training of inspection staff (*Articles 6 and 7*). Furthermore, there must be scrupulous observance of the need to ensure the establishment either of a labour inspection system in each district or, possibly, a system in which authority would be determined on a broader, regional basis if such an option is deemed better suited to more rational use of available resources. In any event, resources must be assigned on a legal basis to labour inspection in order to make available to labour inspection services the staff, material and logistic resources necessary to perform their duties (*Articles 6, 7, 9, 10 and 11*).

2. *Establishment of an inspection system suited to economic and social needs: urgent preliminary measures.* The fact that it has been impossible for many years to produce an annual report on the work of the inspection services (*Articles 19, 20 and 21*) not only reflects the extent to which the labour system has been dismantled but, even more regrettably, prevents any assessment of needs either at national or regional level. As a result, it is impossible to determine any priorities for action and evaluate the resources needed. The effects of globalization on working conditions and workers' rights need to be studied and anticipated on a tripartite basis to secure the social partners' attachment to the principle that an effective labour inspection service needs to be established in the twofold interest of social protection and improved productivity. The Committee notes that the ILO is endeavouring, through technical assistance under the SLAREA project, to draw the Government's attention to the importance of the tripartite dimension of labour administration. It hopes that measures will be taken in this area, particularly in the course of applying this Convention.

The Committee urges the Government, in the light of the foregoing and its earlier and repeated comments, to take all the preliminary steps necessary to the establishment of an inspection system that meets the requirements of the Convention; to keep the Office informed of any developments; to provide copies of relevant legislative, regulatory and administrative texts; and to report any difficulties encountered.

United Arab Emirates

Labour Inspection Convention, 1947 (No. 81) (ratification: 1982)

The Committee notes with interest the developments that occurred in relation to the application of the Convention during the period ending May 2003.

1. *Powers of inspectors to have measures adopted to protect workers against occupational risks.* The Committee notes that, under the terms of Order No. 851/2001, labour inspectors are empowered, in accordance with *Article 13 of the Convention*, to have a workplace closed by the competent authority where the safety of the workers is under threat, and to have such a measure raised where the conditions justifying its adoption have been rectified.

2. *Adequacy of penalties for violations of the legal provisions covered by the Convention (Article 18).* The Committee notes that, with a view to inciting employers to comply more fully with their legal obligations, especially in relation to workers, penalties of imprisonment and fines have also been established in the Schedule annexed to the above Order.

3. *Training of labour inspectors and prospects for the strengthening of the human and material resources of the labour inspection services.* The Committee notes that many labour inspectors in the interior of the country, and also in Bahrain and Damas, have benefited from various training courses to reinforce their technical and psychological skills with a view to discharging their duties more effectively and that measures are being taken to increase the staff and the logistical, material and teaching resources of the inspection services.

The Committee is addressing a request directly to the Government on certain matters.

Uruguay

Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)

The Committee notes the comments of the Association of Labour Inspectors of Uruguay (AITU) concerning the application of the Convention, transmitted to the ILO by the Latin American Confederation of Labour Inspectors (CIIT) on 19 February 2004 and communicated to the Government on 2 April 2004.

In its comments, the AITU considers that the Government's report concerning the period ending 31 May 2003 is too general in character and raises certain points regarding a malfunctioning of the labour inspectorate.

1. *Contribution of labour inspectors towards improving the legislation covered by the Convention (Article 3, paragraph 1(c), of the Convention).* The Organization regrets the lack of reaction from the higher labour inspection authority to the reports of abuses observed in cleaning, security and forestry enterprises and to the recommendations made by the inspectors as regards supplementing the legislation with relevant provisions.

2. *Impact of the performance of a parallel professional activity on the functioning of the labour inspectorate (Article 3, paragraph 2).* According to the Organization, the effect of permission given to inspectors to engage in parallel employment is to restrict significantly the working time and energy which is essential for the performance of inspection duties, and to prejudice the authority, impartiality, prestige and credibility of the inspection system. No procedure has yet been established which would oblige labour inspectors to declare to the competent authority their dependence in relation to private enterprises, and cases of infringement noted and reported by the labour inspectors are not always the subject of relevant administrative inquiries.

The work of a labour commission (composed in particular of representatives of the Labour Ministry and Labour Inspectorate and of members of the AITU management), which was set up in October 2002 in order to seek appropriate solutions to the problems posed by the performance of employment in parallel to inspection duties, has been suspended, even though the administration had envisaged extending to labour inspectors, in a draft act, the requirement concerning the exclusivity of duties and raising the level of remuneration applicable to inspectors of the Directorate-General of Taxation. This draft culminated in the adoption of Act 17706 of 4 November 2002, the scope of which remains limited to tax officials, a development which is perceived by the AITU as a discriminatory act and one having a devaluing effect vis-à-vis labour inspectors and their duties.

3. *Conditions of service of labour inspectors (Article 6).* According to the AITU, five inspectors on contract with responsibility for environmental conditions were forced to waive their right to wage compensation in order to be incorporated in the budgetary posts of the labour inspectorate. The level of remuneration for labour inspectors is claimed to be discriminatory in relation to that applied to other inspection corps despite the scale of their duties and responsibilities.

4. *Training, number and conditions of work of inspection staff (Articles 7, 10 and 11).* The AITU deplors the reduction in human resources further to the implementation of the policy to cut public expenditure; the lack of training of serving inspection staff; the inadequacy of practical resources to perform the work; the slowness of the procedure to reimburse travel costs incurred by inspectors in the performance of their duties; the scarcity of fuel preventing the use of official vehicles and consequently inspection visits. The dissolution of the National Port Services Administration (ANSE) is also claimed to have resulted in an extra burden of work for the labour inspectorate without any transfer of budget allocations and resources provided for by law, and there is a lack of adequate planning in inspection activities in the port sector.

5. *Suppression of sources of documentary information (Article 14).* The Organization indicates the regrettable demise of a State Insurance Fund publication on industrial accidents which it considered an important instrument for the implementation of a preventive policy.

Referring to its repeated comments on the persistent failure of the Government to discharge its obligations under the Convention and to the discussions to which these failures gave rise within the Committee on the Application of Standards during its June 2002 session, the Committee once again requests the Government to provide information and a copy of any text concerning the measures taken to restore the operational efficiency of the inspection system, particularly: (i) re-establishing conditions of service for labour inspectors which ensure their independence with regard to any improper external influences (*Article 6 of the Convention*) and enable them to discharge their duties with the necessary authority and impartiality (*Article 3, paragraph 2*); and (ii) boosting practical, financial and logistical resources which are essential to the inspection services (*Articles 11 and 16*).

The Government is also asked to communicate to the Office any clarification or comment which it considers appropriate in relation to the grievances expressed by the AITU and to provide a copy of any relevant text.

Viet Nam

Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)

The Committee notes the Government's report for the period ending 31 May 2003, the annual inspection report for 2002 and the report covering 2002 of the inspection services of the province of Binh Duong.

Establishment of an integrated inspection system. With reference to its previous comments, the Committee notes with satisfaction that, in the context of the national ILO/Viet Nam project on SafeWork and integrated labour inspection, a labour inspection system which also covers occupational safety and health has finally been established by the Decree of 31 March 2003 of the Ministry of Labour, Invalids and Social Affairs (MOLISA). The Committee also notes that a new Department of Inspection has been established within the MOLISA by Decree No. 1118 of 10 September 2003 and that a training programme for labour inspectors has been established within the context of the above project. It would be grateful if the Government would provide a copy of the Decree and supply detailed information on the training planned within the context of the programme referred to above.

The Committee is addressing a request directly to the Government on certain matters.

Yemen

Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)

The Committee notes the information provided by the Government in reply to its previous comments.

1. *Drawing up, publication and communication to the ILO of an annual labour inspection report (Articles 20 and 21 of the Convention).* Referring to the information which has been provided for several years on changes in law and practice relating to labour inspection, the Committee notes with interest the efforts made, despite the economic difficulties inherent in the reunification of the country, to establish an inspection system as prescribed by the Convention. In 1997 new provisions stating the duties and powers of labour inspectors were incorporated in the 1995 Labour Code, and in its 2000 report the Government indicated in particular that the inspection services had been equipped with computer hardware for the purposes of creating an information exchange network throughout the country and enabling ongoing monitoring and supervision by the central administration of the observation of legislation in undertakings. The Committee considers that it should now be possible for an annual inspection report to be drawn up and hopes that the Government will adopt the necessary measures to enable such a report containing information on each of points (a) to (g) of *Article 21* of the Convention to be published soon and sent to the International Labour Office, in accordance with *Article 20*.

2. *Human resources, material and logistical means available and inventory of workplaces liable to inspection (Articles 7, 10 and 11 of the Convention).* The Committee also notes with interest that an inventory of workplaces liable to inspection was undertaken in Sanaa, that out of 1,050 workplaces listed 320 were inspected and that exhaustive statistics will be communicated as soon as they are available. The Committee hopes that an inventory of workplaces will also be undertaken for all other regions of the country, thus enabling an objective evaluation of the level of coverage provided by the inspection services and making it possible to identify the means to be implemented in order to improve it gradually. The Government is requested to provide information in its next report on the measures taken to this end and the results thereof, as well as on the number and geographical distribution of labour inspectors operating in the industrial and commercial sectors (*Article 10*).

3. *Training of labour inspectors (Article 7).* The Committee would be grateful if the Government would send detailed information on the participants, on the content and on the impact of the training sessions which it indicated in its report would be organized in coordination with the social partners and with the collaboration of the Arab Labour Organization and the ILO.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 63** (Algeria, Chile, Djibouti, Egypt, France, France: New Caledonia, United Republic of Tanzania); **Convention No. 81** (Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Colombia, Congo, Costa Rica, Croatia, Denmark, Dominica, Dominican Republic, El Salvador, France: French Guiana, France: New Caledonia, France: St. Pierre and Miquelon, Gabon, Ghana, Greece, Grenada, Guatemala, Guyana, Haiti, Honduras, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Lebanon, Lesotho, Mali, Republic of Moldova, Paraguay, Peru, Russian Federation, Sierra Leone, Solomon Islands, United Arab Emirates, Viet Nam); **Convention No. 85** (Fiji); **Convention No. 129** (Belgium, Colombia, Costa Rica, El Salvador, France, France: French Polynesia, France: New Caledonia, Germany, Guatemala, Guyana, Italy, Kazakhstan, Latvia, Malawi, Romania); **Convention No. 150** (Algeria, Belize, Benin, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Dominican Republic, Egypt, El Salvador, Guyana, Jamaica, Luxembourg); **Convention No. 160** (Australia, Australia: Norfolk Island, Austria,

Azerbaijan, Benin, Bolivia, Canada, China: Hong Kong Special Administrative Region, Colombia, Costa Rica, Cyprus, Denmark, El Salvador, Finland, Greece, Guatemala, India, Ireland, Kyrgyzstan, New Zealand, Tajikistan).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 129** (Denmark); **Convention No. 150** (Australia, China: Hong Kong Special Administrative Region, Germany).

Employment Policy and Promotion

Argentina

Employment Service Convention, 1948 (No. 88) (ratification: 1956)

1. *Contribution of the employment service to the promotion of employment.* The Committee notes the detailed information for the period 2001-04 drawn up by the Employment Services Development Unit at the Labour Ministry presenting job placement statistics from the public employment offices in the federal capital and in each province of the country (41,898 applications for employment reported to have been processed during the said period). The Government emphasizes that, as at March 2004, employment had increased for 12 successive months for the first time in the last ten years. In the first quarter of 2004 the rate of unemployment was 14.4 per cent. This percentage represented a 6 per cent reduction compared to the same period of the previous year, when unemployment affected 20.4 per cent of the economically active population. The Committee requests the Government to continue reporting on the measures adopted by the public employment services to achieve the best possible organization of the employment market, including adapting them to meet the new needs of the economy and the active population (*Articles 1 and 3 of the Convention*). The Committee would be grateful if the Government would continue to provide statistical information concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices – indicating the efforts made to meet the needs of employers and workers in each region of the country (*Articles 1 and 3 of the Convention and Part IV of the report form*).

2. *Cooperation of the social partners.* The Government refers to certain conventions and agreements concluded under the General Employment Promotion Plan between employers' and workers' organizations. The occupational histories and vocational profiles of the beneficiaries of the Heads of Household Programme are established through the intervention of the municipalities and the trade union organizations. As part of the pilot phase of the Integrated Employment and Training Service, cooperation agreements have been concluded between certain employment offices and public and private local bodies. The Committee refers once again to the provisions of *Articles 4 and 5 of the Convention* and trusts that the Government will be in a position to provide information in its next report on the other measures adopted to establish advisory committees at national, provincial and local levels in order to secure the full cooperation of employers' and workers' representatives in the organization and operation of the employment service.

Bolivia

Employment Service Convention, 1948 (No. 88) (ratification: 1977)

1. In the report received in September 2003, the Government indicates that it has decided to strengthen the labour exchange, for which purpose it concluded an agreement with the Labour Foundation Enterprise of Santa Cruz, with the fundamental objective of eliminating from the process contractors obtaining profit from the work of others. This foundation undertakes statistical surveys, the data from which will be transmitted to the Andean Labour Observatory. In the report, reference is also made to the establishment of a tripartite dialogue body. The Committee refers to its previous comments and hopes that in its next regular report due in 2005, the Government will be in a position to provide information on the progress achieved in the application of all the provisions of the Convention, and particularly on the establishment of a clear link between the employment service and the national employment policy (*Article 1, paragraph 2, of the Convention*), of a basic network of employment offices (*Article 3*) and on the operation of tripartite advisory committees (*Articles 4 and 5*).

2. *Article 11.* With regard to the issues raised in relation to contractors obtaining profit from the work of others, the Committee would be grateful if the Government would provide detailed information in its report on the measures adopted to secure effective cooperation between the public employment service and private employment agencies. The Government may consider it appropriate to examine Convention No. 181 and Recommendation No. 188 on private employment agencies, adopted by the International Labour Conference at its 85th Session (1997).

3. *Part IV of the report form.* Please provide all the statistical information published on the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices.

Employment Policy Convention, 1964 (No. 122) (ratification: 1977)

1. *Coordination of employment policy with poverty reduction.* With reference to the observation of 2002, the Government provided brief information in September 2003 that the National General Budget envisaged an increase in investment with a view to financing over 3,000 public works in all regions of the country. To maintain the necessary macroeconomic equilibrium for the growth of production, employment generation and price stability, the Government had reached significant agreements with multilateral organizations to obtain the resources required both to finance the fiscal deficit and to carry out public investments. The Committee notes that the employment situation deteriorated in Bolivia in 2002. The urban employment rate fell from 55.4 per cent in 2001 to 53 per cent in 2002. The open urban unemployment

rate only rose from 8.5 per cent in 2001 to 8.7 per cent in 2002 due to the fact that the fall in the number of employed persons was compensated by the reduction in the economically active population. The number of employed women fell by 4.7 per cent and the open urban unemployment rate among women rose from 9.7 per cent to 10.3 per cent (according to estimates by ECLAC in its Economic Study of Latin America and the Caribbean, 2002-2003).

2. In its previous observation, the Committee recalled that in June 2001, the international financial institutions made arrangements allowing Bolivia to benefit from the Enhanced Initiative for Heavily Indebted Poor Countries (HIPC), under which Bolivia benefited from a considerable lightening of debt service (in the order of US\$2 billion until 2020). The Committee once again requests the Government to provide information in its next report on the measures adopted to promote the objectives of full and productive employment set out in the Convention in the implementation of the property reduction strategy. In this respect, the Committee emphasizes the importance of having available statistical information on the size and distribution of the labour force and the nature and extent of unemployment as an essential basic stage in pursuing an active employment policy within the meaning of *Articles 1 and 2 of the Convention*.

3. Please provide information on the results achieved by the National Emergency Employment Plan (PLANE), launched in November 2001, in relation to the creation of productive employment. Please also continue providing information on the achievements of other projects established to create lasting employment through micro-enterprises in the rural sector.

4. The Committee once again requests the Government to refer in its next report to matters relating to the coordination of education and vocational training policies with the employment policy, which is essential to ensure that all workers have opportunities to acquire the necessary training to find a suitable job and to make use of their training and skills in such employment. In this respect, the Government may wish to refer to the guidance contained in the Human Resources Development Recommendation, 2004 (No. 195).

5. *Participation of the social partners in the formulation and application of policies.* The Committee once again recalls that the consultations required by the Convention must cover the measures to be adopted in relation to the employment policy with a view to taking fully into account the experience and views of the persons consulted and also to securing their full cooperation in formulating and enlisting the support necessary for the implementation of such policies. Consultations with representatives of the persons affected should include, in particular, representatives of employers and workers, as well as representatives of other sectors of the active population, such as those who work in the rural sector and the informal economy. The Committee trusts that the Government will include in its next report the information requested in the report form under *Article 3* of the Convention on the consultations required in relation to the employment policy.

6. The Committee asks the Government, when preparing its next report on the application of the Convention, also to take into account the points raised in this year's observation on the application of the Employment Service Convention, 1948 (No. 88). The preparation of a detailed report containing replies to the matters raised in this observation will undoubtedly provide an opportunity for the Government and the social partners to evaluate the manner of achieving the objective of full and productive employment set out in the Convention. The Committee recalls that the preparation of a full report on the application of the Convention may require consultations with other concerned government ministries or agencies, such as those responsible for planning, the economy and statistics. The Government may also consider it useful to refer to the Committee's General Survey of 2004 on promoting employment.

Brazil

Employment Policy Convention, 1964 (No. 122) (ratification: 1969)

1. *Application of the employment policy within the framework of a coordinated economic and social policy.* The Committee notes the detailed information provided by the Government in the reports received in 2002 and 2003. In 2003, the urban unemployment rate reached 12.4 per cent (13.1 per cent in the first quarter of 2004). The youth unemployment rate rose more than that of adults (*Labour Overview 2003* indicates that, in 2003, the unemployment rate for young persons aged 15 to 17 years grew by 3.3 per cent and that of young persons aged 18 to 24 years by 1.7 per cent, in a context in which the overall unemployment rate rose by 0.4 per cent). The Government emphasizes that, when compared with the periods 1998-2002 and 1992-97, the labour market participation of persons aged between 25 and 39 years increased over the latter period and that young persons are delaying their entry into the labour market. Taking into account the greater demand for skilled labour, more young persons prefer to prolong their education (both in the formal system and in vocational training courses). The participation rate of women increased, while that of men fell.

2. The Government provides information on the activities undertaken by the National Employment Offices (SINE), which contributed to the placement in 2002 of around 900,000 workers in collaboration with the representative organizations of employers and workers and private entities. A description is also provided of the activities of the Job and Income Generation Programme (PROGER urban and PROGER rural) for the promotion of employment and incomes through special credits for small and micro-enterprises, cooperatives and production units in the informal economy; the Programme for the Expansion of Employment and Improvement of the Quality of Workers' Lives (PROEMPREGO), to create new jobs for the low-income population; and PROTRABALHO, to finance structural projects in strategic sectors. Projects for the creation of jobs are financed through the Popular Productive Credit Programme (PCPP), the Studies and Projects Financing Unit (FINEP) and the Programme for the Strengthening of Family Agriculture (PRONAF).

Furthermore, with a view to promoting economic development with growth, including social development, the concept of the economy of solidarity has been introduced.

3. The Committee expresses its appreciation of the initiatives and important programmes undertaken by the Government to promote employment creation. The Committee recalls that the objective of full, productive and freely chosen employment needs to be integrated as a priority, within the framework of a coordinated strategy, in all economic and social policies. The Committee would be grateful to be provided with fuller information on the manner in which the Government has ensured that employment promotion is a central objective for all the available macroeconomic policy measures, and particularly monetary, financial, fiscal, trade and development policies. 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 (paragraphs 487 and 490 of the General Survey of 2004 on promoting employment). In this respect, the Committee encourages the Government to provide information in its next report on the manner in which the objectives of full employment were taken into account when formulating economic and social policy.

4. In its previous comments, the Committee referred to the activities of PROGER, particularly in Ceará, and would be grateful if the Government would provide information on the evaluations carried out of the various programmes implemented, and particularly their impact on the most vulnerable categories of the population, such as the poor, women, young persons, the African and mixed race population and those living in areas with high unemployment rates.

5. *Participation of the social partners in the formulation and application of policies.* With regard to the consultation required by *Article 3 of the Convention*, the Government refers once again to the Deliberative Council of the Worker Protection Fund (FAT). The Committee would be grateful if the Government would provide information on the manner in which social dialogue contributes to the adoption and implementation of employment policies and reiterates its interest in receiving information on the impact of the decentralized approach adopted by the FAT and the measures taken to ensure the effectiveness of the consultations held in the various employment commissions of the FAT. Please also continue to provide information on the measures adopted to hold consultations with the representatives of the informal economy on the measures intended to improve their prospects of obtaining decent work.

China

Employment Policy Convention, 1964 (No. 122) (ratification: 1997)

1. The Committee notes the Government’s report for the period ending May 2003 and the detailed information it contains in reply to the Committee’s previous request. The Government details in its report the various measures taken in order to tackle employment conditions characterized by increasing unemployment, in particular, in the urban areas; significant movements of the active population which have been held back too long by the planned economy; and an excess of unskilled labour coinciding with a scarcity of skilled labour. In June 2003, the country recorded almost 8 million registered unemployed in the urban areas, of which 3.5 million were workers laid off from state enterprises. The total number of unemployed was estimated at 24 million, and the yearly new arrivals in the urban labour markets at 10 million. A continued annual level of economic growth of 7 per cent should allow for the creation of approximately 10 million new jobs per year, but the supply of labour is expected to continue to exceed the demand for years to come.

2. *Declaration of an employment policy.* The Committee notes with interest the holding of the China Employment Forum in Beijing in April 2004. Organized jointly between the ILO and the Ministry of Labour and Social Security and with the active participation of the China Confederation of Enterprises and the All China Federation of Trade Unions, the Forum adopted a Common Understanding on elements of an Employment Agenda for China, which places the promotion of decent employment at the centre of economic and social policies in the country.

3. Furthermore, the Committee is aware of the publication, in April 2004, of a White Paper on the employment situation and policies in China. The active employment policy which is detailed therein, focuses on developing the economy and adjusting the structure for an active creation of job opportunities; improving the public employment service system and developing the labour market; getting laid-off persons back into the workforce; as well as improving the social security system and maintaining harmonious and stable labour relations. The focus is on improving the quality of the workforce through the promotion of various kinds of educational and training programmes, the establishment of a vocational training system, and the implementation of a vocational qualification certificate system. One chapter is devoted to the employment of the rural workforce and its orderly reassignment, while another addresses the question of employment of women and guaranteeing women’s right to equal employment, promoting youth employment and helping the disabled to find employment.

4. In the opinion of the Committee, these initiatives can but favour the pursuit of the major goal of full, productive and freely chosen employment, within a framework of a coordinated economic and social policy, and in consultation with representatives of persons affected, in accordance with the Convention. It invites the Government to continue to submit detailed information on progress achieved in this respect in order to meet the major challenge that the employment situation in the country represents. In this respect, the Committee requests the Government to include information on how representatives of all persons affected by the measures to be taken are consulted concerning employment policies,

pursuant to *Article 3 of the Convention*. It recalls that, in view of their share of the active population, representatives of persons employed in the rural sector and in the informal economy should be involved in these consultations.

5. *ILO technical cooperation*. The Committee notes the indications provided by the Government in its report on the pilot project for promoting urban employment in the cities of Baotou, Jilin and Zhangjiakou, as well as on the activities of training the trainers in the context of the “Start your business” (SYB) programme of the ILO. It requests the Government to continue to submit information on the technical cooperation or advisory activities of the ILO concerning employment promotion and actions taken as a result thereof (*Part V of the report form*).

6. A request concerning certain other issues related to employment policy has been addressed directly to the Government.

Comoros

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

1. *Coordination of employment policy with poverty reduction*. The Committee notes that, according to the brief information received in March 2004, the Technical and Vocational Training Office is responsible for providing short training courses in all branches of activity. The AMIE project and its partners have also contributed to the promotion of employment: local partners participate in the AMIE project, including the Mohéli Traders’ Solidarity Fund, the Business Development Centre, the Community Development Assistance Fund and the network of mutual savings and credit funds. The project is reported to have led to the creation of 2,800 jobs since 2001. The Government also indicates that the tax exemptions for investors made available by the Inter-ministerial Investment Commission have led to the creation of 2,083 jobs since 2000. The Committee hopes that the Government will be in a position to provide detailed information in its next report on the measures taken to ensure that employment, as a key element of poverty reduction, is at the heart of macroeconomic and social policies. It would also be important to be able to examine information on the results achieved by the measures taken to improve the supply of technical and vocational training and the promotion of an enterprise culture (*Articles 1 and 2 of the Convention* and the Job Creation in Small and Medium-sized Enterprises Recommendation, 1998 (No. 189)).

2. The Committee emphasizes once again the importance of establishing a system for the compilation of labour market data so that policies can be based on an accurate appraisal of labour market conditions. It requests the Government to provide information on any progress achieved in this field, and also in its next report to provide information on the employment policy measures adopted as a result of the establishment of new labour market information systems.

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 the 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 the measures of which they should be the prime beneficiaries (see paragraph 493 of the General Survey of 2004 on promoting employment). The Committee trusts that the Government will provide detailed information on this subject in its next report.

Czech Republic

Employment Policy Convention, 1964 (No. 122) (ratification: 1993)

The Committee noted the Government’s report for the period ending in August 2003. It is also aware of the National Employment Action Plan approved by the Government on 14 July 2004. The Committee notes that, according to OECD data, the rate of unemployment, which fell from 8.2 per cent in 2001 to 7.3 per cent in 2002, reached 7.8 per cent in 2003, despite a decrease in the activity rate. It observes, among the worrying features of the employment situation in 2003, an unemployment rate of 17.6 per cent among young people under 25 years of age and 18.8 per cent among persons without secondary education, as well as the high incidence of long-term unemployment, nearly half of the unemployed being out of work for more than 12 months. In its report the Government describes a set of policies implemented principally to combat the structural causes of unemployment.

1. *General economic policies*. The Government emphasizes in its report the importance of regional policy for tackling the regional disparities in the impact of large-scale structural changes on economic activity and employment. Under the regional development strategy, resources are concentrated on the least developed or the most affected regions which have the highest unemployment rates. The various programmes which are being implemented are to contribute to the creation of jobs by diversification of activities, and their effectiveness will be the subject of an evaluation in 2006. The Government also refers to an industrial policy designed to encourage foreign direct investment and to promote exports, as well as a policy to support the development of small and medium-sized enterprises aimed at increasing their share in economic growth and the reduction of unemployment. The Committee would be grateful if the Government would communicate in its future reports any evaluation available of the impact of these programmes and measures that it

describes on activity and employment. It also invites it to describe the way in which the main aspects of its monetary and budgetary policies contribute to the promotion of employment.

2. *Labour market and training policies.* The Government indicates that employment policy objectives and measures are included in the National Employment Action Plan adopted in accordance with the European Employment Strategy. Particular attention is devoted to the prevention of long-term unemployment and exclusion from the labour market, particularly by support geared to the individual in active job search, which supposes a strengthening of the capacity of the employment services. The Committee requests the Government to indicate progress made in this regard. In as much as a lack of appropriate skills is identified as one of the main factors of unemployment, the Committee also asks the Government to describe the measures taken in the context of its lifelong learning strategy in order to increase the supply of continuing vocational training.

3. *Consultation of the representatives of the persons affected.* The Committee notes the indications provided by the Government on consultations held within the Economic and Social Council, particularly concerning the preparation and evaluation of national employment plans. It requests the Government to continue to provide information on consultation with the social partners on employment policy, indicating opinions delivered and the manner in which account was taken of them (*Article 3 of the Convention*).

Djibouti

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

1. *Coordination of employment policy with poverty reduction.* In reply to its previous comments, the Government indicates that it is currently preparing the national employment conference which will provide an opportunity for overall reflection, in collaboration with the social partners and civil society, on an employment policy based on economic and social needs. It announces that the national conference was planned for November 2003, with the ILO's material and technical support. The Committee also notes that a poverty reduction strategy, established in June 2001, envisages making technical and vocational training a principal component of the education system. Measures to promote micro-enterprises and micro-entrepreneurs are also envisaged to encourage the employment of the very poor. 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 would also like to have at its disposal information on the results achieved in improving the supply of vocational and technical training and promoting an enterprise culture (*Articles 1 and 2 of the Convention* and the *Job Creation in Small and Medium-sized Enterprises Recommendation, 1998 (No. 189)*).

2. The Committee emphasizes the importance of establishing a system for the compilation of labour market data and requests the Government to inform it of any progress made in this field and to provide information in its next report on the employment policy measures adopted following the establishment of such new information systems.

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 representatives of all the persons affected, 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 trusts that the Government will provide detailed information in this respect in its next report.

4. Finally, it requests the Government to describe in its next report the actions it has taken to implement an active employment policy within the meaning of the Convention following the technical assistance received from the ILO.

Ecuador

Employment Policy Convention, 1964 (No. 122) (ratification: 1972)

1. *Coordination of employment policies with economic and social policy.* In a short report received in September 2003, the Government indicates that a new State budget is under discussion and that measures will be approved to reactivate the construction sector. The Government recalls that employment surveys are undertaken by INEC. The Committee notes that the unemployment rate in Ecuador (6.7 per cent in 2003 and 6.3 per cent in 2002) has undergone a moderate increase as a result of the contraction of the non-oil export sectors and the deceleration of migration abroad. The annual urban youth unemployment rate was 17.4 per cent and the informal economy accounted for over 55 per cent of the population in 2002 (ILO, *Labour Overview 2003*). This labour market situation leads the Committee to refer once again to its previous comments in which it pointed out that, to achieve the objectives of full and productive employment set out in the Convention, government policies should give priority to employment promotion and social development to combat poverty. The Committee requests the Government to provide detailed information in its next report on the manner in

which employment policy objectives are related to other economic and social objectives (*Articles 1 and 2 of the Convention*).

2. The Committee once again requests 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), who tend to experience most difficulty in finding lasting employment. The Committee would be grateful if the Government would indicate the manner in which the statistical data compiled served as a basis for the establishment of economic and social policies which give priority to the creation of productive employment.

3. *Social partners' participation.* The Committee notes the Government's statement on the trends with regard to participation in Ecuadorian society. The Committee emphasizes that the consultations required by *Article 3* of the Convention have to address the measures to be adopted in relation to employment policy with the objective of taking fully into account the experience and views of the persons consulted and securing their full cooperation in formulating and enlisting support for such policies. Consultations with the representatives of the persons affected should include in particular the representatives of employers and workers, as well as representatives of other sectors of the economically active population, such as those working in the rural sector and the informal economy. The Committee requests the Government to provide information in its next report on the consultations required by this provision of the Convention.

4. *ILO technical cooperation.* The Government refers in its report to a wide-ranging process of cooperation with the Office. The Committee requests the Government to include information in its next report on the action taken as a result of the ILO's technical assistance in the field of employment policy (*Part V of the report form*).

Finland

Employment Policy Convention, 1964 (No. 122) (ratification: 1968)

1. The Committee notes the Government's comprehensive report for the period ending on 31 May 2003 and the appended documents and information supplied in relation to its 2002 observation. The Committee also refers to its comments made this year on the application of the Paid Educational Leave Convention, 1974 (No. 140), and on the Human Resources Development Convention, 1975 (No. 142).

2. *Policies to promote employment.* The Committee notes that the Government had completed the basic reform (the "second wave") of public labour market policy in application of the Action Plans for 2001-02. According to the information provided, slow economic growth in 2001 and 2002 had not increased overall unemployment. The Government reports that the activity rate remained at the same level in 2002 as in 2001. The number of employed varied between different age groups with increases among older persons and decreases among 15-19 year-olds. The Committee further notes with interest the information the Government provided on the adoption in 2003 of a new comprehensive policy programme comprising four inter-sectoral policy programmes focusing on employment, entrepreneurship, the information society and citizen participation, including a renewed commitment to raise the employment rate close to 70 per cent. The Committee notes that the objectives of this Policy Programme are of particular importance towards achieving the objectives of *Articles 1 and 2 of the Convention*, and it would appreciate disposing of further information on the implementation and impact on the labour market of these programmes.

3. *Active labour policy measures.* The Committee notes that the 2003 Policy Programme is intended to entail a shift in emphasis from passive labour market support to active measures, and that regional and local collaboration will be furthered through a more effective management of the labour force service centres. The Central Organization of Finnish Trade Unions (SAK) is concerned, however, about the overall participation rate of unemployed in active measures. The participation rate in 2002 was only just over 20 per cent, i.e. just over the EU minimum.

4. In this respect, the Committee notes that the 2003 Policy Programme includes the implementation of a structural reform of the public employment services. In order to eliminate structural unemployment, labour exchange functions will be separated from the provision of support for those with reduced working capacity. It also notes that the SAK and the Finnish Confederation of Salaried Employees (STTK) consider the employment offices to be under-resourced or the resources inappropriately apportioned, and that this has had a particularly negative effect for the long-term and recurrently unemployed. STTK adds that efforts by the public employment services to correct imbalances in the gender ratio of the labour market have been insufficient.

5. The Committee further notes that the Government is seeking to develop a new system which will enable it to respond more effectively and flexibly to needs in the area of adult vocational education. In addition, specific reforms have already been undertaken concerning the organization and financing of vocational training. STTK indicates that the 2003 Policy Programme seems to pay too little attention to the question of upgrading the competence of those who worked and helped them to cope.

6. The Committee notes with interest the trend with regard to older workers. The Government reports that not only has the size of the 55-69 age group grown, but the activity rate has also increased from just under 50 per cent in 1997 to 65 per cent in 2002. Moreover, the unemployment rate for this age group decreased from 16.9 per cent to 9.1 per cent in the same period. The Government attributes this to the National Programme for Ageing Workers, launched in 1997,

whereby various ministries, the social partners and others cooperated in an effort to improve the labour market situation of older workers. The Committee views this national programme, aimed at changing the usual labour market response to older workers by pensioning them off to improving their employability, as most innovative. The Committee requests the Government to keep it informed of efforts made in this regard.

7. The Committee notes that among the measures initiated to improve services for immigrants at employment offices, the *MaaTyö* project had been concluded and that the lack of resources and the identification of multiskilling requirements had been the major challenges for this project. It also notes that one of the conclusions was that special support was particularly required when immigrants were to switch from integration services to normal services. SAK also remarked that the unemployment rate among immigrants was still three times that of native Finns.

8. *Participation of the social partners in the formulation and application of policies.* Furthermore, the Committee notes that, according to the Confederation of Finnish Industry and Employers (TT) and the Employers' Confederation of Service Industries in Finland (*Palvelutyönantajat*), social partners had been consulted only very late in preparing new legislation, in particular in relation to the preparation of the new legislation on employment services (*Article 3*).

9. The Committee would appreciate receiving more details in the Government's next report on the ways in which the Government and the social partners have addressed the matters noted in this observation.

Guatemala

Employment Policy Convention, 1964 (No. 122) (ratification: 1988)

1. *Participation of the social partners in the formulation and application of policies.* The Committee notes with interest the information provided in the Government's report, received in August 2003, on the progress made in the framework of the Tripartite Employment Generation Subcommittee. In the context of the work of the Subcommittee, the Guatemala Social Security Institute (IGSS) provided statistical data on the formal labour market for the period 1997-2001. In the formal economy, there are only 928,000 workers registered with the IGSS, whereas the informal economy accounts for 2,300,000 rural workers and 1,600,000 own-account workers. With the assistance of the ILO, the Subcommittee decided upon themes and held tripartite workshops on employment policy approaches for the poverty reduction strategy in Guatemala. According to Government data, six out of every ten citizens are poor, seven out of every ten are in rural areas and three indigenous persons out of every four are poor or extremely poor. The employment generation proposals made by the Government envisage ILO technical assistance and financing from the Inter-American Development Bank for the training of the poor rural labour force, the strengthening of employment services and the implementation of a system of labour statistics. The Committee asks the Government to include in its next report information on the measures adopted for the implementation of an active employment policy within the meaning of the Convention as a result of the technical assistance provided by the ILO.

2. The Committee notes the comments made in August 2003 by the Trade Union Confederation of Guatemala (UNSI TRAGUA) concerning the application of Convention No. 122, which were transmitted to the Government in October 2003. UNSI TRAGUA expressed concern at the rise in both unemployment and the size of the informal economy. It maintains that the available work does not provide a real guarantee for workers, due to the fact that the level of wages is well below the level needed to meet the basic needs of workers and their families. The workers available are prepared to work under conditions which are much lower than the minimum levels established by national legislation.

3. The Committee recalls that *Article 3 of the Convention* requires the holding of consultations with representatives of all the persons affected, and particularly with representatives of employers and workers, for 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 (paragraph 493 of the General Survey of 2004 on promoting employment). In this connection, the Committee would be grateful to be informed of the employment generation proposals made by the employer and worker representatives, and the measures implemented by the Government as a result of the agreements reached. In general, the Committee trusts that the Government will continue providing information on the consultations held with a view to the formulation and implementation of measures to achieve the objectives of full and productive employment set out in the Convention, including consultations with representatives of other categories of persons affected, such as those working in the rural sector, the informal economy and the export processing sector.

4. In a direct request, the Committee continues its examination of the application of the Convention in relation to: the formulation of economic and social policy; the coordination of education and training policies with prospective employment opportunities; the creation of employment in the export processing sector; and the impact on the local labour market of temporary or permanent international movements of migrant workers.

Guinea

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

1. *Coordination of employment policy with poverty reduction.* The Committee notes the report received in February 2004 containing information on the establishment of the “employment” component of the Poverty Reduction Strategy approved in 2002. It is 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 points 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 once again notes the objectives of the Labour and Employment Statistical Information Network (RISET), the establishment of which was already noted in its previous comments. It requests the Government to provide up-to-date information in its next report on the measures taken to guarantee that employment, as a key component in poverty reduction, is at the heart of macroeconomic and social policies. The Committee 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 (*Articles 1 and 2 of the Convention*).

2. *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 in its next report.

3. Finally, it once again asks the Government to describe in its next report the action taken to implement an active employment policy within the meaning of the Convention further to the technical assistance received from the ILO.

Honduras

Employment Policy Convention, 1964 (No. 122) (ratification: 1980)

1. *Implementation of an active employment policy.* In a report received in August 2003, the Government briefly describes a number of employment creation measures (support for the rural economy, creation of road maintenance micro-enterprises) and the new approaches that have been followed since September 2003 in basic education and training. Reference is also made to a project for services to help in finding jobs. The Committee notes that a number of these measures were already in the proposals made by the Social and Economic Council, with ILO assistance, to promote the employment-related aspects of the Poverty Reduction Strategy. The Committee requests the Government to include information in its next report on the measures adopted to implement an active employment policy within the meaning of the Convention as a result of the technical assistance provided by the ILO.

2. The Committee notes that difficulties have been encountered in meeting the eligibility conditions of the debt reduction initiative for Highly Indebted Poor Countries (HIPC). In this respect, the Committee trusts that the Government will endeavour to ensure that employment is given central importance in macroeconomic and social policies in the formulation and implementation of the national poverty reduction strategy. 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 hopes that, as in the past, the Government will provide a detailed report enabling the Committee to examine the manner in which employment promotion has been considered as a central objective of all the available macroeconomic policy measures, and particularly of monetary, budgetary, trade and development policies (*Articles 1 and 2 of the Convention*).

3. The Government states that the data from the National Statistical Institute, in September 2002, showed satisfactory trends with the reduction in open unemployment of 2.8 per cent. According to the data analysed by ECLAC, underemployment rose from 24 per cent in 2001 to 26.6 per cent in 2002, which tends to indicate that new entrants onto the labour market are mostly in the informal economy. Although the unemployment rate fell at the national level, it increased in the cities of Tegucigalpa and San Pedro Sula. The Committee trusts that the Government’s next report will include up-to-date statistical data on the results of the measures adopted to create employment for young persons and women, improve the supply of vocational and technical training and promote new enterprises and trade opportunities.

4. The Committee recalls its interest to have at its disposal information on the employment impact resulting from the action taken by the National Institute of Vocational Training, the National Technical Vocational Education Centre and the measures adopted under the project for the productive integration of young persons who are poor and at risk of social exclusion.

5. The Committee notes that, according to the data from the Honduran Association of Maquila Enterprises contained in the Government's report, it is planned that 237 *maquila* enterprises will be operating in 2004, providing employment for around 130,000 persons. The Committee asks the Government to provide data in its next report on employment trends in the *maquila* sector and the measures which have been adopted to provide labour market guidance for workers affected by the closure of *maquila* enterprises.

6. *Social partners' participation.* The Committee recalls that *Article 3* of the Convention requires consultations with representatives of all the persons affected, and in particular representatives of employers and workers, for 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 (paragraph 493 of the General Survey, op. cit.). The Committee trusts that the Government will provide information in its next report on the consultations held on the subjects covered by the Convention with the representatives of employers' and workers' organizations, as well as representatives of rural workers, the informal economy and the *maquila* sector.

Islamic Republic of Iran

Employment Policy Convention, 1964 (No. 122) (ratification: 1972)

1. *Formulation of an employment strategy.* The Committee notes, from the statistical data provided by the Government in its report, that the unemployment rate fell from 14.2 per cent in 2001 to 12.8 per cent in 2002, principally due to its decline in rural areas. The characteristics of the distribution of employment and/of unemployment which gave rise to concern remain however: the activity rate of women is still extremely low and they continue to experience a higher unemployment rate than men, and the proportion of long-term unemployment in total unemployment rose once again, as 70.9 per cent of the unemployed in 2002 had been seeking a job for more than one year, compared with 66 per cent in 2001. In this context, the Committee, which notes the fundamental importance given to job creation in both the Third and draft Fourth Five-Year Plans, notes with interest the Government's reference to the formulation of an employment strategy in collaboration with ILO employment specialists. Following a national workshop, held on 30 June and 1 July 2003, and bringing together representatives of the various ministries concerned, employers' and workers' organizations, non-governmental organizations, universities and researchers, a report was prepared for the Government containing a series of recommendations on short-term measures and the long-term strategy covering macroeconomic policy, labour market and industrial relations policies, skills development, the creation of employment through small and medium-sized enterprises, the promotion of gender equality and social security. In the view of the Committee, taking these recommendations into consideration should promote the achievement of the objectives of the Convention, which provides that employment promotion policies and programmes shall be decided on and kept under review within the framework of a coordinated economic and social policy (*Article 2 of the Convention*). It further notes that, in addition to its contribution to the formulation of the employment strategy, the Government refers to the ILO's advisory and technical cooperation activities in relation to vocational training and the promotion of women's employment. It requests the Government to indicate any actions taken as a result of these activities, which should promote the application of the Convention (*Part V of the report form*).

2. *Overall and sectoral economic policies.* The Committee notes the Government's reference to the provisions adopted in relation to investment, exports and the reduction of government monopolies as policy measures with an indirect effect on employment. Recalling that, under the terms of the Convention, the measures to be taken to achieve employment objectives should be decided on and kept under review "within the framework of a coordinated economic and social policy" (*Article 2(a)*), the Committee requests the Government to indicate the manner in which the overall and sectoral economic policies contribute to the promotion of full, productive and freely chosen employment.

3. *Labour market and training policies.* The Committee notes the various incentives for recruitment based on the reduction of employers' contributions and tax incentives for investments which create employment in the less developed regions. It asks the Government to provide any available assessment of the results achieved through these measures. The Committee notes that the Government has undertaken to modernize the employment services and the employment information system. It requests it to report on the progress achieved in this respect. Also noting the emphasis placed on the reinforcement of the training system, and on the need for better coordination of education and training policies with the objective of full employment, the Committee requests the Government to describe the measures adopted for this purpose. With reference to its comments on the application of Convention No. 111, the Committee notes with interest the information on the increase in the participation of women in apprenticeship and vocational training activities. It requests the Government to continue providing such information, with an indication of the measures adopted to ensure that this progress is translated into an increase in the participation rate of women in economic activity. In this respect, the Committee notes the relevant recommendations adopted by the Conference on the Promotion of Women's Employment, Autonomy and Equality, held on 8 and 9 March 2004 under the auspices of the Ministry of Labour and Social Affairs and the ILO.

4. *Participation of the social partners in the formulation and application of policies.* With reference to the requests that it has been making for several years, the Committee once again asks the Government to indicate the manner in which effect is given to *Article 3* of the Convention. The Committee emphasizes once again the importance of this Article which provides 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. Please indicate whether procedures have been established for the purpose of holding such consultations and whether representatives of persons engaged in the rural sector and the informal economy are associated with such consultations.

Italy

Employment Policy Convention, 1964 (No. 122) (ratification: 1971)

The Committee notes the report provided by the Government in September 2003. It is also aware of the National Plan of Action for Employment, 2003. The Committee notes that, according to OECD data, the unemployment rate continued to fall during the period, declining from 9.5 per cent in 2001 to 8.6 per cent in 2003. Although it continues to be one of the lowest in Europe, the participation rate increased slightly to 61.6 per cent in 2003, compared with 60.7 per cent in 2001. Despite this overall favourable trend, the characteristics of unemployment remain a matter of concern, particularly with regard to the persistent gap between the north and the south of the country, the labour market integration difficulties experienced by young persons under 25 years of age, whose unemployment rate is 26.3 per cent, and the proportion of long-term unemployment, with 58.2 per cent of the unemployed being without jobs for over 12 months.

1. *Labour market and training policies.* The Government describes in its report the principal innovations introduced by Act No. 30 of 14 February 2003 to reform the labour market, which is intended to modernize the operation of the labour market and make it more flexible. The strengthening of the public employment services, for which responsibility is transferred to the regions, is combined with a liberalization of the operating conditions of private employment agencies with a view to achieving greater complementarity between public and private actors on the labour market. Labour contracts which include a training component have been rationalized, while more flexible forms of entering the labour market are facilitated by the reform of the labour regulations respecting part-time and temporary work. Furthermore, Act No. 53 of 28 March 2003 reforming the education and training system is intended to increase the proportion of vocational training in the education system and to promote the combination of initial training and work so as to improve employability through closer links with the labour market. The Committee requests the Government to provide with its next report any available evaluation of the results achieved through these structural reform measures of the labour market and of training. Also noting the information provided at its request on the measures adopted to improve the situation of women in the labour market, including reform of the part-time work regulations, the Committee requests the Government to continue providing such information, with an indication of the results achieved in terms of the long-term integration of women into productive and freely chosen employment.

2. *General economic policies.* The Committee would be grateful if the Government would supplement the information provided on labour market policies with a description of the manner in which the main aspects of general economic policy contribute to employment promotion. In particular, it requests the Government to indicate the manner in which employment objectives are taken into account in the adoption of measures in such fields as monetary, budgetary and taxation policies, and prices, incomes and wages policies. Please also describe the measures adopted or envisaged in the field of regional development policy, taking into account the specific employment problems in the south of the country.

3. *Participation of the social partners in the formulation and application of policies.* The Committee notes that employment policy measures form part of the framework agreed upon with the social partners which endorsed the Pact for Italy of July 2002. It requests the Government to continue providing detailed information on the consultations held with the representatives of the persons affected, both at the stage of formulating employment policies and in relation to the implementation of the measures adopted under such policies.

Kyrgyzstan

Employment Policy Convention, 1964 (No. 122) (ratification: 1992)

1. The Committee notes with regret that a report has not been received from the Government since September 1996. It understands that the Office, in collaboration with the European Union TACIS programme, has contributed to the "Conception of the State Employment Policy of the Kyrgyz Republic until 2010", approved by the Government in February 2004. It understands that the adoption of this conception will allow the Government to adopt in the near future a national action plan marking a new orientation on active labour market policy and including measures aimed at specific groups of the population. It also recalls that the Government adopted a Poverty Reduction Strategy Paper (PRSP) in December 2002. The Committee once again asks the Government to provide information in its next report on the measures taken as a result of the assistance received from the ILO in relation to employment policy, and to indicate any particular difficulties that have been encountered in achieving the established employment objectives, in the framework of

a coordinated social and economic policy and in consultation with the representatives of the persons affected, in accordance with *Articles 1, 2 and 3 of the Convention*.

2. The Committee also asks the Government to report on:

- the measures taken or envisaged to compile statistics on the labour market and employment problems in order to obtain data on the characteristics and trends in job offers and demands which are necessary to implement an active employment policy;
- the manner in which measures taken with the support of the International Monetary Fund, the World Bank and other development banks for carrying out the structural reforms necessary for the transition to a market economy contribute to the promotion of employment;
- information on the specific training and placement measures for persons who have particular difficulties in finding and retaining employment such as women, young persons, older workers and disabled persons;
- training and retraining measures for workers affected by structural reforms;
- the manner in which consultations take place with representatives of employers and workers concerning employment policies;
- the different programmes the Government has adopted that concern specific groups of workers, such as the “National programme on state support for disabled persons”, the “National programme ‘Zhashtyk’ on youth development until 2010”, and the “State programme *New Generation* for the protection of children’s rights”.

3. The preparation of a detailed report, including the indications requested in this observation, will certainly provide the Government and the social partners with an opportunity to evaluate the achievement of the objectives of full and productive employment of the Convention. The Committee draws the Government’s attention to the technical assistance offered by the Office, which may assist it to comply with the reporting obligations, and to implement an active employment policy in the sense of the Convention.

[The Government is invited to reply in detail to the present comments in 2005.]

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)

The Committee notes with regret that the Government’s report has not been received. It asks the Government to provide detailed information in relation to the following matters already raised in its 1995 comments.

Article 5 of the Convention. 1. Please indicate whether representative organizations of employers and workers are consulted on the implementation of the national policy on vocational rehabilitation and employment of persons with disabilities.

2. Please indicate if any other organizations created under the Act on the social protection of persons with disabilities, besides the Society for Deaf and Blind referred to in the Government’s report, and describe the manner in which these organizations are consulted on the implementation of that policy.

Article 8. Please describe the measures taken to promote the establishment and development of vocational rehabilitation and employment services for persons with disabilities in rural areas and remote communities.

Article 9. The Committee noted the provision of section 17 of the Act on the social protection of persons with disabilities concerning training of vocational rehabilitation staff which shall be financed and organized by the State. It also noted the Government’s statement to the effect that there are no teaching institutions providing training for such staff, though there is a real need to train qualified staff for work with persons with disabilities. It asks the Government to indicate the measures taken or envisaged to ensure the availability of suitably qualified vocational rehabilitation staff, in accordance with this Article of the Convention and the national provision referred to above.

Part V of the report form. Please provide a general appreciation of the manner in which the Convention is applied, including more detailed information on any difficulties encountered, as well as statistics, extracts from reports, studies and inquiries, concerning the matters covered by the Convention (for example, with respect to particular areas or branches of activity or particular categories of persons with disabilities).

[The Government is invited to reply in detail to the present comments in 2005.]

Lithuania

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1994)

1. The Committee notes the detailed information and the statistics supplied in the Government’s report. It notes in particular that in 2003, 1,309 persons with disabilities participated in the programmes of employment clubs, public works and vocational training and that 3,177 worked in subsidized jobs especially adapted to persons with disabilities. It also notes however the observations made by the Lietuyos Darbo Federacija (LDF) received in September 2004, stating that although the national legislation contains numerous provisions on the legal status and social integration of disabled

persons, the Convention is not often put into practice. The Committee therefore asks the Government to continue providing information on measures adopted in favour of persons with disabilities in the context of its national policy, in particular concerning the following points.

2. *Articles 3 and 7 of the Convention.* The Government indicates that there is no uniform and functional system of vocational rehabilitation, which limits the effectiveness of the vocational training services. Vocational rehabilitation infrastructure and services will be further developed under the Strategic Directions for the Development of Vocational Rehabilitation for 2004-10. The Government also indicates that although many measures have been taken to encourage the employment of disabled persons in the open labour market, only those with minor disabilities have any real possibility of finding employment. A bill to revise the Law on social integration was adopted in 2004 (in force in July 2005), under the National Programme on Social Integration of the Disabled for the years 2003-12, in order to replace the notion of “disability level” with that of “work capacity level” and thereby facilitate the occupational integration of disabled people. The Committee asks the Government to continue to provide information on the measures taken to promote the vocational rehabilitation and employment of disabled persons.

3. *Article 4.* The Government reports the adoption in November 2003 of the Law on equal opportunities, under which special measures to ensure real equality of opportunity and treatment between disabled workers of both sexes and other workers shall not be considered as discriminatory. The Committee notes that the Law on the support for the unemployed contains special positive measures and that, on the recommendation of the Employment Fund, any company with a staff of more than 50 must set aside at least 2 per cent of jobs for disabled persons. The Government indicates that two projects are under way to encourage the integration of women workers with disabilities into the labour market: one financed by the PHARE programme of the European Union and the other conducted jointly by the Information Office for the Disabled, the Lithuanian Labour Market Training Authority and the ILO. The Committee asks the Government to continue to provide information on the implementation of the abovementioned measures and the projects providing for the special positive measures required by *Article 4* of the Convention.

4. In this connection, the Committee notes that the Law on equal opportunities provides for the establishment, from 1 January 2005, of an equal opportunities ombudsman, who will hear complaints of equal rights violations. According to the Government, this should facilitate the filing of complaints by persons with disabilities. The Committee asks the Government to keep it informed of the operation and activities of this institution in the areas covered by the Convention.

5. *Article 8.* The Government indicates that the availability of vocational rehabilitation and employment services for disabled persons is limited in small towns and non-existent in villages. The Strategic Directions for the Development of Vocational Rehabilitation for 2004-10, approved in March 2004, provide for various measures to give effect to this provision of the Convention. Referring to the observations made by the LDF, the Committee asks the Government to keep it informed of developments in this regard.

6. *Article 9.* The Government indicates that staff qualifications are for the most part obtained through the exchange of experience with foreign partners and participation in international conferences and seminars. A project under the PHARE programme and a project known as “Disability Etiquette” aim to improve the qualifications of staff of the Lithuanian Labour Market Training Authority. The Committee asks the Government to continue to provide information on the measures taken to ensure that suitably qualified staff responsible for vocational rehabilitation are made available to disabled persons.

Nigeria

Employment Service Convention, 1948 (No. 88) (ratification: 1961)

Contribution of the employment service to employment promotion. In reply to previous comments, the Government indicates that according to figures from the Employment Service, vacancies registered in 2002 were 4,391 against 1,634 in 2003 for the public sector. Jobseekers registered for 2002 were 1,686 and 2,687 in 2003, while placement for 2002 were 3,509 and 868 for 2003. The Committee expresses again its concerns with regard to the labour market situation and notes, as the National Economic Empowerment and Development Strategy (NEEDS) adopted in March 2004 points out, that urban unemployment is acute with the attendant high level of crimes and socio-political tensions. In March 2003, the rural unemployment rate had dropped to 12.3 per cent and the urban rate to 7.4 per cent (giving a composite unemployment rate of 10.8 per cent, meaning that about 6.4 million people were actively looking for jobs without finding them). The labour force is about 61 million in Nigeria. The Committee therefore again requests the Government to provide a detailed report on the application of the Convention and recalls the need to ensure the essential duty of the employment service and its adjustment to meet the new requirements of the economy and the working population (*Articles 1 and 3 of the Convention*). It asks the Government to continue to include statistical information published in annual or periodical reports on the number of public employment offices established, applications for employment received, vacancies notified and persons placed in employment by such offices (*Part IV of the report form*). Please also provide information on the activities of the Employment Service and the effects noted or expected on employment as a result of implementation of the NEEDS of Nigeria.

[The Government is asked to report in detail in 2006.]

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 1999 observation which read as follows:

Part II of the Convention. 1. The Committee takes note of the information supplied by the Government in its report in reply to its previous observation. The Committee recalls that it had in particular requested the Government to give details of the measures taken with a view to adopting the draft Rules under the Fee-Charging Employment Agencies (Regulation) Act, 1976, to which the Government had referred for many years, so as to undertake the abolition of fee-charging employment agencies "within a limited period of time", but not "until a public employment service is established", in accordance with *Article 3 of the Convention*. The Committee regrets to note that the report contains no signs of progress on this matter. The Committee urges the Government to take the necessary measures in the near future and to report on the progress towards achieving adoption of the Rules.

2. The Committee notes the information regarding measures taken to supervise overseas employment promoters under the Emigration Ordinance of 1979 and rules there under. It notes that a licence is issued to these agencies for an initial period of three years, then renewed for periods which vary depending on the way in which the agencies operate. The Committee recalls that, under *Article 5, paragraph 2(b)*, of the Convention, these agencies are required to be in possession of a yearly licence renewable at the discretion of the competent authority. It asks the Government to indicate in its next report the measures taken or envisaged to give full effect to this provision of the Convention in respect of overseas employment promoters.

3. The Committee notes the information regarding penalties imposed on overseas employment promoters following contraventions. It asks the Government to continue to supply such information and also to include the information required under *Article 9* of the Convention on the number of these agencies, as well as on the nature and volume of their activities. Please supply all available information on the application of the Convention in practice (*Part V of the report form*).

Panama

Employment Service Convention, 1948 (No. 88) (ratification: 1970)

1. *Modernization of the employment service.* The Committee notes the information and statistical data provided in the Government's report received in September 2004, and the report of the Directorate-General of Employment for 1999-2004 communicated by the Government in the annex to its last report. It notes in particular the setting up of an electronic labour exchange with the assistance of ILO projects (*Modernizing the labour administrations of Central America* (MATAC) and *Labour information and analysis system for Latin America* (SIAL)), which enabled the registration of 21,438 new applications for employment, 2,676 vacant posts and the placement of 1,520 persons in the labour market. The Committee also notes the measures adopted to promote employment and vocational self-integration, and requests the Government to continue to provide any relevant information on the application of the Convention in practice, in accordance with *Part VI of the report form*.

2. *Reorganization of the employment office network.* The Government indicates that no study has been undertaken to evaluate the effectiveness of the various employment offices with a view to reorganizing the network. The Committee requests the Government to indicate progress made in the installation of employment offices in each of the regions of the country and to communicate the results of the studies undertaken in accordance with *Article 3 of the Convention*.

3. *Participation of the social partners.* The Committee notes with interest that in reply to the comments which it has been formulating for many years, the Government mentions a collaboration agreement concluded in 2000 between the Ministry of Labour and Social Welfare (MITRADEL) and the Labour Foundation, one objective of which is the strengthening of social dialogue. Various measures have been adopted to this end, such as the promotion of the Labour Foundation at national and international levels, the setting up of workshops on its role at international level and the appeal to the Labour Foundation as assistant to the Ministry of Labour and Social Welfare in the area of social dialogue. The Committee requests the Government to continue to provide information on the measures adopted, in collaboration with the social partners, to ensure the effective functioning of a free public employment service having a network of employment offices in sufficient numbers to meet the requirements of employers and workers in each of the geographical areas (*Articles 1 to 5 of the Convention*).

Peru

Employment Service Convention, 1948 (No. 88) (ratification: 1962)

Participation of the social partners. The Committee notes with satisfaction that, in response to the comments it has been making for many years, the Government reports that the National Council for Labour and Employment Promotion, a tripartite advisory body that includes representatives of micro- and small enterprises and social organizations, has discussed and agreed on labour, employment promotion and social protection policies. Employment generation and formalization are on the 2004 five-point agenda of the National Labour Council. The Government also included in its report data on the placements made by the CIL-PROEmpleo network and the Youth Intermediation Programme. The Committee requests the Government to continue to provide information on measures taken with the cooperation of the

social partners to ensure the efficient operation of a free and public employment service with a network of offices sufficient in number to meet the needs of employers and workers nationwide (*Articles 1 to 5 of the Convention*).

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1986)

1. Further to its previous comments, the Committee notes with interest, pursuant to Act No. 28.164 of 16 December 2003, the creation of the national office to promote employment for disabled persons under the Ministry of Labour and Employment Promotion. Measures undertaken include a requirement for the central Government and regional and municipal governments to employ disabled persons suited to the job in at least 3 per cent of the posts on their staff. Thanks to this new national office, it is said that the plans proposed by the National Council for the Integration of Disabled Persons (CONADIS) will be more effective. The Committee asks the Government to provide information in its next report on the impact of the measures in both the public and the private sectors in terms of integrating persons with disabilities into the open labour market: the creation of “enterprises for the promotion of disabled persons”, the award of additional points in the competition for admission to vacancies in the public administration and the entitlement to a further reduction in taxable income.

2. Please provide up-to-date information on the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities (*Article 8 of the Convention*) and on the training of suitably qualified personnel to be responsible for the vocational guidance, vocational training, placement and employment of disabled persons (*Article 9 of the Convention*).

3. *Part V of the report form.* Please include extracts from studies or other assessments of rehabilitation and employment policies and programmes for persons with disabilities. Please also supply up-to-date statistics on the number of participants, the number of placements, public expenditure and other data showing the results of the legislative and political measures adopted for persons with disabilities.

Portugal

Employment Policy Convention, 1964 (No. 122) (ratification: 1981)

1. The Committee notes the Government’s report for the period June 2002 to May 2004 including the observations from the General Confederation of Portuguese Workers (CGTP) and the General Workers’ Union (UGT). It also notes the discussion on the application of this Convention in the Committee on the Application of Standards at the 91st Session (June 2003) of the Conference. The Committee notes that, in a context of recession, the employment situation has deteriorated significantly during the period at issue, with an OECD standardized unemployment rate of 6.4 per cent in 2003, compared to 5.1 per cent in 2002 and 4.1 per cent in 2001. At the same time, however, the share of long-term unemployment has continued to decline from 38.1 per cent of all unemployed in 2001 to 32 per cent in 2003. The Government points out that, in spite of the deterioration of the employment situation, the unemployment rate is still among the lowest in the European Union. The Government further notes that, although the employment rate decreased to 67.1 per cent in 2003, it remains above the target for the European Employment Strategy for 2005 and the gap between men and women is narrowing in so far as the loss of employment has affected men to a larger extent. The Committee notes that part-time work, two-thirds of which is carried out by women, amounted to 10 per cent of total employment in 2003.

2. *General and sectoral economic policies.* The Government refers in its report to the Programme for Productivity and Economic Growth, adopted in July 2002, covering a set of planned economic reforms. It aims at stimulating job creation, including measures to encourage the entrepreneurial spirit, stimulate innovation and the knowledge society and simplify administrative and regulatory procedures related to the creation and operation of companies. Further, the Recovery Programme for Depressed Areas and Sectors, adopted in March 2003, introduced a set of measures to contribute to reducing the economic and social imbalances among the regions, including public sharing in the costs for maintaining jobs in the case of acquisition of companies in serious financial difficulty. In the view of the CGTP, however, the Government is not taking the necessary measures to achieve the employment policy objectives of the Convention. In its view the Government bears considerable responsibility for the worsening of the economic crisis as its economic policy has been centred on reducing the budget deficit and containing domestic procurement, holding wages down, and reducing the purchasing power of civil servants. In this context the Committee recalls that pursuant to the Convention, measures to be adopted for attaining the employment objectives shall be decided on and kept under review, “within the framework of a coordinated economic and social policy” (*Article 2, paragraph (a), of the Convention*). The Committee asks the Government to detail in its next report the manner in which the main macroeconomic policy elements – such as monetary and budgetary policies, and policies related to prices, incomes and salaries – contribute to the promotion of employment.

3. *Labour market and training policies.* The Government states that the National Action Plan for Employment for the period 2003-06 gives priority to the prevention of long-term unemployment and the strategy for lifelong learning. It refers to measures taken to encourage: early retirement among unemployed workers above 58 years; vocational training for the unemployed; and geographical and professional mobility. It also outlines the forthcoming implementation of a multi-year vocational training plan in close cooperation with employment centres. The CGTP asserts that a more systematic evaluation of the active employment measures is called for. The Committee requests the Government to report

on how the measures it describes contribute to an effective and durable integration into employment of the beneficiaries of these measures, and to indicate the data on which it has relied in making this assessment. The Committee also notes that the CGTP is concerned about the effect on job security of the amendments introduced in labour law. It refers, *inter alia*, to the introduction of fixed-term contracts for up to six years which it asserts will lead to increased precariousness of employment and decreased attention to the need for vocational training of workers. The Committee requests the Government to describe in more detail the anticipated and actual impact on employment and skills of the measures taken to increase labour law flexibility.

4. *Consultation of the representatives of the persons affected.* As a follow-up to the discussion in the Conference Committee, the Government emphasizes in its report that consultation with the social partners on the different aspects of employment policy is ensured not only at the national level but also at the regional level through their participation in the advisory councils in vocational training centres and vocational training institutions, as well as in the group for the technical follow-up to the national employment plan. It also states that, since June 2003, contacts are under way to conclude a “Social contract for competitiveness and employment” with the social partners. In this context, CGTP regrets that some of the measures foreseen in the Agreement on Employment, Labour Market, Education and Training Policy, signed in February 2001, have not been acted upon, and is of the view that the tripartite follow-up to the implementation of this agreement is insufficient. The Committee asks the Government to report on all new measures that may have been carried out to ensure that the representatives of the persons affected by the measures to be taken cooperate fully in the formulation of employment policies and assist in enlisting support for such policies, as called for in *Article 3* of the Convention.

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1999)

1. The Committee notes the Government’s report and the observations made by the General Confederation of Portuguese Workers (CGTP) and the General Union of Workers (UGT), provided in the annex to the report. It notes with interest that the Labour Code, approved by Act No. 99/2003, among other measures sets forth the right of persons with disabilities to equality of treatment in access to employment and work, vocational training and working conditions.

2. In its comments, the CGTP indicates that, even though the legislation contains various instruments to promote the social and vocational integration of persons with disabilities, vocational adaptation and rehabilitation are uncommon in practice, as demonstrated by the low number of persons with disabilities integrated into working life. The CGTP adds that the situation of workers with disabilities following an employment accident is particularly serious as vocational rehabilitation and reintegration measures, although provided for by the law, have never been implemented through regulations. The UGT indicates that persons with disabilities are still subject to discriminatory practices, particularly in access to the labour market. Other problems encountered by persons with disabilities include the retention of their jobs, promotion, training, protection against unjustified dismissal, workplace design and the accessibility of equipment. The Committee asks the Government to continue providing information on the measures taken in the context of the national policy on vocational rehabilitation and employment of persons with disabilities (*Articles 3 and 7 of the Convention*) and to provide any relevant information on the application of the Convention in practice, as provided for in *Part V of the report form*, including the results achieved through the measures referred to by the Government in its report, such as telework, local and specialized placement centres and the system of job quotas for persons with disabilities.

Sao Tome and Principe

Employment Service Convention, 1948 (No. 88) (ratification: 1982)

The Committee notes that the Government’s report has not been received. It must therefore repeat its 2002 observation which read as follows:

1. Please provide information on the arrangements made in accordance with *Articles 4 and 5 of the Convention* by the National Council for Social Dialogue (CNCS) or the Directorate of Public Employment Services to ensure 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.

2. Please indicate the manner in which the employment service is organized and the activities which it performs in order to achieve effectively the objectives and carry out the functions set out in *Article 6* of the Convention.

3. Please also provide the detailed information requested in the report form concerning the effect given to *Articles 7, 8, 9, 10 and 11* of the Convention.

4. *Part IV of the report form.* Please furnish statistical information concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices.

5. The Committee recalls that the Office is available to provide the Government with technical advice and assistance for the implementation of a public employment service within the meaning of the Convention.

Sierra Leone

Employment Service Convention, 1948 (No. 88) (ratification: 1961)

1. *Contribution of the employment service to employment promotion. ILO technical assistance.* In reply to the comments that it has been making for many years, the Committee notes the Government's statement, contained in a report received in June 2004, indicating that the legislation on employment services has been included on the agenda of the Joint Advisory Commission for discussion. It is the Government's intention to provide a new mandate to employment services so that they are transformed into dynamic labour market information centres. The new employment services will have to cover not only urban centres but also rural areas and ensure the provision of information, planning and the application of employment policies throughout the country. The Government also states that ILO technical assistance is required to achieve its objectives.

2. Now that security has been re-established and the process of re-establishing public services initiated in the country, the Committee welcomes the fact that the Government is also proposing to strengthen employment services. The Committee recalls that the Office provided support for programmes for the generation of employment opportunities by strengthening employment services for young persons. The Committee hopes that the Government will receive the advice and assistance that can be offered by the competent units of the Office and that it will be in a position to describe in its next report the manner in which the employment service reforms have contributed to securing their essential duty, which is to ensure "the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources" (*Article 1 of the Convention*), in cooperation with the social partners (*Articles 4 and 5*). In this respect, the Committee would be grateful if the Government would provide the statistical information that has been compiled concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices (*Part IV of the report form*).

Spain

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1990)

Progress in the application of policies on vocational rehabilitation and employment of persons with disabilities. In a general observation made in 2001 on the application of the Convention, the Committee indicated that, taking into account the limited resources available, substantial progress had been made in Latin America and Eastern Europe in enabling persons with disabilities to participate more fully in the open labour market. In its report received in July 2004, the Government states that it supports the substantial progress made in Latin America and confirms the success in many countries of programmes of vocational rehabilitation, as well as the assistance provided by the European Union. The Government also reports the adoption of Act No. 51/2003, of 2 December, respecting equality of opportunity, non-discrimination and universal accessibility for person with disabilities, thereby consolidating the adoption of a human rights approach to all state policies, without neglecting affirmative action measures. The Committee welcomes this progress in the promotion of the employment of persons with disabilities in Spain, and the support for programmes in other countries, and it would be grateful if the Government would continue to provide relevant information on the application of policies for persons with disabilities within the meaning of *Articles 2 and 7 of the Convention*.

Sri Lanka

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1958)

1. *Part III of the Convention. Regulation of fee-charging employment agencies.* In its report received in October 2004, the Government reports on the measures adopted by the Bureau of Foreign Employment to reinforce the application of the provisions of Act No. 21 of 1985 and to prevent the illegal placement of Sri Lankan citizens abroad. The Minister for Labour Relations and Foreign Employment and the higher officials of the Bureau of Foreign Employment make regular visits to the countries receiving Sri Lankan migrant workers in order to perceive the shortcomings in the protection granted to them. The Government also indicates that, under section 22 of the Act, officers of the Department of Labour and of the Bureau of Foreign Employment are sent to Sri Lankan missions installed in these countries in order to assist and protect those workers. The Committee notes the statistical data provided to this end in the report and the intention of the Ministry of Labour Relations and Foreign Employment to increase the number of these officers. Please continue to communicate any relevant information on the application of the Convention in practice, in accordance with *Part V of the report form*.

2. The Committee notes with interest that the Government is contemplating ratifying the Migration for Employment Convention (Revised), 1949 (No. 97), and that it might seek technical assistance of the Office to this end. The Committee invites the Government to keep it informed of any development which might take place in this regard and requests it to

continue to provide information on the measures adopted to implement the provisions of Act No. 21 of 1985 and combat effectively the illegal placement of nationals abroad (*Article 10(d)* of Convention No. 96).

3. *Revision of Convention No. 96.* The Committee draws the Government's attention to the growing number of Sri Lankan migrant workers placed abroad. It notes the statistics of the Bureau of Foreign Employment and notes that in 2002 this phenomenon concerned 70,726 men and 132,986 women, mostly placed in unskilled jobs or as domestic workers. The Committee draws the Government's attention to the fact that it is difficult to avoid abusive practices in these settings which are more likely to escape controls and emphasizes the urgent need to grant effective protection to migrant workers. To this end, the non-binding multilateral framework for migrant workers in a global economy was designed in agreement with the tripartite constituents to assist member States in improving the effectiveness of their policies relating to labour migration. It provides particularly for the licensing and supervision of recruitment and contracting agencies for migrant workers, in accordance with the Private Employment Agencies Convention, 1997 (No. 181), with the provision of clear and enforceable contracts by those agencies (*Provisional Record* No. 22, pages 60-61, ILC, 92nd Session, Geneva, 2004). The Committee recalls that Convention No. 181 recognizes the role played by private employment agencies in the functioning of the labour market. In this regard, it recalls that the ILO Governing Body invites the States parties to Convention No. 96 to contemplate ratifying, as appropriate, Convention No. 181, the ratification of which will, *ipso jure*, 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 in this regard.

Swaziland

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1981)

The Committee notes that the Government's report has not been received. It must therefore again ask the Government to supply information required in *Part V of the report form* on the practical application of the Convention, in particular with regard to the recruiting of persons for employment on foreign contracts of employment under Part IX of Employment Act No. 5 of 1980. It asks the Government to supply specific information on this matter, as well as a detailed report on the application of the provisions of *Part III of the Convention*.

[The Government is asked to reply in detail to the present comments in 2005.]

United Republic of Tanzania

Tanganyika

Employment Service Convention, 1948 (No. 88) (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its 1999 observation which, read as follows:

1. The Committee notes that the Government adopted a National Employment Policy in April 1997. The Government indicates that unemployment is increasing annually and the policy document referred to 30 per cent of the labour force being unemployed or underemployed. The Government also indicates that jobseekers are unaware of labour market trends because there are no centres which provide such information. It is therefore necessary to establish employment promotion offices which would perform the role of the former employment exchanges. The Committee notes the Government's concern and also notes the administrative and financial constraints, but again expresses its hope that it will shortly implement its National Employment Policy. It further asks the Government to inform it of any progress as regards the establishment of employment promotion offices and trusts that it will supply, in its next report, information on measures taken in this respect with a view to ensuring full application of *Article 6* (functions of the employment service) and *Article 7* (measures to facilitate within the various employment offices specialization by occupation and by industries, and to meet the needs of particular categories of applicants, such as disabled persons) of the *Convention*.

2. *Articles 4 and 5.* The Government indicates that tripartite committees have been established at different levels within the framework of the National Employment Policy. The Committee would be grateful if the Government would include in its next report further information on the consultations taking place with representatives of employers and workers concerning the organization and operation of the employment services and in the development of an employment service policy.

3. *Article 8.* The Government recognizes that the problem of unemployment is well known and gives support to any programme designed to eradicate unemployment. The Committee would be grateful if the Government would include in its next report any particulars concerning the arrangements made by the vocational training institutions for juveniles within the framework of the employment and vocational guidance services.

4. *Part IV of the report form.* The Government indicates that the current financial climate has hindered the regular collection of statistics. The Committee reiterates its hope that the statistical and other information required will be supplied as soon as it becomes available.

[The Government is asked to reply in detail to the present comments in 2005.]

Turkey

Employment Service Convention, 1948 (No. 88) (ratification: 1950)

1. *Restructuring of the employment service.* The Committee notes the information and statistical data provided in the Government's report received in September 2004 and the comments made by the Confederation of Turkish Trade Unions (TÜRK-İ), the Turkish Confederation of Public Workers' Associations (TÜRKİYE KAMU-SEN) and the Turkish Confederation of Employers' Associations (TISK) annexed to the Government's report. It notes in particular Act No. 4904 of June 2003 on the Turkish Labour Agency (I KUR), restructuring the public employment service, and the new Labour Act No. 4857 of May 2003. The Government states in this respect that I KUR, which has been set up in order to promote employment, prevent unemployment and provide unemployment insurance services, should facilitate the application of the provisions of the present Convention. The Committee requests the Government to continue to provide information on the manner in which I KUR carries out its essential task, ensuring, in accordance with *Article 1, paragraph 1, of the Convention*, 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 for the development and use of productive resources.

2. *Participation of the social partners.* The Committee notes with interest that the I KUR General Council is composed of representatives of employers and workers who have the task of expressing their opinions on the employment policy to be implemented at national level. It also notes that the social partners are represented on the provincial employment councils, in order to enable I KUR to develop appropriate employment policies at regional and local levels. Noting that TÜRKİYE KAMU-SEN declares that the rate of unemployment has been increasing for years owing to inappropriate and confused employment policies, the Committee invites the Government to provide information on the activities of I KUR, and particularly of the provincial employment councils, during the period covered by the next report. It also requests the Government to indicate clearly how these advisory bodies are constituted and what procedure has been adopted in appointing employers' and workers' representatives (*Articles 4 and 5 of the Convention*).

3. *Status of employment service staff.* The Government indicates that I KUR staff are subject to the provisions of Act No. 657 on public servants of the State. The Committee notes the comments made by TÜRK-İ on the decision of the I KUR General Council to improve the conditions of work and quality of training given to staff working in this organization, particularly in the context of an "active labour programme" established with the support of the European Union. It invites the Government to keep it informed of any measure adopted with regard to the stability, recruitment, skills and training of I KUR staff (*Article 9*).

4. *Cooperation between the public employment service and private employment agencies not conducted with a view to profit.* The Government states that section 90 of the new Labour Code ends the state monopoly over the employment service and authorizes the setting up and functioning, under certain conditions, of private employment agencies. The Committee notes that, according to Act No. 4904, I KUR is responsible for supervising the setting up and the activities of private employment agencies and that these agencies are in particular required to communicate every three months to I KUR statistical data on job applicants, vacant posts and job placements made, as well as any other information or document which is useful for monitoring the practices in question. In this regard, it notes that TÜRKİYE KAMU-SEN contends that problems might occur with regard to the inspection of private employment agencies and therefore with regard to ensuring effective cooperation between these agencies and the public employment service. The Committee also notes the comments made by TÜRK-İ , to the effect that these agencies, the number of which increases every day, can impose charges on employers or candidates for certain posts, and fears that in this period of high unemployment these agencies are exploiting workers. It requests the Government to provide additional information on the measures taken to ensure that cooperation between I KUR and private employment agencies is effective within the meaning of *Article 11*.

5. The Committee invites the Government to refer to its comments this year on the application of Convention No. 96. It draws the Government's attention to the fact that other matters, directly connected with the application of Convention No. 88, have been raised by the Committee, particularly in its comments on Conventions Nos. 122 and 142 concerning employment policy and training policy.

[The Government is asked to reply in detail to the present comments in 2006.]

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1952)

1. The Committee notes the Government's report received in September 2004 and the attached comments made by the Confederation of Turkish Trade Unions (TÜRK-İ), the Turkish Confederation of Progressive Trade Unions (DISK), the Turkish Confederation of Public Workers' Associations (TÜRKİYE KAMU-SEN) and the Turkish Confederation of Employers' Associations (TISK). It recalls its previous observation in which it noted that the Government had decided to end the state monopoly over the employment service and to authorize the activity of private employment agencies, and notes in this regard sections 90 and 106 of the new Labour Act No. 4857 of May 2003, Act No. 4904 of June 2003 relating to the Turkish Labour Agency (I KUR) and the regulation on private employment agencies of February 2004. The Committee refers to the comments made by TÜRK-İ , which indicates that the manner in which this new legislation is to

be implemented is not clear and fears that it will favour the exploitation of workers, and requests the Government to provide additional information on the following points.

2. *Part III of the Convention. Regulation of fee-charging employment agencies.* The Committee notes that, according to the provisions of Act No. 4904, I KUR determines the number of private employment agencies according to the needs of the labour market, issues them, subject to certain conditions, with a licence to operate and gives its approval with regard to contracts concluded for the purpose of placing workers abroad. In this regard, the Government states that, in July 2004, in response to nine applications made, only four operating licences were issued by I KUR to private employment agencies. The Government indicates that the inspectors of I KUR are responsible for supervising the activities of these agencies, which can never be profit-making nor in principle charge fees to workers. The Committee notes, however, the Government's statement to the effect that these agencies can charge fees to employers or to candidates for certain posts when the latter have been placed in the labour market, and the amount of such fees is laid down in a written contract between the parties which can be transmitted to I KUR. It also notes the comments made by TÜRK-I and DISK indicating that many workers have already been deceived by false promises of employment and expressing the fear that the activities of these agencies, which are often geared to making a profit, favour the exploitation of workers in the existing climate of high unemployment and the lack of public controls in the country. DISK, for its part, expresses the hope in this regard that, in the current situation of widespread non-registered employment in the country, public inspection will be undertaken in accordance with *Articles 10 and 11 of the Convention*. The Committee draws the Government's attention to the fact that Convention No. 96, with a view to providing protection for workers, covers the activities of fee-charging employment agencies by submitting them in particular to effective supervision by the competent authority and allowing them to charge only fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority. It therefore again requests the Government to indicate the measures taken to ensure effective application of *Articles 10 and 11* of the Convention in the context of the activities of private employment agencies. The Committee would also be grateful if the Government would provide up-to-date statistical data on the activities of private employment agencies (*Part V of the report form*).

3. *Revision of Convention No. 96.* The Government states that private employment agencies are necessary for increasing and improving the efficiency of employment services and that the national legislation has been revised to authorize the activities of these agencies, which are already well established in a number of countries, and thus avail themselves, as also emphasized by TISK, of the possibility provided for in Convention No. 181. Accordingly, the Committee recalls that the ILO Governing Body invites the States parties to Convention No. 96 to contemplate ratifying, as appropriate, the Private Employment Agencies Convention, 1997 (No. 181), the ratification of which will, *ipso jure*, involve the immediate denunciation of Convention No. 96 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). In this regard, it refers to its observation of 1999 on the application of Convention No. 96 and invites the Government to keep it informed of developments which, in consultation with the social partners, might occur in relation to the ratification of Convention No. 181. With the provisions of Convention No. 96 remaining in force as long as Convention No. 181 has not been ratified, the Committee will continue to examine the application in law and practice of Convention No. 96.

[The Government is asked to reply in detail to the present comments in 2006.]

Employment Policy Convention, 1964 (No. 122) (ratification: 1977)

1. The Committee notes the Government's report for the period ending May 2004, including observations made by the Confederation of Turkish Trade Unions (TÜRK-I), the Confederation of Progressive Trade Unions of Turkey (DISK), the Turkish Confederation of Employers' Associations (TISK) and the Turkish Confederation of Public Workers' Associations (TÜRKIYE KAMU-SEN). The Committee also notes the information provided in reports on the application of Convention No. 88 on employment services, Convention No. 142 on human resources development, Convention No. 158 on termination of employment, as well as of Convention No. 159 concerning vocational development of persons with disabilities, and refers to its comments on the application of the Conventions.

2. *Article 1 of the Convention.* The Committee notes the continued progressive increase in the unemployment rates which, in the first quarter of 2004, had reached 12.4 per cent on average, including 11.2 per cent for women and 25 per cent among young educated people. According to TÜRK-I, DISK and TÜRKIYE KAMU-SEN a central cause for these deteriorating conditions in the labour market continues to be an insufficiently active labour market policy and the implementation of the economic policies prescribed by the International Monetary Fund (IMF) and the World Bank, including efforts to reduce inflation and to keep social transfers low. These policies are said to exacerbate the ongoing structural changes in the labour market, including the privatization process in the agricultural and public sectors.

3. The Committee notes, however, that the recent decision to harmonize Turkey's employment policy with that of the European Union represents a major policy shift towards a more effective implementation of the objectives of Convention No. 122. The Committee also notes that both the Government and TISK provide information on a series of new laws, institutions, projects and policies initiated, adopted or under way as part of the implementation of this policy shift. The Committee notes this information and would appreciate being kept informed of progress made in its implementation. The Committee also requests the Government to provide detailed information on measures addressing in

particular the increasing difficulties experienced by women and young persons in accessing the labour market, and the results of these measures.

4. *Article 2.* The Committee notes the concerns raised by TÜRKIYE KAMU-SEN concerning the lack of an effective social policy, and that the Government has announced that the economic programme it will be implementing in 2005 will contain more social elements. The Committee would appreciate receiving further and more detailed information from the Government on the planned social dimension of its future economic policy and how it plans to coordinate this policy with the newly adopted employment policy.

5. *Article 3.* The Committee notes the information provided by the Government regarding tripartite consultation in the formulation and application of its current labour market policy, including its application at the local and regional level activities initiated by the Turkish Employment Agency (I KUR) and through the reorganized tripartite Economic and Social Council (EKOSOK). As regards EKOSOK the Committee notes the detailed information the Government has provided concerning meetings held until 7 November 2003. TÜRKIYE KAMU-SEN stresses that EKOSOK has not been convened since November 2003 – in spite of legislation requiring meetings every three months – and states that the Government has taken a number of important decisions since then. It further contends that, to the extent consultations have been held, they have involved only the employers' organizations but not the workers' organizations and their unions and have thus not been tripartite. The Committee would appreciate continuing to receive information on the manner in which consultations are held with representatives of employers' and workers' organizations in keeping with *Article 3* of the Convention.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 2** (Kenya, Myanmar, South Africa, Sudan); **Convention No. 34** (Slovakia); **Convention No. 88** (Bosnia and Herzegovina, Kazakhstan, Kenya, Netherlands: Aruba, San Marino, Singapore, Thailand); **Convention No. 96** (Luxembourg, Malta, Mauritania, Mexico, Poland, Senegal); **Convention No. 122** (Azerbaijan, Belgium, Bosnia and Herzegovina, Cambodia, Cameroon, Chile, China, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Denmark, Denmark: Greenland, Dominican Republic, France: French Polynesia, France: New Caledonia, France: St. Pierre and Miquelon, Georgia, Guatemala, India, Jordan, Kazakhstan, Latvia, Lebanon, Mongolia, Netherlands: Aruba, Netherlands: Netherlands Antilles, Panama, Papua New Guinea, Paraguay, Peru, Senegal, Serbia and Montenegro, Slovenia, United Kingdom, United Kingdom: Guernsey, United Kingdom: Isle of Man, Yemen, Zambia); **Convention No. 159** (Bolivia, Côte d'Ivoire, Guinea, Lebanon, Luxembourg, Madagascar, Malawi, Mali, Mexico, Mongolia, Norway, Paraguay, Philippines, Russian Federation, Sao Tome and Principe, Sweden, Tajikistan, Trinidad and Tobago, Tunisia, Turkey, Uganda, Uruguay, Yemen, Zambia, Zimbabwe); **Convention No. 181** (Republic of Moldova, Panama, Spain).

Vocational Guidance and Training

Brazil

Human Resources Development Convention, 1975 (No. 142) (ratification: 1981)

Lifelong education and training policies. The Committee refers to its comments on the application of the Employment Policy Convention, 1964 (No. 122), and notes with interest that the National Skills Plan 2003-07 defines, in accordance with international discussions in the context of the ILO, social and vocational skills as an indispensable right and requirement to guarantee decent work for men and women. The Committee notes the detailed information provided by the Government in its report received in September 2003 in which it indicates that the National Workers' Training Plan (PLANFOR) proposed the provision of vocational training on an annual basis for at least 20 per cent of the active population, thereby contributing to increasing its employability and income, raising productivity and competitiveness and reducing poverty. During the period 1995-2002, PLANFOR secured the provision of vocational training for 16.1 million persons, 90 per cent of whom were unemployed or in a precarious employment situation. The Government expresses its intention of reaching out, through vocational training measures, to the "hard core of social exclusion". The Government also refers to the advice received from the ILO for the formulation of strategies and methodologies relating to the new aspects of vocational training. The Committee would be grateful if the Government would continue to describe, in its next report, the manner in which vocational guidance and training systems cover the continuing vocational learning and training needs of persons with specific needs and in all sectors of the economy. In this respect, the Government may find it useful to refer to the provisions of the recent Human Resources Development Recommendation, 2004 (No. 195).

Ecuador

Human Resources Development Convention, 1975 (No. 142) (ratification: 1977)

1. In a brief report received in September 2003, the Government indicates that comprehensive policies and programmes are being carried out in the field of vocational guidance and training under the Ministry of Public Education, the Ecuadorian Council of Universities and Polytechnics and the Ecuadorian Vocational Training Service. The Committee refers to its direct request of 1998 and hopes that the Government will indicate the manner in which effective coordination is secured and in which the programmes implemented by the above institutions are linked with employment and with the public employment services (*Article 1, paragraphs 1 to 4, of the Convention*).

2. The Committee once again requests information on the extension of vocational training systems (*Article 4*), including data on the population groups most affected by the labour market situation (in this respect, see the comments made on the application of Convention No. 122).

3. When preparing its next report, the Government may consider it useful to refer to the General Survey of 2004 on employment promotion and the provisions of the Human Resources Development Recommendation, 2004 (No. 195), adopted by the 92nd Session of the Conference in June 2004.

[The Government is asked to reply in detail to the present comments in 2005.]

Finland

Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1992)

The Committee refers to its comment on the application of the Employment Policy Convention, 1964 (No. 122) and notes that within the context of the legislative reform undertaken in 2001-03, which, inter alia, places increased emphasis on lifelong learning, a new Adult Education Assistance Act (1276/2000) entered into force in 2001. This legislation, complemented with the provision of vocational qualification allowance through the Education Fund Act (1306/2002), provides for a new form of financial support for adult students administered through an education payments fund, managed by the social partners. It also notes the information submitted on the new Alternation Leave Act (1305/2002) through which the job alternation system will continue to be applicable for an additional five years. It would be grateful if the Government would continue providing information on the measures taken, within the framework of the national policy on paid educational leave for workers in all sectors of the economy and persons with specific needs (such as ageing unemployed persons), in order to contribute to the achievement of the objectives set out in *Article 3 of the Convention*, and coordinated with the general policies enumerated in *Article 4*.

Human Resources Development Convention, 1975 (No. 142) (ratification: 1977)

1. The Committee refers to its comment on the application of the Employment Policy Convention, 1964 (No. 122), and notes the observation of the State Employers' Office (VMTL) on the application of Convention No. 142. VMTL

considers that there is scope for improvement in the cooperation between workplaces and educational institutions and in the allocation of resources to career counselling. It also emphasizes the importance of providing job training positions in order to ensure the availability of qualified labour for government agencies in the future.

2. *Articles 3 and 4 of the Convention. Lifelong education and training policies.* The Committee notes with interest the newly adopted adult education strategy which will be operational until 2010, including legislation on financial assistance to adult students and job alternation leave. It notes in particular the promotion of cooperation between working life and training by revising the concept of on-the-job learning, which will involve promoting tutored and assessed study worth at least 20 credits following the goals of the curriculum. Please continue to provide information on the overall practical results of this new strategy, including information on the efforts, in cooperation with the social partners, to bring training and working life closer together including through the revised concept of on-the-job training. Please provide further information on the targets set in the 2003 Policy Programme and the extent of their fulfilment, particularly in light of the information that the total number of persons receiving personal guidance through the employment offices declined by 1,200 in 2002. In this respect the Government may find it useful to refer to the new Human Resources Development Recommendation, 2004 (No. 195).

Guinea

Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1976)

The Committee notes with regret that the Government's report has not been received. It must therefore reiterate its 1998 observation which requested the Government to provide the text of Ordinance No. 91/026 of 11 March 1991 and to specify the provisions taken to ensure the granting of paid educational leave to public servants. It asks the Government to provide full information in its next report in response to each of the questions of the report form.

[The Government is asked to reply in detail to the present comments in 2005.]

Human Resources Development Convention, 1975 (No. 142) (ratification: 1978)

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.

Hungary

Human Resources Development Convention, 1975 (No. 142) (ratification: 1976)

Further to its previous comments, the Committee notes with interest the detailed and useful information contained in the Government's report for the period June 1998-May 2003 prepared by the Ministry of Employment and Labour and the Ministry of Education. During the period under consideration, the percentage of skilled workforce rose, unemployment dropped and economic activity grew. The Government indicates that, whilst early in the 1990s small and medium-sized enterprises (SMEs) catered for the practical training of one-quarter of the work-experience needs of trainees, by the end of that decade, SMEs had become involved in the practical training of over one-third of all trainees. Financial assistance from the European Union has contributed to the overall development of vocational training, career selection and career orientation. The competence of the National Vocational Training Council was extended in 2001. The National Adult Training Council was established in 2002 functioning as a national body preparing decisions, giving opinions and making proposals, supporting the Ministry of Employment and Labour in performing its tasks related to adult education. The Committee would like to receive updated information in future reports on the measures taken to fulfil the objectives of the Convention, including data concerning education and training policies targeted at people with special needs such as women, youth and the Roma community (please refer to the recent Human Resources Development Recommendation, 2004 (No. 195)).

Tajikistan

Human Resources Development Convention, 1975 (No. 142) (ratification: 1993)

1. In its 1999 direct request, the Committee noted the brief statement made by the Government indicating that vocational guidance and training are part of a state-wide programme and are carried out jointly with the social partners and representatives of the state and private sectors. It asks the Government to provide a copy of the state-wide programme mentioned and any other document aiming at comprehensive and coordinated policies, and programmes of vocational guidance and vocational training, as defined in the Convention (*Part I of the report form*).

2. The Committee also points out the importance of first reports since they constitute the basis upon which the Committee makes its initial assessment of the observance of ratified Conventions. It therefore asks the Government to make a special effort to supply a report indicating, in detail, for each Article of the Convention, the legislation and other measures under which each provision is applied. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

United Republic of Tanzania

Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1983)

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*).

Turkey

Human Resources Development Convention, 1975 (No. 142) (ratification: 1993)

1. The Committee notes the information contained in the Government's report received in 2003, including comments by the Turkish Confederation of Employers' Associations (TISK) and the Turkish Confederation of Public Workers' Associations (TÜRKIYE KAMU-SEN). The Committee notes in particular the detailed information on educational as well as vocational guidance at central, regional and school levels in Turkey. With reference to its previous comment the Committee notes with interest that the number of apprentices who have completed training has increased with 46 per cent over the period 2000-03, while the number of occupations for which training is offered as well as the number of training centres have remained at the same levels over the same period. The Committee also notes, however, the views expressed by TÜRKIYE KAMU-SEN that the system of professional guidance is not sufficient for a large number of children and young people. The Committee would like to continue to receive information on the activities of the training centres and the training of apprentices. It would also be grateful if the Government would continue to provide detailed information on the manner in which the vocational guidance and training system is being extended to cover the continuing vocational needs of young people. In this respect, the Government may find it useful to refer to the provisions of the new Human Resources Development Recommendation, 2004 (No. 195).

2. *Article 5 of the Convention.* The Committee notes the information provided on the institutions set up by the General Directorate of the Turkish Employment Agency (I KUR) to provide vocational guidance, as well as the comments by TISK regarding the role of the private sector in the implementation of these policies. It asks the Government to communicate further information on the manner in which employers as well as workers' organizations are encouraged

to participate in the formulation and implementation of the policies and programmes of vocational guidance and vocational training offered by these and other relevant institutions.

3. Lastly, the Committee notes the information provided by TISK concerning a joint project between the Turkish Construction Installation Workers Training Foundation (INI EV) and the EDEXCEL foundation to develop training standards for the construction industry as well as the creation of a training centre by the employers' organization, INTES, and the workers' association, YOL-I . The Committee would like to be kept informed of such cooperative efforts to develop human resources.

4. As regards questions related to vocational development of persons with disabilities, the Committee refers to its comments on the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 140** (*Azerbaijan, Belize, Brazil, Chile, Czech Republic, Hungary, Kenya, Slovakia, United Kingdom, United Kingdom: Anguilla, United Kingdom: Jersey, Zimbabwe*); **Convention No. 142** (*Azerbaijan, Belarus, Egypt, France: New Caledonia, Georgia, Latvia, Lebanon, Lithuania, Luxembourg, Republic of Moldova, Netherlands: Aruba, Niger, Poland, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Ukraine*).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 140** (*France*).

Employment Security

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 the observation it made in 2002 which read as follows:

The Committee recalls that for many years it has been commenting on the policy of "gabonization" of jobs and its implementation in accordance with the provisions of the Convention. In its observation of 2001, the Committee noted the national pact on employment concluded in June 2000 between the Employers' Confederation of Gabon (CPG), the Trade Union Confederation of Gabon (COSYGA) and the Free Trade Union Confederation of Gabon (CGSL), under which: enterprises operating in Gabon encourage the economic integration or reintegration of Gabonese jobseekers by systematically substituting them, wherever possible, for any foreign workers who are laid off, resign or reach the age of retirement; and for the purpose of "gabonization" all posts held by foreigners may be filled by Gabonese. The Committee recalled its previous comments to the effect that, by virtue of *Article 2*, the Convention applies to all salaried workers and that, although nationality is not mentioned in *Article 5* among the factors which do not constitute valid grounds for dismissal, the protection afforded by the other Articles, particularly *Articles 8 and 9*, applies both to foreigners and to nationals. The Committee stressed the need for implementation of the gabonization policy to be consistent with the provisions of *Article 4*, which establish that grounds for dismissal must be valid and related to the worker's capacity for the job or conduct, or based on the operational requirements of the enterprise, establishment or service.

In its report received in September 2002, the Government indicates that the policy of gabonization is implemented with discernment and encourages the occupational integration of nationals while settling at the time of hiring the conditions for the employment and departure of foreign workers, in compliance with section 2 of Decree No. 00663/PR/MTPS of 5 July 1972. As a result, very few complaints have been filed against dismissals of foreigners.

The Committee notes the Government's reply. It still has concerns, however, as to whether at the implementation of the policy of gabonization of jobs is consistent with the provisions of the Convention. The guarantees cited by the Government may not be adequate to afford the protection of foreign workers required by *Article 4* of the Convention. It trusts that the Government will take all necessary steps to ensure that, in the absence of any valid concerns mentioned in *Article 4*, the gabonization of a job may not be cited as a valid concern for dismissal within the meaning of the Convention.

The Committee will accordingly devote close attention to the next report of the Government in which it hopes to find practical information on the application of the provisions of the Convention, and particularly information on the number of complaints against dismissals of foreign and national workers, the results thereof, the nature of the redress granted and the average time needed for a ruling to be handed down and the number of dismissals, if any, linked to implementation of the National Employment Pact (*Part V of the report form*).

[The Government is asked to report in detail to the present comments in 2005.]

Latvia

Termination of Employment Convention, 1982 (No. 158) (ratification: 1994)

The Committee notes with interest the Government's report and the information it contains on the effect given to the Convention by the provisions of the Labour Act of 20 June 2001. It welcomes in particular the provisions adopted to ensure consultations with workers' representatives and notification of the competent authority when terminations of employment are contemplated for economic, technological, structural or similar reasons, in accordance with *Articles 13 and 14 of the Convention*.

A request regarding certain other points is being addressed directly to the Government.

Turkey

Termination of Employment Convention, 1982 (No. 158) (ratification: 1995)

1. The Committee refers to its previous comments as well as the conclusions adopted in 2000 by the committee set up by the Governing Body to examine a representation by the Confederation of Turkish Trade Unions (TÜRK-İ) alleging non-observance by Turkey of the present Convention, and notes the information contained in the Government's report received in 2003. The Committee notes the adoption in 2003 of the new Labour Act No. 4857 and, in particular, its Parts I and II. It also notes the comments submitted in 2003 by the Confederation of Progressive Trade Unions of Turkey (DISK).

2. The Committee notes with satisfaction that, in accordance with *Articles 4, 5 and 6 of the Convention*, section 18 of the new Labour Act prescribes that dismissal be based on a valid reason and proscribes certain bases for dismissal. The Committee notes, however, that sections 1 and 4 of the Labour Act contain provisions which exclude several categories of workers from its application. The Committee further notes that section 25 of the Labour Act contains provisions concerning valid grounds for dismissal which include "Cases contradicting rules of ethic and goodwill and similar cases" and "*force majeure*", and that section 18 provides that the provisions requiring dismissals to be based on a valid reason, do not apply to enterprises employing 30 or fewer workers. With reference to this latter limitation, DISK alleges that it will have the effect of excluding some 95 per cent of all workplaces from the scope of the protection by reason of section 18. The Committee invites the Government to indicate in its next report how protection at least equivalent to the

protection offered by the Convention is ensured for all excluded categories of workers – in particular for employees of enterprises with fewer than 30 employees. The Government is also invited to provide information on the tripartite consultations held on the exclusions from the scope of application of the Labour Act, provided for under *Article 2* of the Convention.

3. The Committee also notes with satisfaction that in accordance with *Articles 7, 8, 9 and 10* of the Convention, section 20 of the new Labour Act entitles any worker who is dismissed to appeal against that dismissal in court, and section 21 prescribes the consequences of an unjustified dismissal. The Committee invites the Government to provide information on the application in practice of these provisions.

4. The Committee hopes that in its next report the Government will also include information on the questions pending since the comments by the Committee in 2000 and the discussion in the Conference Committee in 2001 concerning the amendment of the Maritime Labour Act (No. 854) and the Journalists' Labour Act (No. 5953) to give effect to the Convention.

Uganda

Termination of Employment Convention, 1982 (No. 158) (ratification: 1990)

1. With reference to the comments that it has been making for many years, the Committee regrets to note that the Government indicates once again in the report received in June 2004 that the draft Employment Bill which, according to the Government, should give effect to the Convention, has still not been adopted. Recalling that under the terms of *Article 1* the provisions of the Convention are required to be given effect by laws or regulations (in so far as they are not made effective by collective agreements, arbitration awards or court decisions, or in such other manner as may be consistent with national practice), the Committee observes that the reform of the labour law has benefited from continued ILO assistance, particularly in the context of project UGA/99/0003 financed by UNDP. In this context, the Committee considers that it is particularly regrettable that the draft Employment Bill has still not been adopted and that over 13 years after the entry into force of the Convention, the Government has not yet provided the slightest information on its application.

2. The Committee trusts that the Government will be in a position in the very near future to report real progress in the adoption of the relevant legislation and that it will provide full particulars in its next report on the application of the provisions of the Convention in both law and practice.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to **Convention No. 158** (*Latvia, Lesotho, Luxembourg*).

Wages

Bolivia

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1977)

The Committee notes the Government's report and wishes to draw its attention to the following points.

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 that by Act No. 1715 of 18 October 1996 on agrarian reform, agricultural wage workers have come within the scope of application of the General Labour Act and that a Supreme Decree, which is currently in the process of adoption, is 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 chestnut 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, this amount is renegotiated every year and increases proportionately to the evolution of the consumer price index. The Government adds that the national minimum wage is used for the calculation of various pay supplements and social security benefits, for instance seniority bonus and maternity allowance, and therefore has 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 reply, the Government indicates that no consultations with the Bolivian Labour Federation (COB) were possible this year due to persistent claims of that organization linked to the participation of the President of the Republic in these consultations. However, negotiations were 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 states that it cannot enter into any such discussions with the Confederation of Private Employers of Bolivia (CEPB) since article 8 of the Statutes of this organization prevents 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 keep it informed of any developments concerning the establishment of the National Council on Labour Relations.

Article 5 and Part V of the report form. The Committee notes that the Government intends 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 continuing to supply all available information on the application of the Convention in practice.

Brazil

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1983)

The Committee notes the observations made by the Association of Labour Inspectors of the Gaúcha region (AGITRA) and the Association of Labour Inspectors of the Paraná region (AAIT/PR), which were received on 26 July 2004 and forwarded to the Government on 31 August 2004, on matters related to the application of the Convention.

The two workers' organizations allege non-observance of the provisions of the Convention, especially *Article 4* which requires full consultation with workers' representative organizations at all stages of the establishment, operation and modification of the minimum wage fixing machinery. Referring extensively to the Committee's analysis of the terms "consultation" and "participation" in the 1992 General Survey on minimum wages, the AGITRA and the AAIT/PR consider that whatever discussions are held in the country with respect to minimum wage levels cannot qualify as consultations but rather as a mere formality consisting of information sessions conducted by the Government. According to the same organizations, the non-participation of the social partners in the determination of minimum wage rates explains why Brazil's minimum wage is one of the lowest in Latin America and represents less than 30 per cent of the country's average wage. The AGITRA and the AAIT/PR also denounce the fact that the legal instruments establishing minimum wage rates are adopted as "provisional measures" under article 62 of the Federal Constitution which allows for little or no discussion before the National Congress.

The Committee notes that some of the matters raised by the AGITRA and the AAIT/PR are closely related to the issues it has been raising in previous comments, particularly the need for meaningful consultations within a well-defined, commonly agreed and preferably institutionalized framework which should afford the social partners a genuine opportunity to express their views and have some influence on relevant decisions. The Committee hopes that the Government will provide full particulars on the matters raised above by the two workers' organizations as well as on the Committee's previous comments.

Burundi

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1963)

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 Decrees Nos. 1/015 of 19 May 1990 and 100/120 of 18 August 1990 on public contracts. In this connection, the Committee wishes to draw attention to the following points.

Article 2 of the Convention. Further to its previous comments, the Committee is bound to recall that, under *Article 2, paragraphs 1 and 2*, of the Convention, the workers employed in public contracts are entitled to wages and labour conditions at least as good as those normally observed for the kind of work in question, whether determined by collective agreements, arbitration or legislation. The reason the Convention refers to collective agreements first is that collective agreements, or agreements reached through some kind of negotiation or arbitration, normally prescribe more favourable conditions than the conditions flowing from legislation. The insertion therefore of labour clauses in public contracts seeks to guarantee that the workers concerned enjoy labour conditions not less favourable than whichever is the most favourable of the three alternatives provided for in the Convention, i.e. collective negotiation, arbitration or legislation. Therefore, while noting the Government's indication that collective agreements by sectors have not as yet been concluded, the Committee asks the Government to indicate the measures taken or envisaged to ensure that section 2 of Presidential Decree No. 100/49 of 11 July 1986 is applied in practice in a manner consistent with the requirements of the Convention.

In addition, the Committee notes the Government's statement that no specific measures have been taken to ensure that persons tendering for contracts are aware of the terms of the labour clauses. In fact, section 26 of Decree No. 100/120 of 18 August 1990 concerning the specifications of public contracts does not expressly provide that invitations to tender should contain information on the labour clauses. The Committee therefore requests the Government to take all appropriate measures to ensure that the terms of the labour clauses are brought to the notice of tenderers in accordance with *Article 2, paragraph 4*, of the Convention.

Part V of the report form. The Committee notes the statistical information contained in the Government's report regarding the number of public contracts awarded in 1999 and 2000 as well as the number of workers engaged in the execution of some of those contracts. It requests the Government to continue to provide, in accordance with *Article 6* of the Convention and *Part V of the report form*, all available information on the practical application of the Convention, including, for instance, copies of public contracts containing labour clauses, extracts from official reports, information concerning the number of contracts awarded during the reporting period and the number of workers covered by relevant legislation, statistics from inspection services on the supervision and enforcement of relevant legislation and any other information bearing on the practical implementation of the requirements of the Convention.

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

Central African Republic

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1964)

The Committee recalls its previous observations concerning the Government's continued failure to provide for labour clauses in public contracts in accordance with the provisions of the Convention. In its last report, the Government refers to Constitutional Acts I and II of 15 March 2003 on the provisional organization of state powers and Order No. 007/MJI-DGET/DTLS of 27 February 1979 determining the classification and basic wage of workers in the absence of collective agreements. Even though copies of the above texts have not been made available to the Committee, the Committee estimates that these instruments bear strictly no relevance to the obligation arising from *Article 2 of the Convention* for the insertion of standard labour clauses in those public contracts falling within the conditions specified in *Article 1* of the Convention. The Government states that the terms of the clauses to be inserted in public contracts have not been determined but takes the view that the requirements of the Convention are complied with merely because public contracts are awarded by central authorities, they are subject to the relevant provisions of the Labour Code and their execution is controlled by the regional labour inspection services. While noting the Government's statement, the Committee regrets that no real progress has been made in the application of the Convention. The Committee recalls the Government's repeated assurances that the 1961 decrees on public contracts for the supply of goods and services would be amended taking into account the Committee's suggestions. The Committee also recalls that it has been requesting for years a copy of the National Collective Agreement for Public Works and Construction to which reference was made in the Government's report submitted in June 1987 but no such text has ever been received. Under the circumstances, the Committee hopes that the Government will make a real effort to maintain a meaningful dialogue with the supervisory organs of the Organization on the application of this Convention. It once again urges the Government to take all necessary measures without further delay to bring its national law and practice into conformity with the clear terms and objectives of the Convention.

[The Government is asked to report in detail in 2005.]

Protection of Wages Convention, 1949 (No. 95) (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 observations from the Christian Confederation of Workers of Central Africa (CCTC) concerning the application of *Article 12 of the Convention*. The Committee notes that the Office brought the above observations to the Government's attention on 18 October 2002 and that, so far, the Government's comments on them have not been received. The Committee hopes that the Government will send its comments as soon as possible so that the Committee may examine them together with the observations by the CCTC.

The Committee recalls that in its previous observation it requested the Government to provide full and up-to-date information on: (i) the actual size of the outstanding debts due to wage earners (number of workers affected, length of delay in payment and total amount of sums owed, number and nature of establishments concerned); (ii) the specific measures taken to improve the situation including measures to ensure effective supervision, strict application of penalties and adequate compensation of workers' losses from the delay in payment; (iii) the results obtained.

In its report the Government indicates that at 30 August 2002 there were wage arrears only in the public sector and that they covered 20 months, from December 2000 to July 2002.

The Committee expresses its concern at the non-payment of wages in the public sector. It notes that this problem has lasted for nearly two years and expresses regrets that the Government's report does not provide the information requested previously on the number of workers concerned, the total amount due and the number and nature of the establishments concerned by the problem of wage arrears. Nor does the Government's report refer to any measures taken to improve the situation, in particular by means of effective supervision, strict application of sanctions and adequate compensation for the losses sustained by workers as a result of the delays. The Committee therefore urges the Government to take appropriate measures without delay to settle the arrears affecting public sector workers and their families.

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.

Chad

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (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:

The Committee regrets that the Government's report responds only partially to its previous comments. It therefore draws the Government's attention once again to the following points.

Article 3 of the Convention. The Committee recalls its previous observations in which it requested the Government to indicate any measures taken with a view to updating the guaranteed interoccupational minimum wage (SMIG) and the guaranteed minimum agricultural wage (SMAG) which were last revised in 1995. The Committee notes that the Government is still not in a

position to report any progress in this respect and recalls that the fundamental objective of the Convention, which is to ensure to workers a minimum wage that guarantees a decent standard of living for them and their families, cannot be meaningfully attained unless minimum wages are periodically reviewed to take account of changes in the cost of living and other economic conditions. Moreover, the Committee has been requesting additional information as regards the equal representation of the employers and workers concerned in the operation of the minimum wage fixing machinery. In its reply, the Government states that the Trade Union Confederation of Chad (CST) is now among the social partners consulted by the Government and that the said organization is represented in joint committees. The Committee takes this opportunity 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 should 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.

Article 4. The Committee has been requesting the Government to take the necessary steps to enforce the minimum wage rates fixed in the public sector. According to the Government's report, although the application of the SMIG in the public sector continues to be a problem, a protocol of agreement has been concluded in 2003 between the Government and the trade union centres for the establishment of a joint committee to determine the wage scales applicable to workers in the public sector. The Committee requests the Government to supply a copy of this protocol of agreement and to keep it informed of the new wage rates for public employees as soon as these are fixed. The Committee would also be interested in receiving additional information on the functioning of the new joint committee, including for instance its composition or the criteria used in fixing minimum wage rates.

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

Colombia

Protection of Wages Convention, 1949 (No. 95) (ratification: 1963)

The Committee notes the Government's report and some earlier observations, which had been received on 24 December 2003, in response to its previous comments. It also notes the new comments made by the Union of Maritime and River Transport Workers (UNIMAR), dated 30 April, 27 July and 21 October 2004. In addition, the Committee notes the communication of the Workers' Union of *Administradora de Seguridad Limitada* (SINTRACONSEGURIDAD), dated 23 December 2003, and the Government's reply, dated 26 May 2004. All these comments concern problems of unpaid wages and the special protection of wage claims in bankruptcy proceedings.

With respect to the detailed comments of UNIMAR concerning the ongoing liquidation of the Merchant Navy Investment Company, S.A. (formerly the Grancolombian Merchant Navy, S.A.), the Committee notes the summary overview of the dispute provided by the Government and the information regarding the latest developments in the liquidation process. The Committee lacks, of course, any authority for intervening in the manner in which the judicial or administrative authorities deal with specific labour disputes, but feels obliged to recall the need for enhanced protection of workers' earnings for work already performed, as required under the relevant provisions of the Convention. The Committee hopes therefore that the Government will make every effort to put in place accelerated payment procedures to ensure the rapid payment of workers' privileged claims in similar proceedings. It accordingly requests the Government to keep it informed of any definitive settlement of the outstanding payments to the 23 employees and 774 pensioners of the Merchant Navy Investment Company.

As regards the comments of SINTRACONSEGURIDAD alleging non-payment of wages to former employees of "Conseguridad" for security services provided to Bancafe (formerly Banco Cafetero), the Committee notes the explanations of the Government and the judicial decision of 7 October 2003 in which it was concluded that the bank had no responsibility for settling any service-related claims that the employees of "Conseguridad" might have against their employing company in respect of services provided to the bank. Finally, with regard to previous complaints submitted by the Colombian Association of Airline Pilots (ACDAC), the Committee notes the Government's indication that a labour administrative inquiry is in progress by the competent labour inspection directorate. The Committee trusts that the Government will not fail to report on the outcome of this inquiry and the measures taken to put an end to the accumulation of wage debts in the Intercontinental Aviation Company. The Committee seizes this opportunity to recall that a State that ratifies the Convention is required not only to apply it scrupulously to public employees but also to ensure that it is applied by local authorities and private enterprises. The Convention, as the Committee has pointed out on several occasions, does not offer ready-made solutions to phenomena such as large-scale wage crises or corporate bankruptcies, but serves as a reminder of the special nature of wages as the workers' principal, if not sole, means of subsistence, hence the necessity for vigorous and effective action to eliminate abusive pay practices.

Comoros

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1978)

The Committee recalls its previous comments in which it noted that despite the establishment of the Higher Council of Labour and Employment (CSTE), no minimum wage rates had been fixed in recent years and that the wage levels applied in practice no longer reflected the economic or social realities in the country. In its reply, the Government states

that the CSTE has held its first meeting and has agreed on a draft text setting the guaranteed interoccupational minimum wage (SMIG) at 35,000 KMF. According to the Government's report, the draft text is currently before the competent authorities for signature.

The Committee takes due note of the above information. It requests the Government to supply in its next report additional information on the first meeting of the CSTE, including full particulars on the participation, the views expressed by the social partners, the criteria taken into account in fixing the SMIG level, the coverage of the new minimum wage rate as well as any consideration given to the problem of the periodic review or readjustment of the SMIG. The Committee hopes that the decree regarding the determination of the guaranteed interoccupational minimum wage will take effect very shortly and requests the Government to transmit a copy of that text once it has been formally adopted. In addition, the Committee asks the Government in its next and subsequent reports to provide information on the practical application of the Convention as required by *Article 5 of the Convention* and *Part V of the report form*.

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) ***(ratification: 1978)***

The Committee notes the Government's succinct report. It notes in particular the Government's statement that the system of remuneration of agricultural workers needs to be reviewed to take into account the evolving social conditions. It further notes the references to UNDP- and EU-financed projects on micro and small enterprise development and the promotion of income-generating activities but is inclined to consider that such information is hardly relevant to the nature and form or the method of operation of the minimum wage fixing machinery in the agricultural sector.

While noting the Government's reference to past WFP-assisted activities whereby food supplies were provided in exchange of work, the Committee asks the Government to clarify in its next report whether any food-for-work activities are currently pursued, and under which conditions, and also to communicate full particulars on the application in law and practice of section 98 of the Labour Code which makes provision for the partial payment of wages in the form of food and lodging. The Committee would also appreciate receiving information on the practical application of the Convention called for under *Article 5 of the Convention* and *Part V of the report form*.

The Committee refers also to the comments made under Convention No. 26.

Congo

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

The Committee notes the information provided by the Government in reply to its previous comments.

With regard to the accumulated wage arrears owing to state employees, the Committee notes from the Government's report that the wage debt is estimated at 187.6 billion CFA which corresponds to the wage bill of 23 months. The Government states that in accordance with the Protocol of Agreement of 9 August 2003, the settlement of outstanding payments should commence in the fourth quarter of 2004. The Government adds that since 2000 all steps have been taken to prevent the further deterioration of the situation and that currently state employees receive their salaries regularly. While noting the extent and seriousness of the ongoing wage crisis, the Committee requests the Government to transmit a copy of the above referenced Protocol of Agreement and to supply in its next report detailed information on the number of workers affected, the amount of arrears settled according to the terms of that Protocol and the time schedule for the repayment of the sums remaining due. The Committee urges the Government to accelerate its efforts to put an end to the phenomenon of delayed payment or non-payment of wages and wishes to refer in this connection to paragraph 355 of its 2003 General Survey on the protection of wages in which it pointed out that 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 whereas the delayed payment of wages or the accumulation of wage debts clearly contravene the letter and the spirit of the Convention and render the application of most of its other provisions simply meaningless.

With respect to the payment of the sums due to the former workers of the Ogooué Mining Company (COMILOG) to which the Committee has been drawing attention for several years, the Committee notes the Government's indication that the question has been discussed with the Government of Gabon at Libreville in July 2003. More concretely, the Government refers to a Protocol of Agreement signed on 19 July 2003 according to which COMILOG accepted to pay a lump sum of 1.2 billion CFA in final settlement of all workers' claims and ceded to the Government of the Republic of the Congo the proprietary rights to all its movable and immovable assets in the country. The Government further states that the reimbursement of the amounts due to the former workers of COMILOG can thus be effected once the practical arrangements for such payment have been settled. The Committee notes the positive developments with regard to the recovery by the former workers of COMILOG of all the amounts due to them some ten years after the matter was first brought to the knowledge of the International Labour Office. In this regard, the Committee wishes to reiterate, as it observed in paragraph 398 of the abovementioned General Survey, that the principle of the regular payment of wages, 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. The Committee therefore asks the Government to speed up and closely monitor the process of settling the outstanding payments to the workers

concerned and to supply in its next report full particulars on the progress made in this regard. The Committee would also appreciate receiving a copy of the Protocol of Agreement of 19 July 2003.

[The Government is asked to reply in detail to the present comments in 2005.]

Costa Rica

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

The Committee notes the information supplied by the Government in reply to its previous comments.

Article 3, paragraph 1, of the Convention. With regard to the practice of remunerating coffee plantation workers with money substitutes, which is permitted under section 165, paragraph 3, of the Labour Code, the Committee notes the Government's statement that by letter dated 8 August 2003 the Minister of Labour and Social Security requested the Directorate of Legal Affairs to examine this question and prepare a draft amendment to ensure that section 165 of the Labour Code is fully consistent with the requirements of this Article of the Convention. The Committee regrets, however, that although the Government has expressed its intention to revise that section on several occasions, no real progress has as yet been made. The Committee therefore urges the Government to take concrete measures without further delay to bring its law and practice into conformity with the Convention's clear prohibition against the payment of wages in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender.

Article 4, paragraph 2. The Committee has been commenting for some time on the need to take appropriate action, either by adopting the regulations provided for in section 2 of Decree No. 11324-TSS or by amending section 166 of the Labour Code to guarantee the attribution of a fair and reasonable value to allowances in kind. While noting the Government's reference to the letter dated 8 August 2003 by which the Minister of Labour and Social Security requested the Directorate of Legal Affairs to look into this issue and propose specific amendments to the relevant provisions, as may be required, the Committee is bound to observe that regrettably the situation has not evolved and that no concrete action has as yet been taken. The Committee wishes to refer in this respect to paragraphs 144 to 163 of its General Survey on the protection of wages in which it noted that the principal requirements of this Article of the Convention, in particular the obligation to ensure that authorized allowances in kind are appropriate for the workers' personal use and fairly valued, are not always fully understood and that beyond the legislative recognition of this principle specific measures are needed to ensure its practical application. The Committee therefore once again urges the Government to take steps to ensure the full implementation of this Article of the Convention in law and practice.

Articles 8 and 12, paragraph 1. Further to previous comments made by the Transport Workers' Union of Costa Rica (SICOTRA) and the Confederation of Workers Rerum Novarum (CTRN) alleging abusive pay practices, such as unjustified wage reductions and irregular payment of wages, against public transport workers and workers in the road transport sector, the Committee notes the Government's reference to labour inspection visits in three road transport enterprises which were conducted in August 2002 and January 2003 and which revealed no wage-related offences. Given that the labour inspection reports communicated by the Government cover a total of 160 employees, the Committee would appreciate receiving additional explanations as to how representative these inspection results are of the situation prevailing in the road transport sector in general. In this regard, the Committee would be interested in obtaining some statistical information on the total number of enterprises and workers employed in that sector. Finally, the Committee would be grateful to the Government for continuing to supply documented information as regards the enforcement of the Convention, particularly in those branches of economic activity in which pay irregularities are observed, denounced or suspected.

[The Government is asked to reply in detail to the present comments in 2005.]

Cyprus

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Further to its previous observation, the Committee notes the Government's statement that in May 2003 the Tripartite Technical Committee of the Labour Advisory Board completed the drafting of a new law on the protection of wages which will ensure full legislative conformity with the Convention. The Government adds that the draft text will be transmitted to the full Board for consideration and approval before being submitted to the Council of Ministers. The Committee notes the Government's assurances that the new legislation takes satisfactorily into account all the requirements of the Convention and the Committee's past comments. The Committee requests the Government to keep it informed of any further progress made towards the adoption of the new legislation and to provide a copy as soon as it is enacted.

In addition, the Committee notes with interest the adoption of Act No. 25(I) of 2001 concerning the protection of employees' rights in the event of the employer's insolvency which provides for the establishment of a wage guarantee fund. The wage guarantee fund covers unpaid wages for the last 13 weeks of work as well as claims for holiday pay and end-of-year bonuses, up to a weekly ceiling equivalent to four times the basic weekly wage used for the assessment of social security contributions. In this connection, the Committee wishes to draw the Government's attention to the

Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), which marks a clear improvement over the standards set out in *Article 11* of Convention No. 95 and which provides for a distinct set of principles for the protection of workers' claims by means of a privilege or through the intervention of an independent guarantee institution or both in combination. Hoping that the Government will give favourable consideration to the ratification of the above instrument, the Committee would appreciate receiving additional information on the operation of the wage guarantee fund including copies of any regulations which may have been issued under section 8(2) of Act 25(I)/2001 regarding its financing, administration and payment procedure.

Ghana

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (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:

Further to its previous observations, the Committee notes with regret that the Government is still unable to report any progress concerning the application of the Convention. The Committee recalls that for the last ten years the Government has been indicating that a tripartite advisory body has been reviewing national labour laws with a view to harmonizing them with ratified Conventions. The Committee can only hope that measures will be taken in the very near future to ensure that labour clauses are included in public contracts and that adequate sanctions are applied in conformity with *Articles 2 and 5 of the Convention*.

The Committee again strongly suggests that the Government takes the necessary steps without delay to ensure that full effect is given to the provisions of the Convention and suggests that the Government may wish to consider the possibility of requesting ILO assistance to review the rules on public contracts in order to bring them into conformity with the requirements of the Convention.

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

[The Government is asked to report in detail in 2005.]

Greece

Protection of Wages Convention, 1949 (No. 95) (ratification: 1955)

Further to its previous observations concerning the application of *Articles 4 and 7 of the Convention*, the Committee notes the Government's explanations, in particular the reference to article 653 of the Civil Code which, according to the Government's report, explicitly takes up the provisions of the Convention in respect of the payment of wages in kind. The Committee is inclined to believe, however, that the quoted text is part of a commentary, possibly from an annotated edition of the Civil Code, rather than the actual text of article 653 of the Civil Code. It would therefore request the Government to provide in its next report further clarifications on this point and to transmit a copy of the legislative text in question. The Committee wishes to refer in this connection to paragraph 510 of its 2003 General Survey on protection of wages in which it expressed the view that some of the provisions of the Convention require specific practices to be prohibited or to be regulated in a particular manner and thus call for legislative action to this effect, while others merely require certain practices to be followed and thus seem to leave scope for implementation by various means, including custom or practice. Recalling that the provisions of *Article 4, paragraphs 1 and 2*, and *Article 7, paragraph 2*, of the Convention are not self-executing and therefore require the competent authorities to take appropriate measures to ensure their observance, the Committee hopes that the Government will make every effort to take the necessary action and bring its legislation into conformity with the Convention. Finally, the Committee would appreciate if the Government could provide, in accordance with *Part V of the report form*, general information on the practical application of the Convention, including any difficulties encountered with respect to the timely payment of wages, extracts from labour inspection reports, copies of any official publications or studies relating to the questions dealt with in the Convention as well as any other particulars bearing on the implementation and enforcement of the Convention.

Guinea

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (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 the Government's report. It regrets that despite its repeated comments made in the past ten years, the Government has not as yet been in a position to issue the decree fixing the minimum hourly wage rate as referred to in section 211 of the Labour Code. The Committee has been requesting for some time past additional information particularly as regards the full consultation and equal participation of employers' and workers' organizations in the operation of the minimum wage fixing machinery provided for in the Labour Code. In its reply, the Government merely states that there is no guaranteed interoccupational minimum wage (SMIG) and that the statutory instrument in the implementation of section 211 of the Labour Code is still under examination. The Committee notes therefore with concern that the provisions of the Convention are no longer

given effect in practice as the Government fails to determine minimum wage rates for the workers employed in those trades in which no arrangements exist for the effective regulation of wages by collective agreement and wages are exceptionally low. It urges once again the Government to take the necessary action to fulfil its obligations arising out of the ratification of this Convention and to communicate information on the measures taken to this end. Finally, the Committee reminds the Government that it may have recourse to the technical assistance of the Office on these matters.

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

[The Government is asked to report in detail in 2005.]

Islamic Republic of Iran

Protection of Wages Convention, 1949 (No. 95) (ratification: 1972)

The Committee recalls that by communications dated 20 September and 31 October 2002, respectively, the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL) had submitted observations concerning the application of the Convention, indicating in particular, serious and persistent problems of non-payment of wages, especially in the textile industry, and detailing the different actions taken by unpaid workers in specific textile mills and other industrial plants to protest against the several months delay in the payment of their wages. Both organizations consider the situation prevailing throughout the country to be dramatic; they refer to growing unrest among Iranian workers and they denounce the sometimes violent response of the authorities. Among the many facts and figures reported by the ICFTU and the WCL, the Committee notes that the delay in the payment of wages often varies from three to nine months and may even stretch to two years. It also notes that problems of unpaid remuneration relate to the payment not only of wages but also of unemployment benefits and pensions. In addition, the Committee notes other sources of information, such as UN documents concerning the situation of human rights in the Islamic Republic of Iran, which refer to the critical situation of 1,400 companies, chiefly in the textile sector, and an estimated 80,000 workers who are not being paid.

In its reply, transmitted some two years after the filing of the comments of the two organizations, the Government gives a general overview of the legal remedies provided for in the Labour Code for the recovery of unpaid wages and the settlement of wage claims, and provides some up-to-date information on the current employment situation in some of the textile factories referred to in the communications of the ICFTU and the WCL. The Government does not supply, however, concrete statistics showing the nature and scale of the wage crisis facing the textile industry and possibly other sectors of the national economy, nor its evolution in the past few years.

As the Committee has pointed out on numerous occasions, a proper assessment of the problem is only possible through the systematic collection of statistical data emanating from credible sources. It therefore asks the Government to supply in its next report, documented information on the number of workers affected, the number of textile factories or related establishments experiencing difficulties in the payment of wages, the average length of the delay in the payment of wages, the amount of arrears settled and the outstanding amount of arrears, the number of inspections made and the penalties imposed, and any negotiated time schedule for the repayment of the sums outstanding. The Committee would also appreciate receiving detailed information on any other occupational category or branch of economic activity which may experience similar problems on a large scale.

The Committee recalls that for the past six years it has been commenting extensively on problems related to abusive pay practices and the non-payment of wages affecting a considerable number of countries worldwide, and has been drawing attention to three essential elements insofar as the application of the Convention is concerned: (i) efficient control and supervision basically implying the strengthening of labour inspection services; (ii) truly dissuasive and strictly enforced sanctions against those who take advantage of the economic situation to commit abuses; and (iii) the means to redress the injury caused, including not only the full repayment of the amounts due but also fair compensation for the losses incurred on account of the delayed payment. In this connection, reference may be made to paragraphs 356 to 374 of the General Survey of 2003 on the protection of wages in which various wage debt crises are discussed in light of the obligations arising out of *Article 12, paragraph 1, of the Convention*. The Committee therefore requests the Government to indicate in its next report the legislative, administrative or other measures, especially regarding methods of supervision and enforcement of national legislation, that it intends to adopt to ensure effectively that wages are paid in full and on time and all wage arrears are settled. It also asks the Government to forward copies of any relevant legal text in this regard.

Finally, the Committee wishes to emphasize, as it was noted in paragraph 366 of the abovementioned General Survey, that the phenomenon of wage arrears is “part of a vicious circle that inexorably affects the national economy in its entirety” and that unless urgent action is taken to contain it before it takes significant proportions, it may spill over to other sectors of the national economy with disastrous social and financial consequences. The Committee accordingly requests the Government to intensify its efforts and exhaust all available means in order to eliminate accumulated wage debts and prevent the recurrence of similar phenomena in the future.

Kyrgyzstan

Protection of Wages Convention, 1949 (No. 95) (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:

The Committee notes the detailed information supplied by the Government in its report, including texts of relevant legislation and descriptions of the application of the Convention in practice. The Government refers in particular to difficulties in applying *Articles 4* (regulation of wage payment in kind), *7* (works stores and services), *8* (deductions from wages), *10* (attachment and assignment of wages) and *12* (regular payment of wages and the final settlement) of the Convention. The Committee notes this information with concern and hopes that the Government will take all possible measures to overcome these difficulties.

The Committee, however, appreciates the Government's attitude about providing information on the problems it is faced with and suggests that the Government request technical assistance of the Office. It would be grateful if the Government would continue to communicate information on the measures taken or envisaged in this regard as well as on any improvement in the situation.

The Committee asks the Government to provide information on particular points raised in the request which it is addressing directly to the Government.

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

Libyan Arab Jamahiriya

Protection of Wages Convention, 1949 (No. 95) (ratification: 1962)

The Committee notes the Government's succinct report and wishes to draw once again its attention to the following points.

Article 12, paragraph 2, of the Convention. The Committee recalls its previous comments concerning the situation of thousands of sub-Saharan migrant workers who were allegedly expelled from the Libyan Arab Jamahiriya in 2000 without receiving the wages owed to them. These comments were related to some earlier observations concerning the final settlement of wages due to Palestinian workers who had also been forced to leave the country in 1995. In addition, the question of the settlement of wage entitlements of Palestinian workers was discussed by the Conference Committee in June 1996, while in 1985 a representation was filed (which was finally withdrawn in 1991 after an agreement was reached between the parties concerned) under article 24 of the Constitution alleging non-observance of the Convention by the Libyan Arab Jamahiriya following the expulsion of many thousands of workers of Tunisian and Egyptian nationality.

In following these developments, the Committee has been consistently drawing attention to the following principles: (i) the obligation arising out of *Article 12, paragraph 2, of the Convention* is incumbent upon the employer(s) concerned and therefore the Government may not ask foreign workers to claim from their own governments the unpaid salaries; (ii) the Convention applies to all persons to whom wages are paid or payable, irrespective of the existence of a valid employment permit or formal contract; (iii) regardless of the reasons that may have prompted the deportation of foreign workers considered to be illegal immigrants, the Government is responsible for establishing whether any amounts are due to the workers concerned and ensuring that any existing wage debts are fully paid. As the Committee emphasized in paragraph 398 of its 2003 General Survey on the protection of wages, 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.

While dismissing the latest allegations as unfounded and grossly exaggerated, the Government confined itself to making conflicting statements. In fact, whereas the Government initially referred to the displacement of African illegal immigrants undertaken in full coordination with their respective home countries, in its last two reports it affirmed that no African or other citizen was forced to leave the country. Moreover, the Government has failed to provide specific information, as requested, concerning the circumstances surrounding the deportation of illegal immigrants, the number of workers affected, the total amount of wage claims settled or any outstanding payments. In light of the preceding observations, the Committee again asks the Government to communicate detailed particulars on the manner in which the situations described above have been handled and the measures taken to enable the workers concerned to recover all sums due to them.

Articles 2, 4, 7 and 8. The Committee recalls that it has been commenting for more than 25 years on the application of the above provisions, particularly as regards: (i) the coverage of agricultural workers by the Labour Code of 1970; (ii) the limits within which wages may be paid in kind; (iii) the conditions of operation of works stores; and (iv) the overall amount of permissible wage deductions. The Committee has indicated that these matters did not appear to be regulated in the terms required by the Convention and has repeatedly asked the Government to consider the adoption of appropriate legislation to give full effect to the relevant Articles of the Convention.

In earlier reports, the Government had referred to a commission set up in 1985 to advise on appropriate action with regard to the Committee's comments, and subsequently to another national commission entrusted to examine outstanding

questions related to International Labour Conventions and Recommendations, but no information was provided on any concrete measures taken following the recommendations of these commissions. In some other reports, the Government had indicated that Act No. 15 of 1981 on wages covered most of the issues raised by the Committee but no copy of that legislation was ever communicated to the Office. More recently, the Government stated that a new Labour and Employment Code was being drafted to remedy the existing shortcomings in legislation but no such text has as yet been adopted. The Committee is obliged to conclude that despite its persistent comments, the Government has been unable to provide any tangible sign of progress in aligning its legislation with the requirements of the Convention. The Committee therefore urges the Government to take at last the necessary action and to supply the long-awaited information respecting the measures taken to ensure strict compliance with the provisions of the Convention.

[The Government is asked to reply in detail to the present comments in 2005.]

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1971)

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 Act No. 31 of 1994 respecting the public service, employment and the labour force, permitting recruitment under an employment contract in the public service and the private sector, was repealed in 1999 and that all the parties engaged in work are therefore governed by the provisions of the Wages Act No. 15 of 1981. The Government states in its report that this Act applies to all national workers, whether they are employed in the public service or in public companies and enterprises and that the minimum wages increase in accordance with the provisions of the above Act.

Article 3 of the Convention. Section 1 of Act No. 15 of 1981 provides that the wage system for national workers "shall establish the principle of equal wages for equal work and equal responsibilities, while being designed to respond to the fundamental needs of workers covered by the system and to grant an annual increase according to the level of output and production. The wage shall be a function of the established output rates, all of which shall be in conformity with the general principles and rules which shall be determined in the regulations issued under the present Act". In view of this provision, the Committee has been requesting the Government for many years to provide information on the elements taken into consideration to determine the level of minimum wages applicable to the workers covered by Act No. 15 of 1981. It therefore requests the Government to provide this information and copies of any regulations adopted under section 1 of the above Act.

Article 4. With regard to the determination of minimum wages, the Committee notes that section 4 of Act No. 15 of 1981 provides that the "wages of all national workers in bodies governed by the provisions of this Act are established in Schedule 1, supplemented by any increments, benefits and other financial emoluments due by virtue of the present Act and the regulations and orders issued under this Act". In section 7, the Act provides that "without prejudice to the provisions of section 4, the People's General Committee shall issue regulations and decisions respecting wages and schedules determining these wages for workers in bodies, institutions, services, societies, public establishments and similar units covered by the provisions of the present Act". The Committee has also been requesting the Government for several years to indicate whether the machinery for the determination of minimum wages which is in force provides for a method for the adjustment of wages from time to time and the participation in this machinery of the representative organizations of workers and employers. The Committee therefore hopes that the Government will provide information on the frequency with which minimum wage rates are adjusted and on the participation of organizations of employers and workers in wage-fixing machinery.

Article 5 and Part V of the report form. The Committee notes that the technical commission will transmit the executive decisions respecting the new administrative structure, in accordance with the decision of the People's General Congress, which were adopted in March 2000. In addition to this information, the Committee hopes that the Government will provide information concerning the adoption of the necessary measures to ensure observance of the provisions of the Convention, with an indication of the minimum wage rates in force and extracts of the reports of the inspection services on the application and observance of minimum wage rates.

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

Republic of Moldova

Protection of Wages Convention, 1949 (No. 95) (ratification: 1996)

The Committee notes the information provided by the Government in reply to its previous comments.

With regard to the payment of wages in kind, the Committee notes that, according to the Government's report in the first half of 2003, there has been a significant progress in reducing the amount of wages paid in the form of goods and services. The Government indicates that, whereas in 2002, 253 million lei worth of goods and services were paid in lieu of money wages, or 5.1 per cent of the annual wage bill, in the first semester of 2003 the payment of wages in kind represented 52.9 million lei, or 1.89 per cent of the annual wage bill. The Government adds that, whereas the payment of wages in kind is practically non-existent in the budgetary sector and is maintained at very low levels in commercial enterprises, transport and communications, hotels and restaurants and the financial sector, it remains widespread in agricultural enterprises where money wages are often replaced by cereals, vegetable oil, fodder and other agricultural products essential for the worker's family. It is known, for instance, that agricultural cooperatives often distribute to their workers any unsold part of their produce in place of cash wages. While noting that the agricultural sector accounts for almost 60 per cent, or 31.4 million lei, of the total amount representing payments in kind in the first half of 2003, the Committee asks the Government to clarify in its next report whether such extensive practice concerns only cases of *partial* payment of wages in kind and, if so, to specify the average proportion of workers' wages being paid in kind.

Moreover, the Government states that in 2002 and the first half of 2003 the labour inspection services have not reported any cases of payment of wages in the form of alcoholic drinks, narcotic substances or tobacco products, nor have any such cases been denounced by trade unions or the workers themselves. The Committee is satisfied that according to the statistical information communicated by the Government the situation is clearly improving but considers the percentage of the inspected enterprises, currently estimated at 15 per cent, which continue to practise wage payment in kind in violation of section 29(3) of the Wages Act of 2002 to be worryingly high. In this connection, the Committee welcomes the Government's announcement that a legislative reform has been initiated to reinforce the system of sanctions for infringement of the labour legislation and accordingly to amplify the powers of the labour inspectorate. The Committee requests the Government to closely monitor the evolution of the situation and to keep it informed of any further progress made in this respect.

With reference to accumulated wage debts, the Committee notes that on 1 July 2003 the total amount of wage arrears stood at 152.5 million lei, as compared to 217.1 million lei in June 2002, which represents a fall of 58.7 per cent. The Government indicates that, even though wage arrears are no longer experienced in the public sector, the deferred payment of wages continues to affect particularly certain branches of economic activity such as agriculture (64.4 million lei), manufacture (36.4 million lei), construction (14.5 million lei) and transport and communications (10.3 million lei). The Government adds that the average delay in the payment of wages has been reduced from 1.1 months to 0.3 months, although in some cases such as the fishing industry workers continue to suffer delays of over three months. The Government also refers to the activities of the labour inspection services and the results obtained during the period from January to July 2003. Concretely, 2,304 inspection visits were carried out, 15,506 violations were observed, 1,997 persons holding responsible positions were sanctioned and 172.8 thousand lei worth of fines were imposed. In addition, the managers of five major companies were punished each by a fine equal to 150 minimum wages under section 41 of the revised Code of Administrative Offences for non-observance of the periodicity of wage payments.

The Committee notes the positive developments with regard to the settlement of wage arrears and encourages the Government to pursue its efforts to resolve the persisting wage crisis. The Committee understands that eliminating the phenomenon of wage arrears is a long and difficult process, especially in conditions of transition and unfavourable economic conjuncture, but wishes to emphasize, as it has pointed out in paragraph 412 of its 2003 General Survey on the protection of wages, that none of the reasons normally advanced by way of excuse, such as the implementation of structural adjustment or "rationalization" plans, falling profit margins or the weakness of the economic situation, can be accepted as valid pretexts for the failure to ensure the timely and full payment to workers of the wages due for work already performed or services already rendered, as required by *Article 12 of the Convention*. The Committee therefore asks the Government to continue to report in full on any measures designed to break the vicious spiral of wage arrears, demonetized transactions and deteriorating working and living standards.

A request on certain other points is being addressed directly to the Government.

Myanmar

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1954)

The Committee notes the Government's report which replies only partially to the matters raised in its previous comments.

Article 1, paragraph 1, and Article 3, paragraph 2(2), of the Convention. The Committee recalls its previous observation in which it requested the Government to indicate any progress made with regard to expanding the minimum wage legislation to industries other than the rice-milling industry and the cigar- and cheroots-rolling industry. The Government, without offering any specific information on this point, states that workers in the private sector generally enjoy wages higher than the minimum wages prescribed while in the public sector the minimum wage was last increased in 2000 by order issued by the Minister of Finance and now amounts to 100 kyats daily or 3,000 kyats monthly. The Committee recalls that a system of minimum wages serves hardly any useful purpose as a measure of social protection designed to overcome poverty and to ensure the satisfaction of the workers' subsistence needs unless minimum wage rates are periodically reviewed in light of the socio-economic conditions prevailing in the country. It therefore asks the Government to provide in its next report detailed information, including copies of the most recent statutory instrument(s) establishing minimum wage rates on: (i) the sectors of economic activity and different categories of workers which are currently subject to minimum wage legislation; (ii) the criteria used in readjusting minimum wage rates from time to time, the rate of recent increases and whether such increases are adequate to maintain the purchasing power of workers concerned in relation to a basic basket of essential goods; and (iii) the measures taken to ensure the prior consultation and equal representation of employers' and workers' organizations in the operation of the minimum wage fixing machinery.

Article 5 and Part V of the report form. The Committee notes the statistical data provided by the Government according to which in 2003 there were 3,971 establishments employing 10,225 workers in the rice-milling industry and 649 establishments employing 3,784 workers in the cigar- and cheroots-rolling industry. The Committee requests the Government to continue to provide up-to-date information concerning the application of the Convention in practice, in particular the minimum wage rates currently in force in the above industries, the evolution of these rates in recent years as

compared to the evolution of economic indicators such as the inflation rate or the national average wage, extracts from official reports and relevant studies and any other particulars bearing on the functioning of the minimum wage system.

[The Government is asked to reply in detail to the present comments in 2005.]

New Zealand

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1938)

The Committee notes the comments made by the New Zealand Council of Trade Unions (NZCTU) concerning the application of the Convention. While acknowledging that significant progress has been made in the period since 1999 in matters related to the minimum wage system, the NZCTU observes in its comments that two areas of concern remain, namely the proposed exemption process for trainees and the level of resources applied to enforcement of minimum wages. Concerning the proposed training minimum wage, the NZCTU considers that there should be trainee scales to be agreed between the appropriate employer and union group and notified the Department of Labour so that trainees are given the opportunity to progress through a scale rather than being stranded on a trainee commencement rate for an extended period. It adds that the minimum wage rates applicable to trainees should reflect what is generally recognized under the current structure of minimum wages, i.e. that those over 18 years of age should receive a higher amount, and notes in this connection that in 2000, only 8 per cent of all industry trainees were aged 15 to 19 years old. As regards enforcement, the NZCTU holds that the promotion material provided by the Department of Labour is not sufficient to ensure effective enforcement and that a higher number of labour inspectors is needed.

The Committee requests the Government to include in its next report any observations it may wish to make on the comments forwarded by the New Zealand Council of Trade Unions. It also asks the Government to keep it informed of all developments concerning the repeal of the training exemption and the implementation of the new training minimum wage and to transmit a copy of the legal instrument adopted to this effect.

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1952)

The Committee notes the comments made by the New Zealand Council of Trade Unions (NZCTU) concerning the application of the Convention. For the most part, these comments refer to the fixing of minimum wages in general and thus relate principally to Convention No. 26. Regarding agriculture, the NZCTU raises specific concerns about enforcement and maintains that the one-to-one work relationships, deduction for lodgings and the problem of isolation call for particular measures in this sector. It also points out that the prevalence of piecework in horticulture is often designed to avoid paying minimum wages.

The Committee requests the Government to include in its next report any observations it may wish to make on the comments forwarded by the New Zealand Council of Trade Unions. In particular, the Committee would appreciate receiving additional information on how it is ensured in practice that allowances in kind, such as board and lodging, are fairly valued as required by *Article 2, paragraph 2, of the Convention*. The Committee would also be grateful to the Government for continuing to supply, in accordance with *Article 5 of the Convention and Part V of the report form*, detailed information on the practical application of the Convention, including available statistics on the number of inspection visits, the penalties imposed, and the wage amounts recovered through enforcement action.

Nicaragua

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1934)

See under Convention No. 131.

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1976)

The Committee has been in receipt of two communications of workers' organizations regarding the application of the Convention. The first, dated 23 April 2004, was made by the Trade Union Workers Confederation "José Benito Escobar" (CST), while the second, dated 12 June 2004, was made jointly by the National Union of Public Employees and the Sandinista Workers' Confederation. The above communications were transmitted to the Government on 19 and 20 August 2004 but no reply has so far been received.

According to the CST, in the last twelve and a half years the minimum wage has been revised six times although the Minimum Wage Act No. 129 of 1991 provides that minimum wage rates should be readjusted once every six months. In addition, the minimum wage rates currently in force have lost most of their purchasing power and are therefore completely inadequate to cover the basic needs of workers and their families. Based on an estimated cost of the basic basket of essential consumer goods of 5,567 cordobas in December 2003, the CST indicates that the current minimum wage of 988.6 cordobas per month represents only 17.7 per cent of that basic basket of goods (as compared to 47 per cent in May 2002 and 45.7 per cent in May 2001). Furthermore, the CST indicates that due to the falling exchange rate of the national

currency against the US dollar (15.7:1 in March 2004 as contrasted to 5:1 in August 1991), the monthly minimum wage expressed in dollars has decreased in the last five years (US\$62.82 in March 2004 as contrasted to US\$66.42 in August 1999, US\$66.84 in May 2001 and US\$68.67 in May 2002) and only moderately increased since the introduction of the national minimum wage some 13 years ago (US\$62.82 in March 2004 as compared to US\$46.38 in August 1991).

For their part, the National Union of Public Employees and the Sandinista Workers' Confederation denounce the consultation process initiated by the Government as being conducted in complete disregard of the criteria referred to in *Article 3(a) of the Convention* and without any real and effective participation of workers' representatives as required under *Article 4, paragraph 2, of the Convention*. In their view, this is not merely a problem of lack of consensus between the Government and the workers in discussing minimum wages but has to do with an institutional practice which in essence deforms and violates the principles of minimum wage-fixing set out in the Convention. Moreover, the two organizations consider the latest increase of the minimum wage rate by 10 per cent for the public sector and by 8.83 per cent for all other economic sectors to be abusive and derisory.

The Committee hopes that the Government will provide full particulars on the matters raised by the workers' organizations to enable the Committee to better evaluate the consistency of the national law and practice with the requirements of the Convention.

Niger

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

Further to its previous observation concerning the need to repeal 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, the Committee notes with regret that the Government is still unable to report any concrete progress. The Government had previously transmitted a copy of the records of the March-April 2002 session of the tripartite Labour Consultative Committee in which a draft Decree to regulate the application of the Labour Code was examined, while in its last report the Government confined itself to indicating that the draft Decree in question is still in the process of adoption. The Committee urges the Government to take at last the necessary measures to ensure the application of *Article 12, paragraph 1, of the Convention* on which it has been commenting for many years and to forward a copy of the Decree regulating the application of the Labour Code once it has been adopted.

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

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1980)

For many years, the Committee has been drawing the Government's attention to the requirements of *Article 4, paragraph 1, of the Convention* and the need to readjust the guaranteed minimum inter-occupational wage (SMIG) which has not been revised since December 1980. In response to the Committee's comments, the Government refers to the persistent economic and financial crisis and states that the SMIG and other minimum wages by occupational category will be revised as soon as national conditions may allow it. In this connection, the Committee is obliged to recall that a system of minimum wages serves no useful purpose as a measure of social protection designed to overcome poverty and to ensure the satisfaction of the workers' subsistence needs unless minimum wage rates are periodically reviewed in light of the socio-economic conditions prevailing in the country. The Committee considers that when minimum rates of pay are systematically left to lose most of their value so that they ultimately bear no relationship with the real needs of the workers, minimum wage fixing is in fact reduced to a mere formality devoid of any substance. The Committee hopes that, more than 20 years after ratifying the Convention, the Government will take the necessary measures to reactivate the minimum wage fixing machinery and thus ensure the effective application of the Convention in practice.

Poland

Protection of Wages Convention, 1949 (No. 95) (ratification: 1954)

The Committee recalls its previous observation in which it requested the Government to provide, following the comments communicated by the Polish Trade Union of Nurses and Midwives (OZZPiP), detailed information on the wage crisis experienced in the nursing services sector and any other occupational category or branch of economic activity affected by similar problems. The Committee also notes the discussion in the Committee on the Application of Standards at the 92nd Session of the International Labour Conference (June 2004) in which the Conference committee concluded that even though it was conscious of the difficult financial situation of the majority of public health-care institutions and the painful structural changes which they went through, delays in the payment of wages or the accumulation of wage arrears constituted a clear violation of the letter and spirit of the Convention and rendered inapplicable most of its provisions.

1. *The deferred payment or non-payment of wages.* The Government reports that the Council of Ministers has dealt with the issue of non-payment of wages on two recent occasions, in September 2002 and July 2003, and has decided to undertake decisive law enforcement measures and to apply stricter sanctions for violation of relevant provisions. The

Government refers to a series of measures, including: (i) the termination of the employment relationship of persons exercising managerial functions in state enterprises in the case of failure to pay remuneration to employees despite the availability of funds; (ii) the amendment of the Labour Code, dated 14 November 2003, according to which the amount of the fine imposed for infringement of employees' rights was doubled; (iii) the agreement concluded in December 2003 between the Chief Labour Inspector and the Minister of Justice regarding cooperation in fighting infringement of the employees' right to remuneration; (iv) the decision of the National Labour Inspectorate to establish detailed documentation of all cases of offences against employees' rights and to make such documentation available at the request of prosecutors.

2. According to the statistical information provided by the Government, in the period 2001-03, a total number of 2,866 criminal proceedings were registered concerning wage-related offences, 95 per cent of which or 2,735 cases, have already been completed. The Government adds that in 2003 for the first time after many years it noted a drop in percentage of employers reported to have infringed the legislation regarding labour remuneration (62 per cent in 2003 as compared to 68 per cent in 2002). It further states that over the past three years a gradual improvement was observed concerning the payment of overtime pay and various wage supplements; the relevant regulations have been infringed by 41.3 per cent of employers in 2001, 40.3 per cent in 2002, and 36.8 per cent in 2003. A similar improvement was observed with regard to the payment of holiday pay, the respective figures having fallen from 17.5 per cent in 2001 to 15 per cent in 2002 and 13.5 per cent in 2003. Taking into account all kinds of unpaid benefits, the average amount due per employee decreased from 1,360 zloty in 2002 to 1,237 zloty in 2003.

3. While the Government interprets the above statistics as a forecast of long-expected positive changes, they also demonstrate that notwithstanding the measures already taken by the Government, there is still a serious situation prevailing in the country with regard to protection of wages. Even though statistical figures may point at an improvement in absolute numbers, the fact remains that one out of three inspected employers fails to pay overtime pay and wage supplements to his/her employees while more than six out of ten employers are found in breach of the legislation concerning the payment of wages in general. While noting that the Government's report contains little additional information to that given to the Conference Committee in June 2004, the Committee asks the Government to closely monitor the situation in respect of wage arrears in all sectors of the national economy and in all regions and to continue providing statistics on further developments in this regard.

4. *Wage arrears in the health-care sector.* The phenomenon of deferred payment or non-payment of wages appears particularly serious in the health sector. According to the Government's report, as of March 2003, 70 per cent of public health-care establishments were in debt, and could not fulfil their obligations concerning the statutory increase of wages. Regular controls conducted in health-care establishments by the National Labour Inspection in 2001-03 have demonstrated that among the main difficulties encountered by these institutions was the implementation of the so-called "203 Act". However, whereas in 2001, 65 per cent of the inspected health-care establishments failed to introduce the pay increase, in 2002 this irregularity concerned 49 per cent of the inspected establishments, and in 2003 only 29 per cent. The Government states that in 2003, in 69 per cent of cases in which notices were issued by labour inspectors concerning miscalculation or non-payment of wages, the employers concerned complied, and as a result the amount of 27 million zloty (approximately US\$6 million) was paid to over 41,000 employees.

5. Moreover, the Government reports that following a plenary session of the Tripartite Commission in September 2003 and the completion of the work of an ad hoc team of the Tripartite Commission in November 2003 which focused on public health-care reforms and the issue of settlement of wage debts, a draft Law on public aid and restructuring of public health-care establishments was adopted by the Council of Ministers, examined by the Parliament and was expected to enter into force in October 2004.

6. According to the information supplied by the Government, the draft law provides for the transformation of the legal status of public health-care establishments into commercial law companies and the reimbursement of all outstanding wage debts deriving from the "203 Act" within a period of two years. It also provides that the health-care establishments will be allowed to issue bonds while under another law amending the law on public aid and restructuring of public health-care establishments, the Government proposes to introduce different measures for paying off the health-care establishments debt, such as the payment in instalments or the deferred payment upon the agreement of the establishment and the creditor. The Committee would be particularly interested in receiving detailed information on the draft laws, especially concerning the issue of bonds and the partial or delayed payment, as these measures might raise certain difficulties having regard to the requirements of *Articles 3, paragraph 1, and 12, paragraph 1, of the Convention*.

7. In the same connection, the Committee stresses that any method of payment of overdue wages other than cash, for instance securities (such as bonds or any other form of acknowledgment of indebtedness offered in lieu of money in full or partial settlement of outstanding payments) would fall within the scope of the prohibition of *Article 3, paragraph 1, of the Convention* against money substitutes. It also recalls that in situations of deferred payment of wages or accumulated wage debts, the means to redress the injury caused should include not only the full payment of the amounts due but also fair compensation for the losses incurred by the delayed payment. A similar view has been expressed by the Office in response to the Government's specific request for an informal opinion on the legal implications of *Article 3* of the Convention on certain provisions of the draft law on public aid and restructuring of the public health-care establishments.

8. Moreover, while noting the Government's reference to extended consultations with the social partners, the acceptance by the employers' representatives of the proposed method for solving the problem of unpaid wages in the health-care sector, and the ongoing discussions with different trade unions representing nursing personnel, the Committee would be grateful to the Government for providing more ample information on the extent to which representatives of nursing personnel have been associated with recent decisions in light of *Article 5, paragraphs 1 and 2*, of ratified Convention No. 149, requiring measures to promote the participation of nursing personnel in the planning of nursing services and also calling for negotiated solutions to disputes concerning the determination of conditions of employment and work.

9. The Committee requests therefore the Government to: (i) transmit copies of all draft or enacted laws concerning the settlement of the wage crisis in the nursing services sector; (ii) provide up-to-date information concerning the total amount of wage arrears in the health-care sector and its evolution in recent years; (iii) supply detailed statistics concerning the number of employees concerned, including the number of employees whose employment relationship has been terminated, or is expected to be terminated, as a result of the public health-care restructuring. The Committee would also appreciate receiving the Government's explanations (i) as to whether the informal opinion given by the International Labour Office in April 2004 was duly considered in drafting the law on public aid and restructuring of health-care establishments, and (ii) as to the amount and method of calculation of the compensation it envisages to offer to the employees concerned for the losses incurred by the failure to ensure the regular payment of wages.

[The Government is asked to reply in detail to the present comments in 2005.]

Sri Lanka

Protection of Wages Convention, 1949 (No. 95) (ratification: 1983)

The Committee notes the observations made by the Independent Workers' Union (IWU) concerning the alleged non-payment of an agreed gratuity to 500 employees of Harepark S.P., a state-owned and managed tea plantation which has since been leased to a private enterprise. The IWU indicates that prior to leasing its tea plantations to private individuals, the Government had made a commitment to pay all its employees at Harepark a gratuity by 31 January 2003, but later reneged on its commitment and this has led to an ongoing strike at the Harepark plantation. The IWU further indicates that the estimated sum of money owing to the workers amounts to 1.6 million euros by way of gratuity and 500,000 euros from the Employer Provident and Trust Fund. The Committee recalls that this point has also been raised in connection with the Plantations Convention, 1958 (No. 110), and once again invites the Government to make the comments it considers appropriate on the observations of the IWU.

Ukraine

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

Further to its previous observation, the Committee notes the Government's reply to the comments made by the Workers' Union of the Coalmine Nikanor-Novaya concerning the growing payroll debt of the state-owned enterprise. The Government states that as of October 2003, wage arrears at the mine stood at 7.8 million grivnas, that is 2.8 million grivnas more than the amount which had been communicated by the workers' union. The mine also owes some 5.3 million grivnas for work done by construction enterprises which therefore experience difficulties in paying the wages to their own employees. The Government states that in the period 2002-03, several inspections carried out which revealed an increasing accumulation of wage arrears, unpaid compensation for loss of income resulting from delays in payment and other contraventions of the legislation relating to the payment of wages. The Committee notes with concern that despite the numerous changes in the management of the mine, the administrative sanctions imposed on successive directors for failure to implement the instructions of the state labour inspectorate and the important state subsidies for offsetting production costs, technical refitting and upgrading safety and health, the wage arrears situation is rapidly deteriorating. The Committee asks the Government to closely monitor further developments in the Nikanor-Novaya coalmine and to supply full particulars on any new measures taken with a view to eliminating outstanding wage debts. Moreover, the Committee would appreciate receiving the Government's comments on the alleged sub-minimum wage rates applied at the enterprise.

In addition, the Committee notes the communication of the Confederation of Free Trade Unions of Ukraine (KSPU), which was received on 12 October 2004 and forwarded to the Government on 20 October 2004 regarding the application of the Convention. The Committee requests the Government to transmit for its next meeting its observations in this regard so that it may examine in detail the points raised in this communication. The Committee will also examine at its next session the Government's report on the other questions that were raised in its previous observation.

Uruguay

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1977)

The Committee notes the Government's report and the explanations provided in reply to its previous comments.

The Committee notes the adoption of Decree No. 255 dated 22 July 2004, which increased as from 1 July 2004 the minimum wage at 1,310 pesos per month for all workers except for rural workers, domestic workers and sheep-shearers. It also notes the adoption of the Decree dated 3 August 2004, which readjusted as from 1 July 2004 the monthly and daily minimum wage rates for agricultural workers by occupational category and also set the monthly and daily rates of the board and lodging allowance. Following on its previous observation concerning the real value of such minimum wage rates in terms of purchasing power and their capacity to satisfy the basic needs of workers and their families, the Committee feels obliged to reiterate its request for statistical information on the evolution of the national minimum wage in recent years as compared to the evolution of other economic indicators such as the inflation rate or the consumer price index. The Committee stresses once again that when minimum rates of pay are systematically left to lose most of their value so that they ultimately bear no relationship with the real needs of the workers, minimum wage fixing is in fact reduced to a mere formality devoid of any substance. Moreover, the Committee requests the Government to indicate whether the latest increases in the national minimum wage rates have been the subject of prior consultations with the social partners, and, if so, to specify the employers' and workers' organizations consulted and the institutional framework within which such consultations have taken place.

In addition, the Committee notes the Government's indication that the national minimum wage is not used as a threshold of a decent wage level but rather as a reference for the calculation of numerous benefits payable under the social security regime, such as pensions, family allowances and unemployment benefits. 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 a minimum living wage 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 accordingly 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.

The Committee is encouraged that the Government, with the technical assistance of the Office, currently considers the possibility of dissociating the determination of the minimum wage level from the calculation of the various social security entitlements. It hopes that the Government will take full advantage of the expert advice of the ILO specialists in this regard and that a time-bound programme of action for the establishment of an institutionalized minimum wage-fixing mechanism based on genuine, direct and broad consultations with the social partners will be announced in the very near future.

[The Government is asked to reply in detail to the present comments in 2005.]

Zambia

Protection of Wages Convention, 1949 (No. 95) (ratification: 1979)

The Committee notes with regret that in its last report the Government confined itself to repeating information already communicated in September 2000.

The Committee has been commenting for several years on the problem of wage arrears experienced by thousands of local council employees, drawing the Government's attention to the need to ensure the regular payment of wages irrespective of the poor financial situation of most local councils or any retrenchment exercises undertaken by local authorities. The Committee notes that according to some reports the Government would require close to K500 billion (over US\$100 million) to clear outstanding arrears and terminal packages for council workers. It further notes that the situation is particularly tense in certain councils, such as the Luanshya municipal council, where workers have reportedly been unpaid for six months.

The Committee takes this opportunity to refer to paragraph 412 of the 2003 General Survey on the protection of wages in which it emphasized that none of the reasons normally advanced by way of excuse, such as the implementation of structural adjustment or "rationalization" plans, falling profit margins or the weakness of the economic situation, can be accepted as valid pretexts for the failure to ensure the timely and full payment to workers of the wages due for work already performed or services already rendered, as required by *Article 12 of the Convention*. The financial straits of a private enterprise or a public administration may be addressed in many ways, but not by the deferred payment or non-payment of the outstanding wages due to workers. The Committee therefore urges the Government to supply in its next report detailed and up-to-date information as to the total amount of wage debts, the number of employees affected and the time schedule for the settlement of accumulated arrears.

In addition, the Committee notes the Government's indication that the Zambia Local Authorities Workers' Union has taken a number of councils to the High Court to ensure payment of wages. The Committee would be grateful if the Government could transmit copies of any decisions that the High Court may have rendered so far as well as practical information on the implementation of these decisions.

[The Government is asked to reply in detail to the present comments in 2005.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 26** (*Albania, Central African Republic, Chad, Congo, Dominica, Fiji, Guinea-Bissau, Luxembourg, Mauritania, Mauritius, Sierra Leone, Solomon Islands, South Africa, Uganda, United Kingdom: Montserrat*); **Convention No. 94** (*Norway, United Republic of Tanzania, Uganda*); **Convention No. 95** (*Afghanistan, Albania, Central African Republic, France: New Caledonia, Guinea, Kyrgyzstan, Malaysia, Republic of Moldova, Netherlands: Aruba, Niger, Sierra Leone, Solomon Islands, Tajikistan, United Republic of Tanzania, United Kingdom: Montserrat*); **Convention No. 99** (*Mauritius, Sierra Leone*); **Convention No. 131** (*France: New Caledonia, Guatemala, Swaziland, Zambia*); **Convention No. 173** (*Botswana, Chad, Madagascar, Mexico, Slovakia, Spain, Zambia*).

Working Time

Algeria

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1962)

The Committee has been commenting for several years on the duration of the night period and the exemption possibilities provided for in sections 27 and 29 of Act No. 90-11 of 21 April 1990 respecting labour relations which are not entirely consistent with the requirements of the Convention. In its reply, the Government indicates that a draft amendment bringing the relevant provisions into full conformity with *Article 2 of the Convention* is under preparation and that the text of the new legislation will be transmitted as soon as it is adopted.

In this respect, the Committee wishes to refer to paragraphs 191-202 of its 2001 General Survey 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. More concretely, 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 workers. The Committee hopes that the Government will take due account of the preceding observations in amending the 1990 Act on labour relations and asks the Government to keep it informed of any developments in this respect. Finally, the Committee would be grateful to the Government for continuing to supply, in accordance with *Part V of the report form*, all available information concerning the practical application of the Convention, including for instance extracts from reports of inspection services, statistics on the number of workers covered by relevant legislation, the application of the exceptions allowed under the provisions of the Convention, etc.

Bangladesh

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1972)

The Committee recalls its previous observation in which it noted the Government's indication that the Tripartite Consultative Council has recommended the ratification of the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89), and that the matter should then be referred to the Cabinet and the respective Parliamentary Commission for examination. The Committee notes that, according to the Government's report, there have been no further developments in this regard.

The Committee takes this opportunity to refer to paragraphs 191-202 of its 2001 General Survey 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 workers. The Committee requests the Government to keep it informed of any progress made or decisions taken in this regard. Finally, the Committee would be grateful to the Government for providing in its next report, in accordance with *Part V of the report form*, all available information concerning the practical application of the Convention, including for instance extracts from reports of inspection services, statistics on the number of workers covered by relevant legislation, the application of the exceptions allowed under the provisions of the Convention, etc.

Bolivia

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1954)

Article 5 of the Convention. In reply to the Committee's previous observation, the Government indicates in its report received in September 2003 that no progress has been made at the legislative level in guaranteeing compensatory periods of rest for workers employed on the weekly rest day. In the absence of any progress, the Committee is bound to repeat its previous observation, which read as follows:

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 in the near future. 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.

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1973)

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 2001 General Survey 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 it 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.

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1973)

Article 8, paragraph 3, of the Convention. In reply to the Committee's previous observation, the Government indicates, in a report received in September 2003, that no progress has been made at the legislative level to secure compensatory rest for workers employed on the weekly rest day. In the absence of any progress, the Committee is bound to repeat its previous observation, which read as follows:

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 when it has been adopted.

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

Cameroon

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1973)

In its reply to the Committee's previous observation, the Government states that the National Labour Advisory Committee is still in the process of taking steps to amend certain provisions of the Labour Code to bring it in line with the Convention. The amendments produced by the National Labour Advisory Committee were to become available during 2004. The Committee hopes that the Government's next report will indicate the progress that has been made. In the absence of further concrete information, the Committee sees itself obliged to revert to its previous observation, which read as follows:

Article 2 of the Convention. Scope of application The Government's report states that only seafarers are excluded from the scope of the Convention. As indicated in earlier reports, section 1(3) of the Labour Code excludes further categories of employed persons, such as those employed in the public service, to whom special rules and regulations apply. Please indicate the manner in which the organizations of the employers and workers concerned were consulted with respect to these exclusions and provide the latest legislative or other texts applicable to them.

Article 5, paragraphs 1 and 2. Minimum period necessary for right to holidays. Section 92(1) of the Labour Code states that the right to holidays is acquired after a period of actual service equal to one year and under section 92(2), collective agreements and individual contracts with provisions concerning holidays exceeding the length fixed under section 89(1) of the Labour Code may provide for a qualifying period of service of up to two years. The Committee recalls that *Article 5, paragraph 1*, of the Convention, is an optional clause and that, if use is made of this clause, under *Article 5, paragraph 2*, of the Convention, the minimum period of service for entitlement to an annual holiday must in no case exceed six months. The Committee requests the Government to indicate the measures taken or envisaged to bring the length of the minimum period of qualifying service into conformity with the Convention.

Article 9. Postponement of holidays. The Committee notes that section 1(3) of Decree No. 75-28 of 10 January 1975, authorizes leave to be deferred for a period of up to two years. Since 1980 the Committee has noted that such provisions are not in conformity with the Convention which prescribes that at least two weeks of the leave must be granted within one year, and the remainder of the leave no later than 18 months, from the end of the year which entitles to the holiday (see *Articles 8(2) and 9(1)* of the Convention). The Government is again requested to bring the legislation into conformity with this provision of the Convention and to report on the measures taken to this end.

Canada

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1935)

The Committee once again notes the difficulties encountered by the Government in harmonizing the federal and provincial regulations with the provisions of the Convention, particularly with regard to the maximum length of the working day as prescribed by *Article 2 of the Convention* and the determination of the circumstances and limits within which exceptions to normal working hours may be allowed (*Article 6*). The Committee is also concerned about certain categories of workers who come within the scope of the Convention (e.g. *Article 1, paragraph 1(d)* – railway workers) but, under certain provincial legislations, are exempt from the coverage of the Convention. The Committee is bound once again to express the hope that the Government will take the necessary action to ensure the application of these provisions of the Convention and that it will take into account the points raised by the Committee in a request addressed directly to the Government.

Central African Republic

Night Work (Women) Convention (Revised), 1934 (No. 41) (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 more than 30 years, the Committee has been requesting the Government to bring national legislation into conformity with the requirements of the Convention by amending section 3 of Order No. 3759 of 25 November 1954, which authorizes exemptions from the prohibition of night work for women in circumstances which are not permitted by the Convention. The Committee regrets that the Government is still not in a position to report any progress in this regard other than merely indicating that the Order in question will be amended following the adoption of the new draft Labour Code. The Committee can only hope that the adoption of the new Labour Code and, subsequently, the repeal of the Order will not be excessively delayed.

In addition, the Committee ventures to draw the Government's attention to paragraph 194 of the 2001 General Survey on the night work of women in industry in which the Committee concluded that "not only is Convention No. 41 poorly ratified and its relevance is diminishing, but also that it would be in the interest of those member States which are still parties to this Convention to ratify instead the revising Convention No. 89 and its Protocol which allow for greater flexibility and are more easily adaptable to changing circumstances and needs". Recalling that the Government in some of its earlier reports had indicated that it was considering the ratification of Convention No. 89, the Committee hopes that appropriate action will be taken shortly and asks the Government to report on any decisions taken in this matter.

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

Chile

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1925)

Article 2(b) of the Convention. Normal working hours. The Committee notes with interest that, following the adoption of Act No. 19.759 of 27 September 2001 amending the Labour Code, normal weekly working hours have been reduced from 48 to 45 with effect from 1 January 2005 (section 22, as amended, of the Labour Code). The Committee notes with regret, however, that the Government did not take the opportunity at the same time to amend section 28 of the Labour Code to bring it into line with *Article 2(b)* of the Convention. Although the normal working week of 45 hours amounts to nine hours a day for a working week of five days, where hours of work are unevenly distributed the nine-hour limit may be exceeded since section 28 sets a maximum working day of ten hours. The Committee is therefore bound to request once again the Government to take the necessary steps to prevent the daily limit of nine hours from being exceeded, in accordance with *Article 2(b)* of the Convention.

Article 6. 1. Overtime. Section 31 of the Labour Code still allows parties to agree to overtime of up to two hours a day in jobs which, by their nature, do not harm the health of the workers. Act No. 19.759 has placed a limit on the cases in which recourse to overtime is allowed (section 32, as amended). For overtime to be allowed, there must now be a “need or temporary situation prevailing in the enterprise”. These terms are defined by section 4 of Circular 0332/0023 of 30 January 2002 as non-permanent circumstances in which the productive activity of the enterprise is carried out, which are the result of occasional occurrences or factors that cannot be avoided, and which generate excess work for a given period. The Committee requests the Government to provide more specific information on the circumstances in which such agreements may be concluded, given that *Article 6, paragraph 1(b)*, of the Convention allows temporary exceptions to normal working hours only to enable enterprises to deal with exceptional cases of pressure of work and on condition that the employer cannot ordinarily be expected to resort to other measures.

2. Renewal of collective agreements. Although agreements for the performance of overtime may not initially be for more than three months, they may be renewed, under section 32 of the Labour Code, where the circumstances that led to their need persist. The Labour Code establishes only a daily limit to authorized overtime. As already pointed out by the Committee, if not accompanied by a reasonable annual limit, a daily limit of two hours’ overtime could give rise to abuse. Consequently, the Committee again requests the Government to take the necessary steps to establish in advance, the maximum amount of overtime that may be authorized per year. The Government is also asked to provide copies of collective agreements, if any, establishing overtime arrangements.

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

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1935)

Article 7 of the Convention. 1. Additional hours. Section 31 of the Labour Code still allows the parties to agree that up to two additional hours in the day may be worked in jobs which by their nature do not harm the health of the worker. Act No. 19.759 of 27 September 2001, amending the Labour Code, restricted the cases in which recourse to additional hours is authorized (section 32, as amended, of the Labour Code). Henceforth, the performance of additional hours has to respond to a “need or temporary situation prevailing in the enterprise”. These terms are defined in section 4 of Circular No. 0332/0023, of 30 January 2002, as non-permanent circumstances in which the production activities of the enterprise are carried on, arising out of occasional events or factors which cannot be avoided, and which result in a greater volume of work during a given period. The Committee draws the Government’s attention to the fact that, with the exception of cases of *force majeure* or urgent work, as covered by section 29 of the Labour Code, *Article 7, paragraph 2*, of the Convention authorizes temporary exceptions in order to prevent the loss of perishable goods or avoid endangering the technical results of the work, to allow for special work or to enable establishments to deal with cases of abnormal pressure of work, in so far as the employer cannot ordinarily be expected to resort to other measures. The Committee requests the Government to provide more detailed information on the circumstances in which agreements may be concluded under sections 31 and 32 of the Labour Code.

2. Renewal of collective accords. Although accords for the performance of additional hours may not have an initial duration in excess of three months, they may be renewed insofar as the circumstances leading to their conclusion persist (section 32 of the Labour Code). The Labour Code only establishes a daily limit on the number of additional hours authorized. However, *Article 7, paragraph 3*, of the Convention requires that the number of additional hours of work allowed shall be determined not only in the day, but also in the year. The Committee therefore once again requests the Government to take the necessary measures to determine in advance the maximum number of additional hours which may be allowed in the year. The Government is also asked to provide copies of any collective accords which establish a system of additional hours.

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

Colombia

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1969)

Article 8, paragraph 3, of the Convention. Temporary exceptions. Section 180 of the Labour Code, as amended by Act No. 50 of 1990, provides that a worker who as an exception works on the compulsory rest day may choose between compensatory paid leave and financial compensation. In the comments it has been making since the Government sent its first report following ratification of the Convention, that is, for more than 30 years, the Committee has recalled that under this provision of the Convention compensatory rest of a duration at least equivalent to the period provided for under *Article 6* (at least 24 consecutive hours) must be accorded where temporary exemptions are made to the requirements concerning weekly rest. In its report of 1996, the Government stated that a bill to align section 180 of the Labour Code with the provisions of the Convention had been drafted. The Committee notes that in its latest reply to its comments, the Government indicates that the process to enact the bill has not been completed. The Committee recalls that *Article 8, paragraph 3*, of the Convention applies to all workers covered by the Convention and that compensatory rest may not be replaced by financial compensation even with the agreement of the worker concerned. The Committee trusts that the Government will take the necessary steps in the near future to bring the legislation into line with the Convention on this point, and requests it to provide information on any new developments in this matter.

[The Government is asked to report in detail in 2005.]

Comoros

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1978)

The Committee notes with satisfaction the amendments adopted on hours of work contained in Ministerial Order No. 01/386/MTET, drafted on the basis of a meeting between the Government and the representatives of workers and employers, facilitated by the Office. The new Order rectifies problems that had been identified by the Committee in its previous observation.

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

Costa Rica

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1982)

Since the Government's first report on the application of the Convention, the Committee has pointed to the non-conformity of sections 136 and 140 of the Labour Code with the Convention and to the need to amend these provisions. The discrepancies between the Labour Code and the Convention are repeated below.

Article 2 of the Convention. Maximum daily limit on the hours of work. *Article 2 of the Convention* provides for the general principle, that working hours shall not exceed *eight per day* and 48 per week. *Paragraph (b)* of this provision allows, under certain circumstances, for *the daily limit of eight hours to be exceeded by one hour* in cases of uneven distribution of hours of work within the week. In such cases, the hours of work shall not be more than nine hours per day. Section 136 of the Labour Code is not in conformity with the provisions of the Convention on this point, as it provides for the possibility to work up to ten hours per day for work which is not inherently unhealthy or dangerous.

Article 6. Overtime. Section 140 of the Labour Code provides that the hours of work, including overtime, shall not exceed 12 hours per day (which is four hours more than the normal hours of work). *Article 6* of the Convention gives an exhaustive enumeration of cases in which permanent and temporary exceptions are allowed. Therefore, additional hours of work cannot be authorized in all circumstances. Furthermore, such exceptions must remain within reasonable limits (see paragraph 226 of the General Survey of 1967 on the hours of work which deals with this issue). Permitting four additional hours per day without any monthly or yearly limit does not appear to fulfil this condition.

The Committee hopes that in the light of these new explanations, the Government will soon be able to amend sections 136 and 140 of the Labour Code in order to bring them in line with the Convention.

In a request addressed directly to the Government the Committee raises certain further issues concerning, in particular, a draft amendment to the Labour Code, on which an observation has been made by the Confederation of Workers Rerum Novarum (CTRN). If adopted, the draft amendment would not appear to bring the legislation into conformity with the Convention. The Committee hopes that the amendments to the Labour Code, which it has been requesting repeatedly for many years, and more generally, the underlying principles in the Convention, will be taken into account during the drafting of the new legislation.

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1984)

Article 2 of the Convention. Minimum weekly rest. In Judgement No. 10.842-2001 issued on 24 October 2001, the Constitutional Chamber of the Supreme Court of Justice ruled on the validity, in relation to article 59 of the Constitution and the provisions of the Convention, of section 152(1) of the Labour Code, under which "every worker is entitled to one

day of rest after a week or after six days of continuous work". The Court concluded that this provision is in conformity with the Constitution and the Convention only if it is interpreted as not offering the choice to the employer to grant a day of rest after six or seven days of work but as covering two different de facto situations. The granting of a day of rest after a week of work cannot concern workers who work every day of the week. It is concerned with protecting those whose work is not continuous, who only work certain days of the week or who work on a piece-rate basis. The Committee notes with interest this Judgement, which confirms that section 152 of the Labour Code must be interpreted in such a way as to ensure conformity with the provisions of the Convention, particularly *Article 2*, which prescribes the granting of a period of rest comprising at least 24 consecutive hours in every period of seven days.

Articles 4 and 5. Exceptions to the rules on weekly rest. In its previous comments, the Committee requested the Government to clarify whether section 152 of the Labour Code authorizes the introduction of special schemes applicable on a *permanent* basis or permits adjustments to the normal weekly rest scheme for *temporary* reasons.

In reply to the Committee's observation, the Government indicates that the competent authorities have not adopted measures for introducing special weekly rest schemes for economic or humanitarian reasons. Section 152(3) of the Labour Code permits an adjustment to the rules on weekly rest in industrial undertakings meeting certain conditions. It provides for the possibility, if an agreement exists between the parties concerned, to work on the weekly rest day in industrial undertakings which require continuity of work owing to the nature of the needs which they satisfy or for an obvious public or social interest. In accordance with the spirit of the national legislation, the possibility of working on the weekly rest day cannot be permanent since an abusive extension of this exception might lead to forced labour or to other forms of work prohibited by law.

As the Committee understands it, section 152(3) of the Labour Code allows for only temporary exceptions to the rules on weekly rest in certain industrial undertakings. The Committee requests the Government to provide examples of industrial activities which entail an obvious public or social interest. It also requests it to provide information on measures which ensure that these are temporary exceptions, given that the activity of "undertakings which require continuity of work owing to the nature of the needs which they satisfy" seems to imply permanent exceptions. In any case, even if these adjustments do not constitute special schemes, as the Government claims, they must respect the conditions laid down by the Convention.

Firstly, *Article 4* of the Convention requires the consultation of representative organizations of employers and workers before such exceptions are established, the consent of the worker concerned not being sufficient in this regard. The Committee requests the Government to provide information on the consultations held on this subject.

Secondly, under *Article 5* of the Convention, a State party to the Convention shall make, as far as possible, provision for compensatory periods of rest where use is made of the exceptions permitted by *Article 4*. In its report, the Government maintains that, where an employer has recourse to the possibility provided by section 152(3) of the Labour Code, he is *required to restore to the worker the enjoyment of the weekly rest day* when the work (which justified the exception) is completed. As the Committee understands it, this implies the granting of compensatory rest to the workers concerned. However, in its report of 2000, the Government asserted that, in cases where work is done on a rest day, the employer has *the option of granting compensatory rest*. The Committee requests the Government to clarify whether this is indeed an obligation imposed on employers and to indicate on what provisions it is based.

The Government also refers to section 152(4) of the Labour Code, which states that, in respect of work covered by *the last case specified in subsection [3]*, if the worker does not consent to providing services during his rest days, the employer may request an authorization from the Ministry of Labour with a view to accumulating the rest days over a period of one month. It adds that no request of this sort has been made by the director of an industrial undertaking and concludes that section 152 does not permit either employers or workers, whether unilaterally or by mutual agreement, to suppress or diminish the weekly day of rest. The Committee emphasizes, however, that *Article 4* of the Convention covers all types of exceptions to the rules on weekly rest, and not only suppression or diminutions of rest. Indeed, various aspects of weekly rest may be subject to modification, as emphasized by the 1984 General Survey on working time (paragraph 153); uniformity of all workers, choice of day, regularity and continuity.

The Committee requests the Government to specify whether section 152(4) of the Labour Code is restricted to activities which present an obvious public or social interest, or whether it also extends to industrial undertakings which require continuity of work owing to the nature of the needs which they satisfy. In addition, given that subsection 4 applies only if workers fail to give their consent to provide services during their rest days, the Committee requests the Government to indicate whether the provisions provide for the possibility of accumulating weekly rest days if workers give their consent.

Part V of the report form. The Committee requests the Government to continue to provide information on the manner in which the Convention is applied in practice, including reports of the inspection services, statistical data and the number and nature of infringements recorded with respect to weekly rest.

Bill to amend the Labour Code. The Committee notes that the Government has drawn up a Bill aiming to make the regulations on the hours of work more flexible. It requests the Government to indicate whether the provisions contemplated also apply to weekly rest schemes.

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1960)

The Committee recalls its previous observation in which it noted that, following the adoption of Decree No. 26898-MTSS of 30 March 1998, the general prohibition on women's night work has been relaxed and that the authorization of the employment of women on night shifts for reasons of national interest is not consistent with *Article 5 of the Convention* which is only applicable "in case of serious emergency". In its reply, the Government makes reference to specific provisions of other international instruments, such as article 24 of the 1948 Universal Declaration of Human Rights and article 7(d) of the 1966 International Covenant on Economic, Social and Cultural Rights dealing with the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay, and article 5(e)(i) of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination seeking to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration. In the Committee's view, however, the above instruments are at best remotely relevant to the subject matter of this Convention and certainly do not constitute valid grounds for suspending the application of its provisions.

The Committee takes this opportunity to refer to paragraphs 191 to 202 of its 2001 General Survey 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 indicated 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 whereas 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. Therefore, the Committee once again invites the Government to give favourable consideration to the ratification of either the 1990 Protocol, which affords greater flexibility in the application of the Convention, or 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.

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1959)

Article 6 of the Convention. Weekly rest – General rules. Under the terms of section 150(d) of the Labour Code, commercial establishments may remain open on Sundays until midday (with certain restrictions for establishments in the central canton of San José). In its report, the Government indicates that the weekly rest day has not been established on Sunday by the legislation and that the determination of the rest day remains within the contractual freedom of the employer and the worker. The Committee understands that, in commercial establishments, the weekly rest includes Sunday afternoon. It recalls that all persons to whom the Convention applies shall be entitled to an *uninterrupted* weekly rest period comprising not less than 24 hours in the course of each period of seven days. The Committee requests the Government to indicate the manner in which compliance with this rule is secured in commercial establishments.

Article 7. Special schemes. The Committee notes the Government's indication in its report that section 150 of the Labour Code provides for exceptions solely to the prohibition upon employing workers on public holidays and does not affect the rules relating to weekly rest.

The Committee also notes that section 152 of the Labour Code does not establish special schemes within the meaning of *Article 7* of the Convention. It provides for the possibility of working on the weekly rest day, by agreement between the parties, in the case of work which is not arduous, unhealthy or hazardous, and which is carried out in agricultural or livestock breeding grounds, industrial undertakings which require continuity of work owing to the nature of the needs which they satisfy or for obvious public or social interest. While it is clear that the first three categories of establishments referred to above do not lie within the scope of application of the Convention, the Committee would be grateful to be provided with additional information on the subject of "activities of obvious public or social interest". It requests the Government to provide examples of such activities and to indicate whether commercial establishments or those in which office work is carried out may be covered by this provision of the Labour Code.

Article 10. Inspection. In the comments that it made previously, the Confederation of Workers Rerum Novarum (CTRN) indicated that commercial establishments tend to remain open at weekends and on public holidays. However, under the terms of section 150(d) of the Labour Code, commercial establishments have to be closed after 12 o'clock on Sunday. The CTRN also alleged that, due to fear of reprisals, workers do not denounce abuses to the labour inspection services. The Committee urges the Government to provide information on the measures adopted to guarantee the effectiveness of the labour inspection system responsible for enforcing the rules relating to weekly rest.

Penalties. Section 608 of the Labour Code provides that acts or omissions committed by employers, workers or their respective organizations which are in violation of the ILO Conventions ratified by Costa Rica and the rules set out in

the Labour Code shall be penalized. Furthermore, under section 152 of the Labour Code, an employer who does not comply with the rules on weekly rest is liable to legal sanctions and shall pay the worker double wages for the day concerned. The Committee requests the Government to provide further information on the penalties imposed in practice in cases of violations of the legal provisions on weekly rest.

Part V of the report form. Application in practice. The Committee requests the Government to provide information on the manner in which the Convention is applied in practice, including, for instance, extracts from the reports of the inspection services, statistics on the number of workers covered by the Labour Code and the number and nature of contraventions of the rules on weekly rest.

Bill to amend the Labour Code. The Committee notes that the Government has formulated a Bill to make the rules on hours of work more flexible. It requests the Government to indicate whether the envisaged provisions also cover the system of the weekly rest period.

Cuba

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1953)

The Committee notes the information provided by the Government in reply to its direct request.

Article 4 of the Convention. Nullity of agreements to relinquish the right to an annual holiday with pay. In its previous comments, the Committee concluded that section 98 of the Labour Code was 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 considered null and void. 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 Government indicates in its report that section 98 of the Labour Code remains formally in force pending the outcome of the procedure to amend the Code but that it is no longer applied in practice. The Committee hopes that the Government will include a provision, in the context of the reform of the Labour Code, for any agreement to relinquish an annual holiday with pay to be declared null and void. It requests the Government to provide information on any new developments in this regard.

Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1954)

Article 8 of the Convention. Nullity of agreements to relinquish the right to an annual holiday with pay. The Committee requests the Government to refer to its observation under the application of Convention No. 52.

Equatorial Guinea

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1985)

The Committee takes note of the Government's report.

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.

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1985)

The Committee notes the Government's report.

Article 7 of the Convention. In reply to comments that the Committee has been making since 1994, the Government indicates 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.

Furthermore, the Committee raises other matters in a request addressed directly to the Government.

Ethiopia

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1991)

The Committee notes the Government's response to its previous comments. It also notes the enactment of Labour Proclamation No. 377 of 2003, although regrettably, it contains no new provisions in response to the matters raised in its previous comments. The Committee again urges the Government to bring its national legislation into full conformity with the Convention.

Article 1, paragraph 1(d), of the Convention. Exemptions for workers in the transport sector. Section 72(2) of the new Labour Proclamation continues to allow the Minister to issue directives determining special application of the provisions of the weekly rest to workers who are directly engaged in the carriage of passengers and goods. The Committee notes the Government's statement that at the moment, no directive has been issued by the Minister and therefore the weekly rest provisions contained in the Proclamation apply equally to these workers. It also notes the Government's intention to undertake a comprehensive study to formulate a new directive for these workers. The Committee requests the Government to keep it informed of any changes and, upon the adoption of a new directive, to provide and indicate how the provisions contained in the present Convention are applied in full.

Article 2, paragraph 1, and Articles 4 and 5. Exemptions of persons holding managerial positions. Section 3(2)(c) continues to exclude those holding managerial positions from the scope of the Proclamation. The Government states in its report that these categories of workers are provided with a weekly rest as each enterprise adopts management regulations in which the matter is addressed or contractual agreements incorporate the weekly rest period. The Government further states that in practice the weekly rest is granted to all managers in the same manner as other workers and therefore there is no need to amend the Proclamation. The Committee draws the Government's attention once again to the fact that persons holding managerial positions have the right to a weekly rest of 24 consecutive hours and this should be guaranteed by a legislative provision. If work needs to be carried out on the day of the weekly rest, this should be done in accordance with *Article 4* of the Convention, and compensatory periods of rest must be provided (*Article 5*). The Committee urges the Government to amend its legislation in order to ensure that a right to weekly rest is provided in law for those in managerial positions, bringing the provisions in line with the Convention.

Article 7(a) and (b). Posting of notices. The Committee once again requests the Government to provide, in its legislation or otherwise, the obligation of employers to make known collective rest to workers by means of notices posted at the workplace; for workers subject to a special system of rest to make known the days of rest by means of rosters, in order to give full effect to *Article 7(b)* of the Convention.

The Government is also requested to provide information under *Part V of the report form*.

Ghana

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1959)

The Committee recalls that for several years it has been drawing the Government's attention to the inconsistencies between certain provisions of its national legislation and the requirements of the Convention, in particular as regards the possibility of suspending the prohibition of night work for women. In its reply, the Government states that measures have been taken to address the Committee's concerns and refers to draft new labour legislation which is designed to ensure the overall conformity with the Convention. In fact, the Committee notes that the Labour Act, 2003, has in the meantime been enacted and entered into force. It also notes that the general prohibition of night work for women has now been removed and that under section 55(1)(a) of the new Labour Act it would only be prohibited to assign or employ pregnant women workers to do any night work without their consent between 10 p.m. and 7 a.m. The Committee is bound therefore to conclude that following the adoption of the new Labour Act, the Convention has for all practical purposes ceased to apply.

In this connection, the Committee wishes to refer to paragraphs 191 to 202 of the 2001 General Survey on the night work of women in industry in which it 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. It also noted that many countries are in the process of easing or eliminating legal restrictions on women's employment during the night with the aim of improving women's opportunities in employment and strengthening non-discrimination. The Committee recalled that member States are under an obligation to periodically review their protective legislation in the light of scientific and technological knowledge with a view to revising all gender-specific provisions and discriminatory constraints. This obligation stems from article 11(3) of the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (to which parenthetically Ghana became a party in 1986) as later reaffirmed in point 5(b) of the 1985 ILO resolution on equal opportunities and equal

treatment for men and women in employment. 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 no longer applies in either law or practice, and also recalling the need for an appropriate legal framework addressing the problems and hazards of night work in general, the Committee once again invites 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 it informed of any decision taken in this regard.

Guatemala

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1988)

The Committee notes the communication received in July 2004 from the Trade Union of Workers of Operators of Plants, Wells and Guards of the Municipal Water Company and its Annexes (SITOPGEMA) of Guatemala City. This communication was sent to the Government, which has not made any reply to date.

Article 6 of the Convention. Additional hours. SITOPGEMA asserts that the municipality imposes on the workers of this undertaking a schedule consisting of working 24 hours in succession before each rest period of 48 hours, making a total working week of 72 hours. However, article 102(g) of the Constitution of the Republic states that normal working hours are eight hours per day and 44 hours per week. In addition, Order No. 106 adopted on 8 October 1974 by the municipality of Guatemala and the regulations concerning the staff of the municipality of Guatemala of 28 July 1978 fix the normal length of the working week for municipal workers at 40 hours. The 32 hours per week worked beyond this 40-hour limit therefore constitute overtime and should be remunerated as such. However, the municipality of Guatemala has stopped paying overtime while maintaining the abovementioned schedule. SITOPGEMA concludes that this practice constitutes a violation of the Convention.

As the Committee understands it, the weekly hours of work in the municipal water utility of Guatemala City (EMPAGUA) are unevenly distributed over the week, amounting to 72 hours one week followed by 48 hours the following week, inasmuch as the workers concerned alternate 24 hours of work with 48 hours of rest.

Conditions and limits for overtime. Apart from cases of accidents, urgent work or *force majeure*, the Convention regulates the cases in which permanent or temporary exceptions may be granted to the rules it lays down with regard to hours of work, namely eight hours per day (nine hours if the weekly hours of work are unevenly distributed) and 48 hours per week. Permanent exceptions are authorized in cases of preparatory or complementary work which must necessarily be carried out outside normal working hours or for categories of persons whose work is essentially intermittent. Temporary exceptions are allowed to enable undertakings to deal with exceptional cases of pressure of work.

The Committee requests the Government to provide information on the type of work carried out by the EMPAGUA factory and well operators and to indicate whether the schedules mentioned by SITOPGEMA are habitual or exceptional. In any case, the public authority regulations establishing permanent or temporary exceptions must be adopted after consultation with the employers' and workers' organizations. The Committee requests the Government to indicate whether such consultations took place.

By Order No. 106 of 8 October 1974, the municipality of Guatemala adopted the framework agreement and the regulations for fixing the length of the working week at a maximum of 40 hours. The framework agreement states that normal working hours are 40 hours per week and eight hours per day (section 1). Hours worked beyond these limits constitute overtime (section 3). Section 4 of the regulations states that EMPAGUA may adopt the working week not exceeding 40 hours from Monday to Friday in accordance with the governing internal rules of operation. The Committee requests the Government to indicate whether any effect has been given to the aforementioned section.

In addition, section 75 of the regulations concerning the staff of the municipality of Guatemala of 28 July 1978 allow overtime to be worked where required by the needs of the service, up to a maximum of four hours per day, except in cases of *force majeure*. Under *Article 6, paragraph 2*, of the Convention, the maximum number of additional hours which can be authorized in each case must be specified. In its previous comments regarding section 122 of the Labour Code, the Committee considered that the employment of workers for four additional hours per day without any restriction (for example, a monthly or annual limit) went far beyond the exceptions authorized by the Convention. The Committee requests the Government to indicate the measures taken to ensure that the number of additional hours authorized is subject to a reasonable monthly or annual limit.

Remuneration for overtime. SITOPGEMA alleges that the overtime worked by EMPAGUA employees is not remunerated. Under section 77 of the regulations fixing the length of a working week at a maximum of 40 hours, additional hours are paid at the regular rate, unless worked on weekly rest days or holidays. However, under *Article 6, paragraph 2*, of the Convention, additional hours must not only be paid but be subject to a rate of pay which is at least

25 per cent higher than the regular rate. The Committee requests the Government to indicate the measures taken to ensure that additional hours are paid at the rate laid down by the Convention.

The Government is also asked to reply to the points raised by the Committee in its observation of 2003 on the application of the Convention.

Finally, the Committee refers to its comments under the application of Convention No. 29.

Haiti

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1952)

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 refers to its previous direct requests, in which it pointed to an inconsistency of section 107 of the Decree of 24 February 1984 to revise the Labour Code, as published in *Le Moniteur* (No. 18-A, Monday 5 March 1984), providing for a weekly period of rest comprising at the most 24 consecutive hours, whereas *Article 2 of the Convention* provides for at least 24 consecutive hours.

It notes an observation of the "Haitian Trade Union Coordination" (Coordination Syndicale Haïtienne – CSH), pointing to a continuing discrepancy between the national legislation and the requirements of *Article 2* of the Convention, while acknowledging that in practice weekly rest of at least 24 hours is granted to workers. The Committee hopes that the Government will be able to correct this error in the near future and requests to be kept informed of any progress made.

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: 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 6 of the Convention. See the comments under Convention No. 14.

The Committee, furthermore, notes an observation of the "Haitian Trade Union Coordination" (Coordination Syndicale Haïtienne – CSH) pointing to the continuing discrepancy between the national legislation and the requirements of *Article 6* of the Convention, while acknowledging that in practice weekly rest of at least 24 hours is granted to workers. The Committee hopes that the Government will be able to correct this error in the near future and requests to be kept informed of any progress made.

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

India

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1950)

The Committee notes with interest the information contained in the Government's report, in particular the ratification of the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89). The Committee notes the Government's statement that, in the light of changed circumstances and demands from various women's organizations and also in view of the Protocol of 1990, it has decided to amend section 66 of the Factories Act, 1948, in order to ensure greater flexibility in the application of the Convention while maintaining adequate safeguards. Recalling that according to *Article 1 of the Protocol*, exemptions from the prohibition on women's night work and variations in the duration of the night period may be introduced by decision of the competent authority provided that the employers and workers concerned or their representatives have concluded an agreement to this effect at the branch or enterprise level, the Committee requests the Government to specify in its next report the legislative provisions giving effect to the requirements of the Protocol and to transmit a copy of the amended text of section 66 of the Factories Act, 1948. Moreover, the Committee wishes to draw the Government's attention to *Article 2, paragraphs 1 and 3*, of the Protocol which lay down the principle that, even though the prohibition on the night work of women may in practice be lifted in specific branches of activity and occupations or specific establishments, minimum protection is still needed for pregnant women workers and nursing mothers and therefore an outright prohibition on night work should continue to apply at least during the eight weeks preceding childbirth and the eight weeks following it, whereas appropriate measures should be taken to ensure the income maintenance and the protection of female employees against unfair dismissal during the period of compulsory absence from work on maternity grounds. The Committee accordingly requests the Government to indicate the measures taken or envisaged to ensure that national legislation is fully consonant with the above provisions. Moreover, the Committee would be grateful to the Government for providing in its next report, in accordance with *Part V of the report form* and *Article 3* of the Protocol, all available information concerning the practical application of the Convention, including for instance extracts from reports of inspection services, statistics on the number of workers covered by relevant legislation, information on the variations and exemptions introduced pursuant to the Protocol, etc. Finally, the Committee invites 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 Government is asked to reply in detail to the present comments in 2005.]

Italy

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1924)

The Committee notes the Government's report. It also notes the observations made by CISL (Confederazione Italiana Sindacati Lavoratori), received through the Government, on the issue of "appropriate protection" and on the exceptions to weekly rest.

Article 1 of the Convention. Scope of application – Mobile workers. Mobile workers are excluded from the scope of Legislative Decree No. 66 of 8 April 2003 which implements Directive 93/104/EC on the organization of working time. The Committee requests the Government to provide information on how the weekly rest for mobile workers falling within the scope of the present Convention is ensured and whether there is a special provision regulating the working time of mobile workers.

Personnel working in the rail transport sector. Workers in the rail transport sector do not enjoy a period of rest every seven days under section 9(2)(c) of Legislative Decree No. 66. The Committee requests the Government to clarify how it ensures that weekly rest is provided to workers in the rail transport sector, who come within the scope of the present Convention.

Articles 4 and 5. Partial or total exceptions and compensatory periods of rest. Section 9(2) of Legislative Decree No. 66 provides exceptions to the provision of weekly rest. The Committee requests the Government to clarify whether special regard had been given to all proper humanitarian and economic considerations when authorizing the exceptions and whether they were adopted after consultation with the responsible associations of employers and workers. It further requests clarification as to how compensatory rest is guaranteed for those workers who do not receive their weekly rest due to partial or total exceptions from the weekly rest provisions.

Article 5. Compensatory rest and the meaning of "appropriate protection". Section 17(4) of Legislative Decree No. 66 states that in exceptional cases, where the provision of compensatory rest periods is not possible for objective reasons, the worker concerned is to be offered "appropriate protection". The Committee reminds the Government that under the Convention, as far as possible, provision for compensatory periods of rest is to be made for the suspensions or diminutions made to the provision of weekly rest. It asks the Government to clarify the term "appropriate protection" in this provision of Legislative Decree No. 66.

Article 7. Posting of notices. The Committee requests the Government to provide further information on how it ensures that employers post notices or rosters to make known when weekly rest is granted to the workers.

Part V of the report form. The Committee requests the Government to provide the required information.

Lithuania

Forty-Hour Week Convention, 1935 (No. 47) (ratification: 1994)

The Committee notes the observations made by the Lithuanian Trade Union of Constables and Police Employees (LPTU). The Government has not, as yet, commented on these observations.

The LPTU alleges that the working-time provisions contained in the new Internal Services Act No. IX 1538 of 29 April 2003, which came into effect on 1 May 1993, is contrary to the principle of a 40-hour working week provided for in the Convention. The LPTU observes that under the new Act, whilst certain sections of the Act express that the norm for police officers cannot be longer than 40 hours per week (seven-day period), the section concerning overtime provides that, in certain circumstances, overtime work is compulsory. The LPTU states that the Act allows the Internal Affairs Office executive to require certain officers to work longer than the ILO norm. The LPTU observes that, under the new Act, the normal hours of work for certain workers will be 48 hours per week, as they will no longer receive overtime rate of pay for work carried out above 40 hours.

The Committee, in its direct request in 2003, requested the Government to indicate to what extent hours may be worked in excess of a 40-hour week as section 144(3) of the new Labour Code merely stipulates that the maximum working time, including overtime, must not exceed 48 hours per seven working days. The Committee noted that this provision could be used to arrange for a regular working time of up to 48 hours, which would run counter to the principle of the 40-hour week.

The Committee requests the Government to respond to these issues and generally on how the working-time provisions contained in the new Internal Services Act comply with the provisions contained in the present Convention both in law and in practice. It also requests the Government to provide information requested in its last direct request in the next report.

Myanmar

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1954)

The Committee notes the Government's response to its comments made in 2003 but reiterates the following points.

Article 1 of the Convention. Scope of application. The Government states that workers excluded under section 2(4)(e) of the Leave and Holidays Act 1951 from the holidays with pay provisions therein are covered by the Fundamental Rules and the Burma Leave Rules and can therefore enjoy ten days of casual leave and 30 days of earned leave in a year with full pay. The Committee requests the Government to provide the legislative texts which guarantee the workers these entitlements.

Article 2, paragraph 2. Holidays with pay for those under 16 years of age. The Government states that section 4(1) of the Leave and Holidays Act, which allows workers between 15 and 16 years to ten days of annual leave instead of the entitlement in the Convention of 12 working days after one year of continuous service, will be reviewed. The Committee hopes that the legislative provisions will be amended in the near future to bring the provision in line with the Convention.

Article 4. Agreements to relinquish the right to annual holidays with pay. The Government states that section 4(3) of the Leave and Holidays Act, which allows for agreements permitting the accumulation of earned leave, will be reviewed. The Committee hopes that the Government will be able to provide information on new provisions which nullify or make void any agreement to forgo or relinquish the right to the minimum annual holiday with pay (six working days or in the case of persons under 16 years of age 12 working days).

The Committee urges the Government to take the steps necessary for the adoption of the revised text and hopes that the Government will be able to report on the progress made in its next report.

Netherlands

Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1958)

Article 8 of the Convention. Relinquishing annual holidays with pay. Section 640(2) of the new Civil Code, as amended, allows employees, by a written agreement, to receive compensation instead of annual holidays with pay that exceeds the minimum set in the Code.

The Netherlands Trade Union Confederation (FNV) alleges that the newly introduced paragraph 2 of section 640 of the Civil Code permits to forgo, by way of written agreement, during the labour relation, the minimum annual holiday for compensation, as far as the employee did not exercise his entitlement to this minimum holiday within the year of acquisition.

The FNV contends that the Government had declared an opinion, according to which the entitlement loses its quality of a legally guaranteed minimum if it has not been executed in its year of acquisition and that it, therefore, may be replaced by an allowance in lieu in the next year, as during this year indeed a new minimum holiday entitlement emerges.

In the FNV's view, the Government's alleged interpretation contravenes, besides other supranational law, *Article 12 of the Holidays with Pay Convention (Revised), 1970 (No. 132)*, and *Article 8 of the Holidays with Pay (Agriculture) Convention, 1952 (No. 101)*. This interpretation would incite the postponement of holidays and their subsequent replacement by allowances. As a consequence, it would tend to erode the recuperation function of the legally guaranteed minimum holiday by means of pay.

The Netherlands has not ratified the Holidays with Pay Convention (Revised), 1970 (No. 132), nor the Holidays with Pay Convention, 1936 (No. 52).

The Government has not yet reacted to the FNV's observation. The Committee invites the Government to pronounce itself on the scope of section 640(2) of the Civil Code and to state whether an employee, especially an agricultural worker, is obliged to take minimum leave during the year of the acquisition of the right to leave. Section 638(1) of the Civil Code only appears to oblige the employer to provide employees every year with an occasion to take their annual leave entitlements, but does not seem to statute an obligation for employees to actually take their holidays.

The Government is also requested to indicate whether under section 640(2) of the Civil Code, a worker may forgo the entirety of his annual leave, or whether the possibility to forgo annual leave under this section only applies to that part of annual leave which exceeds the minimum statutory leave of the year in which it is given.

[The Government is asked to reply in detail to the present comments in 2005.]

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 2001)

The Committee notes the Government's first report on the application of the Convention. It also notes the observations made by the Netherlands Trade Union Confederation (FNV). The Government has not, as yet, commented on these observations. The Committee requests further information on the following points.

Article 7 of the Convention. Special weekly rest scheme. Section 2.1:14, paragraphs 1 and 2, of the Decree of 30 January 2003, concerning weekly rest time for personnel in trade establishments and offices, allow special weekly rest schemes to be implemented for persons employed in commerce and offices when the nature of work or the conditions of the establishment so requires. Section 2.1:14, paragraph 3, of the Decree further states that special weekly rest schemes shall be implemented by collective agreements. If there is no collective agreement or the collective agreement does not make specific provisions on this issue, then the consent of the concerned worker is required.

The Committee notes the concerns raised by the FNV on the application of special weekly rest schemes. It recalls that the special weekly rest schemes may be applied by the competent authority or through the appropriate machinery to specified categories of persons or specified types of establishments covered by the present Convention, regard being paid to all proper social and economic considerations, in consultation with the representative employers' and workers' organizations concerned.

Exceptions to the normal weekly rest scheme should not be left to the disposal of an agreement between an individual employer and employee as it may place undue pressure on the employee concerned. The competent authority should authorize the application of the special weekly rest schemes to specified categories of persons or establishments, if no collective agreement is applicable. The Committee requests the Government to indicate how conformity of the special weekly rest scheme as outlined in section 2.1:14, paragraphs 2 and 3 of the Decree on weekly rest time for personnel in trade establishments and offices and the Convention is ensured in law and in practice.

The Committee also requests the Government to indicate whether the measures regarding the application of the special weekly rest scheme have been taken in consultation with the representative employers' and workers' organizations concerned.

In addition, a request regarding certain points is being addressed directly to the Government.

Aruba

Holidays with Pay (Agriculture) Convention, 1952 (No. 101)

The Committee notes with interest the information supplied by the Government in reply to its previous observation concerning *Article 7, paragraph 3*, and *Article 11 of the Convention*.

Norway

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) ***(ratification: 1953)***

Article 8 of the Convention. Consultation with workers' and employers' organizations. The Committee notes the observation made by the Confederation of Trade Unions in Norway (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.

Panama

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) ***(ratification: 1959)***

Article 7, paragraphs 2 and 3, of the Convention. Temporary exceptions – annual limits to additional hours. In the comments that it has been making since the adoption of the Labour Code in 1971, the Committee has requested the Government to bring section 36(4) of the Labour Code in line with the provisions of *Article 7, paragraph 3*, of the Convention, which require the determination of the number of additional hours of work allowed in the year.

Under section 35(2) of the Labour Code, a collective agreement may set forth the obligation for workers to perform additional hours, within the statutory limits and on the condition that the worker has agreed to this obligation in the employment contract. Section 36(4) of the Labour Code sets the maximum number of additional hours allowed at three in the day and nine in the week. However, as indicated above, *Article 7, paragraph 3*, of the Convention provides that regulations allowing the performance of additional hours as a temporary exception have to determine the number of additional hours of work which may be allowed in the day *and in the year*. This rule applies whether or not an agreement has been made with the worker to perform additional hours.

In its report, the Government maintains the position that it adopted in its previous report. It indicates that the situation of the country is not sufficiently favourable to amend the Labour Code and that there is no consensus among the social partners on this subject. It adds that the Government has entered a pre-electoral period and hopes that a solution can be sought when the new administration is in office.

The Committee wishes to emphasize that the provisions of the Convention constitute a minimum threshold and that nothing prevents States from setting out more favourable provisions in their legislation. The flexibility clauses contained in the Convention merely allow member States, under certain conditions, to adapt the rules respecting working time so as to take into account the national situation. If the Government considers that the application of these flexibility clauses would be contrary to the national legislation, this does not raise specific problems for the application of the Convention. For example, in its report in 2002, the Government expressed concern at the possibility provided by *Article 6* of the Convention, in exceptional cases, to distribute hours of work over a period longer than the week. The Government's attention is drawn to the fact that this is merely a possibility, and in no case an obligation upon States.

In any event, the Government has made use of the flexibility clause contained in *Article 7, paragraph 2*, of the Convention by authorizing the performance of additional hours. As a consequence, the conditions set out in this provision, including the determination of the maximum number of additional hours which may be allowed in the year, have to be complied with.

The Committee regrets that the Government has not so far followed up the Bill formulated in the context of the direct contacts mission in 1977, which set at 250 the maximum number of additional hours which may be allowed in the year. It urges the Government take the necessary measures to bring the legislation into conformity with the Convention on this point and notes that, if it so wishes, it may call upon the ILO for technical assistance.

[The Government is asked to reply in detail to the present comments in 2005.]

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1970)

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 2001 General Survey 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 either law or 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 it informed of any decision taken in this regard.

Peru

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1960)

Article 1, paragraph 1, of the Convention. Scope – Public service. According to the information supplied by the Government in its report, the provisions on annual holiday with pay of Legislative Decree No. 276 issuing basic regulations on careers in the administration and public sector pay, apply as well to non-career public servants under contract and officials with political or confidential functions. Section 2 of Legislative Decree No. 276 provides that the two above categories are covered by the Legislative Decree only in respect of the provisions applicable to them. Furthermore, section 24 of the same Legislative Decree lists the rights – including rights to annual holiday with pay – only of career public servants and makes no express reference to non-career public servants under contract or officials with political or confidential functions. Article 40 of the Political Constitution of Peru provides that public officials with political or confidential functions do not have administrative careers. The Committee therefore requests the Government

to provide more specific information on the application of the provisions of the Convention to non-career public servants under contract and officials with political or confidential functions.

The Committee notes the information supplied by the Government on the provisions that govern holidays with pay in the armed forces and the police. It requests the Government to provide copies of Supreme Decree No. 213-90-EF, and Legislative Decree No. 745 and its implementing regulations.

Articles 2, paragraph 1, and 4. Deferral of annual leave. Supreme Decree No. 121-2002-PCM set the dates at which public sector workers were required to take their holiday, namely from 16 December 2002 to 3 January 2003, i.e. a holiday period of more than six working days. However, this Supreme Decree applies only to this one specific year. Section 2(1) of Legislative Decree No. 276 still allows public servants to accumulate two holiday periods under agreements. The Committee recalls that the Convention allows holiday to be deferred from one year to the next only exceptionally and for the part of the holiday which exceeds the minimum of six working days. It requests the Government to indicate in its next report the legislative measures taken or envisaged to ensure that the Convention applies permanently as regards this point.

Article 2, paragraph 2. Young workers. Only persons over 18 years of age have access to careers in the administration and consequently, this provision of the Convention is not applicable to young workers in the public sector. As to the private sector, the Committee infers from the information sent by the Government that under section 61 of the Children's and Adolescents' Code, young workers who are not in the school system are likewise entitled to holidays with pay. The Committee requests the Government to specify the duration of holidays for workers under 16 years of age. Furthermore, it notes that apprentices are excluded from the scope of the Children's and Adolescents' Code and is governed by separate regulations. The Committee requests the Government to indicate the provisions that apply to apprentices in respect of holidays with pay and to provide a copy of them.

Article 2, paragraph 3. Illnesses or accidents that occur during holidays. Section 13 of Legislative Decree No. 713 states that annual holidays shall not be granted when the worker is unable to work due to sickness or an accident, unless such a cause occurs during the annual holiday. According to the information in the Government's supplementary report in 2000, holidays entail a suspension of the employment relationship, which means that employers may not be required to compensate workers for days of holiday lost owing to sickness or accidents. However, *Article 2, paragraph 3*, of the Convention allows no exceptions to the prohibitions on including interruptions due to sickness in the annual holiday with pay. It accordingly asks the Government to bring the legislation into conformity with this provision of the Convention and to keep it informed of all progress in this regard.

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

Philippines

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1953)

The Committee has been drawing attention for some time past, to certain provisions of the Labour Code which are not consistent with the requirements of the Convention regarding the duration of minimum compulsory night rest for women and authorized exceptions to the prohibition of women's night work. While in earlier reports the Government has been referring to forthcoming review projects and the possible amendment of the provisions in question to bring them into conformity with the Convention, it would now appear that the Government considers either the outright denunciation of the Convention or the ratification of the Protocol of 1990 to Convention No. 89.

The Government states that even though the Convention is seen as no longer in tune with the times and increasing the duration of the night period to 11 hours, as prescribed by *Article 2 of the Convention*, would be a backward move, it would not be fully ready to dismantle protective legislation for women in the name of equality. On the other hand, while recognizing that the ratification of the Protocol may appear to be a convenient option, as it would bring about a relaxation on the night work prohibition against women, the Government fears that it would give rise to massive requests for exemptions from several sectors or industries. In addition, the Government foresees that it will be required on a regular basis to thoroughly report on the implementation not only of the Protocol but also of the Convention. In this latter respect, the Committee ventures to suggest that, in accordance with *Article 4, paragraph 1*, of the Protocol should the Government decide to ratify that instrument, it would thereafter be bound by the provisions of the Convention as partially revised by those of the Protocol. This implies that the Government would be expected to report only on the effect given to the Convention in its new tenor, i.e. in light of any variations in the duration of the night period and exemptions from the prohibition of night work, as may have been introduced pursuant to the Protocol.

More generally, 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 current 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. In this respect the Committee indicated 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, whereas 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.

The Committee therefore invites the Government, in the context of its current efforts to promote women's employment opportunities and economic empowerment, to give favourable consideration to the ratification of the 1990 Protocol, which affords greater flexibility in the application of the Convention, and/or 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. As the Committee noted in paragraph 184 of the General Survey, the standards set out in these two instruments may be applied in parallel by those countries which would decide to relax some but not all limitations on women's night work and which would seek to offer at the same time optimum protection to those female employees entitled to perform night work. The Committee asks the Government to keep the Office informed of any decision taken in this regard.

Finally, the Committee would be grateful to the Government for supplying, in accordance with *Part V of the report form*, all available information concerning the practical application of the Convention, including for instance extracts from reports of inspection services, statistics on the number of workers covered by relevant legislation, applications for exemption filed and authorizations granted, etc.

Romania

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1921)

The Committee notes the Government's comments to the observations made by the Bloc National Syndical (BNS) concerning the application of the Convention in practice. It notes the Government's statement that there are currently no specific sanctions for the violation of legal provisions relating to the maximum hours of work allowed per day. It further notes that the Labour Inspectorate will propose legislation to amend Act No. 53/2003 in order to enable the inspectorate to impose fines for violations on provisions regulating hours of work, thus bringing the national legislation in line with *Article 8, paragraph 2, of the Convention*. The Committee requests the Government to keep it informed about any progress made in this respect. It also asks the Government to provide the information requested in its last direct request, which is reproduced separately.

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1923)

The Committee notes the Government's comments to the observations made by the Bloc National Syndical (BNS) concerning the application of the Convention in practice. It notes the Government's statement that there are currently no specific sanctions for the violation of legal provisions ensuring weekly rest. It further notes that the Labour Inspectorate will propose legislation to amend Act No. 53/2003 in order to enable the inspectorate to impose fines for violations of the provisions related to the weekly rest. It requests the Government to keep the Committee informed about any amendments made and to provide information requested in the last direct request in its next report.

Sierra Leone

Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1961)

Articles 1 and 8 of the Convention. Right to annual holidays with pay. The Committee notes the Government's report of 2004 and its statement that section 63(6) of the Draft Employment Act will provide that any agreement to relinquish the right to minimum annual holiday will 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 also takes note of the request by the Government for technical assistance from the Office.

Spain

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1929)

The Committee notes the Government's reply to its previous comments. It also takes note of a communication from the General Workers' Union (UGT), repeating earlier observations of the organization. The communication was forwarded to the Government, which has not, as yet, replied.

The Government is asked to refer to the Committee's comments under Convention No. 30. In addition, the Committee raises the following points.

Article 2 of the Convention. Maximum daily hours of work. Article 34(3) of the Workers' Regulations sets a maximum of nine hours for the length of the working day, unless a collective agreement or an agreement between the enterprise and the workers' representatives distributes the working time differently, it being understood that compulsory rest between two working days must be observed. However, *Article 2(b)* of the Convention allows the limit of eight hours a day to be exceeded only by one hour where working hours are unevenly distributed over the week. To allow a working day of more than nine hours is therefore contrary to this provision of the Convention. The Committee requests the Government to take the necessary steps to bring the legislation into line with this provision.

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1924)

The Committee notes the Government's reply to its previous comment. It also notes a communication from the General Union of Workers (UGT). This communication has been forwarded to the Government, which has not sent any reply to date.

The Government is asked to refer to the comments made under Convention No. 106.

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1932)

The Committee notes the Government's reply to its previous comment. It also notes a communication from the General Confederation of Workers (UGT), reiterating the observations made previously by this organization. The communication has been forwarded to the Government, which has not yet provided a reply.

The UGT, in its previous observations as well as in its most recent communication, indicates that the combination of the various provisions of Legislative Decree No. 1/1995 of 24 March 1995, which consolidates the Workers' Charter, makes it possible to bring the hours of work in a week up to 60 hours. Under the terms of these provisions, ordinary hours of work may not exceed 40 hours in the week on an annual average, but they may be distributed unevenly over the year within the framework of a collective agreement or where agreement is reached between the enterprise and the representatives of the workers. Furthermore, daily working hours are nine hours at the maximum, unless a collective agreement or an agreement between the enterprise and the representatives of the workers provides for another method of distributing working time. The UGT adds that, in practice, enterprises make use of this flexibility to extend working hours excessively and, in most cases, do not compensate the workers for the hours performed in these circumstances.

The Committee notes that the Government, in its report on this point, emphasizes that the distribution of working time on an annual basis is accompanied by guarantees, as it is necessarily the product of collective bargaining. Furthermore, the distribution of hours of work has to comply with the rules on daily and weekly rest. With regard to the maximum working day, this is in principle nine hours, except where a collective agreement or an agreement between the enterprise and the workers' representatives sets out a different rule, which nevertheless must comply in any event with the obligation of at least 12 hours rest between two working days. The Government's report also contains a list of collective agreements applicable to establishments covered by the Convention. All these agreements contain an annual limit on the hours of work, but only some of them also establish a weekly or daily limit, as provided for by the provisions of the Convention examined below.

Article 3 of the Convention. Maximum weekly working hours. Section 34 of the Workers' Charter provides that hours of work shall be determined by collective agreement or in the employment contract, with maximum weekly hours of work being 40 hours as an annual average (subsection 1). A collective agreement or an agreement between the enterprise and the workers' representatives may provide for an uneven distribution of working hours over the year, provided that the rules relating to weekly rest and rest periods between two working days are respected (subsection 2). However, *Article 3* of the Convention provides that hours of work shall not exceed eight hours in the day and 48 hours in the week. The possibility of distributing working hours over a period longer than a week, as envisaged in *Article 6* of the Convention, is limited to exceptional cases in which the limits on normal working hours are recognized as being inapplicable. As a consequence, section 34(2) of the Workers' Charter does not comply with the conditions set out in this provision of the Convention and is therefore contrary to *Article 3*. The Committee requests the Government to take the necessary measures to amend the legislation to bring it into conformity with the provisions of the Convention on this point.

Article 4. Maximum hours of work in the day. Under the terms of section 34(3) of the Workers' Charter, the maximum hours of work in the day are nine hours, unless a collective agreement or an agreement concluded between the enterprise and the workers' representatives establishes a different distribution of working hours, on the understanding that the compulsory rest period between two working days shall be respected. However, *Article 4* of the Convention lays down that where working hours are distributed unevenly in the week, the hours of work in any one day shall not exceed ten hours. The Committee requests the Government to indicate the measures adopted to ensure that the collective agreements or enterprise agreements referred to in section 34(3) comply with this limit.

Substantial modifications in conditions of work. Section 41(1) of the Workers' Charter authorizes the employer to undertake substantial modifications in conditions of work, including those relating to working hours, where there are established grounds for so doing, whether they are of an economic or technical nature or related to organization or production. The Committee requests the Government to indicate the manner in which compliance with the provisions of

the Convention is ensured in the context of this procedure. The Government is also requested to provide information on cases in which employers are authorized to modify conditions of work in this manner.

Article 7, paragraph 2. Additional hours and authorized exceptions. Section 35 of the Workers' Charter provides that the performance of additional hours must be voluntary, unless provided for in a collective agreement or the employment contract (subsection 4). Their number may not exceed 80 hours in the year, although additional hours which are compensated for by rest periods or those required to prevent or repair damage that is out of the ordinary and requires urgent action are not taken into account (subsections 2 and 3). However, *Article 7, paragraph 2*, of the Convention makes a limitative enumeration of the cases in which temporary exceptions are allowed. The Committee requests the Government to provide further information on the circumstances in which a collective agreement or a contract of employment may provide for the performance of additional hours.

Article 7, paragraph 3. Maximum number of additional hours. Under this provision of the Convention, the regulations which grant temporary exceptions shall determine the maximum number of additional hours which may be allowed in the day and in the year (except in the cases of accident, *force majeure* or urgent work). The determination of the maximum number of additional hours solely on an annual basis, as provided for in section 35 of the Workers' Charter, is therefore insufficient. Furthermore, the failure to take into account additional hours which have given rise to compensation in the form of rest periods could lead to abuses, as their numbers are not subject to any limits. The Committee requests the Government to indicate whether daily limits are also applicable to the performance of additional hours.

Article 7, paragraph 4. Higher rates of pay. Under the terms of section 35(1) of the Workers' Charter, additional hours are compensated for either in the form of rest or payment. In the latter case, the remuneration is to be determined by collective agreement or in the employment contract, but cannot be lower than that for normal working hours. The Government indicates in its report that many collective agreements applicable to the commercial sector provide for a higher rate of pay for the performance of additional hours. *Article 7, paragraph 4*, of the Convention requires that the rate of pay for additional hours of work in the context of temporary exceptions shall be at least 25 per cent higher than the regular rate. This requirement has to be met in all cases, whether or not it is provided for in a collective agreement. The Committee therefore requests the Government to indicate the measures adopted to ensure compliance with this obligation in all establishments covered by the Convention.

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1971)

The Committee notes the Government's reply to its previous comment. It also notes a communication from the General Confederation of Workers (UGT). This communication has been forwarded to the Government, which has not yet replied.

Article 6, paragraph 1, of the Convention. Minimum period of weekly rest. Section 37(1) of the Workers' Charter provides that workers shall be entitled to an uninterrupted period of rest of at least one-and-a-half days in the week, which may be accumulated over a period not exceeding 14 days.

In its communication, the UGT contends that the new Spanish labour law introduces a period of work extended over two weeks which creates serious risks for the health and safety of workers in certain branches of activity and may affect the quality of the work performed. In commerce and activities related to office work, as well as in certain services sectors, such as hospitals and hotels, work is performed practically without a break and with compensatory days of rest being granted when it suits the enterprise. The UGT concludes that the possibility of accumulating weekly rest over a period of 14 days is contrary to the provisions of the Convention.

In its report, the Government indicates that the application of section 37(1) of the Workers' Charter can indeed have the consequence that the granting of one day of rest a week, as prescribed by the Convention, is not guaranteed. However, if over a period of two weeks no rest has been granted during the first week, the rest period during the second week will be three days. This provision is intended both to take into account the need to protect workers in relation to occupational safety and health and to ensure the flexibility to allow production processes to achieve maximum efficiency. It is in conformity with European Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, which authorizes States to establish a reference period not exceeding 14 days for the purposes of the weekly rest period. In its previous comments, the Committee emphasized that, by allowing such an accumulation of weekly rest as a general rule and in all circumstances, section 37(1) of the Workers' Charter is not in conformity with *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*. Although the above Directive authorizes recourse to reference periods of 14 days, this is not the case of the present Convention. The Committee once again requests the Government to take the necessary measures to amend this provision so as to ensure that it is in conformity with the Convention.

Article 7. Special schemes. Commerce and hotels. Section 6 of Royal Decree No. 1561/1995, of 21 September 1995, provides that in the commerce and hotels sectors a collective agreement or, if no such agreement exists, an agreement between the enterprise and the workers' representatives, may provide for the accumulation of half-day periods over a period of up to four weeks or the division of the rest period, with the half day being granted on another day of the

week. In its report, the Government refers to a certain number of collective agreements applicable in the commerce sector. For example, the collective agreement for department stores, published by Resolution of 23 July 2001, provides that one day of weekly rest may be compensated by another day of rest during the course of the week, on a rota basis; furthermore, an agreement between the enterprise and the workers may provide that the remaining half-day of the weekly rest period may be accumulated over a maximum period of four weeks. In its report, the Government considers that the collective agreements to which it refers are in general terms, in conformity with *Article 6, paragraph 1*, of the Convention and, in so far as they are not, they are covered by *Article 7* of the Convention. However, the special schemes introduced under this latter provision have to comply with a number of conditions, including the requirement that the persons covered by such special schemes shall be entitled, *in respect of each period of seven days*, to a rest period of a total duration of at least 24 hours. The existence of a collective agreement such as the one referred to by the Government cannot undermine this rule. Accordingly, while it is possible, in the context of special schemes, to divide the weekly rest period during the week, the Convention does not allow the accumulation of rest days in the manner established in the national legislation. The Committee requests the Government to take appropriate measures to ensure that all persons to whom such special schemes apply are entitled, in respect of each period of seven days, to a rest period of a total duration of at least 24 hours.

Substantial modification of conditions of work. Section 41(1) of the Workers' Charter allows an employer to make substantial modifications to conditions of work, including those relating to hours of work, where there exist established reasons for so doing, whether they are of an economic or technical nature, or related to organization or production. The Government is requested to provide detailed information on the circumstances in which employers are authorized to modify conditions of work in this manner. Furthermore, the Government indicates in its report that an employer who modifies in a substantial manner the conditions of work shall do so within the context of the applicable regulations, including those on the weekly rest period. With regard to compensatory rest periods, the Government refers in its report under Convention No. 14 to section 2 of Royal Decree No. 1561/95, under which the reductions in the weekly rest period provided for by this text have to give rise to compensation. Nevertheless, this provision does not apply to the substantial modifications of conditions of work imposed under section 41(1) of the Workers' Charter. The Committee therefore requests the Government to provide information on the compensatory rest periods granted in these circumstances.

Turkey

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1946)

The Committee notes the observations communicated by the Turkish Confederation of Employers Associations (TISK) and the Turkish Confederation of Public Workers' Associations (TÜRKIYE KAMU-SEN). The Government has not, as yet, commented on these observations.

The Committee has repeatedly noted, in its previous observations, comments received from workers' organizations alleging inadequate monitoring of the application of the Convention due to the low number of inspections. Furthermore, these inspections do not cover all categories of workers. The same allegations have been raised again by Kamu-Sen. The Committee requests the Government to respond to the observations made and to provide information on how it aims to ensure that adequate numbers of inspections are carried out annually and to all workers covered under the present Convention.

The Committee also notes the statistics provided in the Government's report of 2003. The number of general inspections and "control" inspections carried out significantly decreased in the years 2001 and 2002 in comparison to the year 2000. It requests the Government to clarify why there was a decrease in the number of inspections carried out in 2001 and 2002 and requests the Government to provide, in accordance with *Part V of the report form*, available extracts from the reports of the inspection services and to provide information, in particular, on the *number and nature of contraventions* reported on issues concerning the weekly rest.

The Committee further notes the comments made by TISK that no disputes have arisen out of the implementation of the weekly rest in workplaces and that collective agreements generally envisage that workers who work on the weekly rest day are paid three times the daily wage. The Government may want to draw the attention of the social partners to *Article 5 of the Convention*, which states that, as far as possible, provisions shall be made for compensatory periods of rest for suspensions or diminutions to the weekly rest.

In addition, requests regarding certain points are being addressed directly to the Government.

Venezuela

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1944)

Article 2 of the Convention. Daily and weekly hours of work. In its previous comments, the Committee concluded that section 206 of the Basic Labour Act (LOT) was not in accordance with the provisions of the Convention. Under this section, employers and workers may decide by joint agreement to modify the limits on working hours subject to compensatory arrangements and on condition that hours of work do not exceed 44 hours a week on average over a period of eight weeks. The Committee noted previously that the application of section 206 is not confined to the exceptions

explicitly provided for by the Convention. Furthermore, *Article 2(b)* of the Convention does not allow the uneven distribution of hours of work over a period longer than a week. Moreover, the use of the flexibility offered by this provision requires the authorization of the competent authority or an agreement concluded between the organizations or representatives of employers and workers. The existence of an agreement between an employer and workers on an individual basis is not sufficient in this respect. Furthermore, the extension of hours of work authorized in this context may not be more than one hour a day, whereas section 206 of the LOT does not establish any limit for daily hours of work.

In its report, the Government confines itself to indicating that under the terms of section 90 of the Constitution working hours may not exceed eight hours a day and 44 hours a week when the work is performed during the day. The Government considers that this provision is in conformity with the requirements of the Convention and provides for adequate guarantees to prevent abuse. It adds that the National Assembly has embarked upon a reform of the LOT, without providing further details on this subject.

Under these conditions, the Committee is bound to reiterate its previous comments and to urge the Government to take the necessary measures to amend the legislation so as to bring it into conformity with the provisions of the Convention on this point. In this respect, the Government is requested to provide information on the draft amendment of the Basic Labour Act undertaken by the National Assembly.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 1** (*Canada, Chile, Comoros, Costa Rica, Czech Republic, Dominican Republic, Equatorial Guinea, Lebanon, Paraguay, Romania, Saudi Arabia, Uruguay, Venezuela*); **Convention No. 4** (*Cambodia*); **Convention No. 14** (*Angola, Antigua and Barbuda, Belarus, Bolivia, Cameroon, Chad, Denmark: Greenland, Hungary, Kyrgyzstan, Mali, Mauritania, Romania, Serbia and Montenegro, Solomon Islands, Switzerland, Tajikistan, Turkey, Venezuela, Viet Nam*); **Convention No. 30** (*Chile, Equatorial Guinea, Morocco, Paraguay, Saudi Arabia, Uruguay*); **Convention No. 41** (*Afghanistan, Chad, Madagascar*); **Convention No. 47** (*Azerbaijan, Belarus, Republic of Moldova, Russian Federation, Tajikistan*); **Convention No. 52** (*Albania, Comoros, Denmark, Kyrgyzstan, Libyan Arab Jamahiriya, Paraguay, Peru, Senegal, Tajikistan*); **Convention No. 89** (*Angola, Burundi, Cameroon, Congo, France: French Polynesia, France: New Caledonia, Guinea-Bissau, Kenya, Kuwait, Lebanon, Malawi, Mauritania, Netherlands: Aruba, Paraguay, Saudi Arabia, Serbia and Montenegro, Slovenia, Swaziland, Syrian Arab Republic, Tunisia, United Arab Emirates*); **Convention No. 101** (*Antigua and Barbuda, Burundi, Comoros, Peru, Saint Vincent and the Grenadines, Spain*); **Convention No. 106** (*Angola, Belarus, Bolivia, Cameroon, Denmark: Greenland, Djibouti, Dominican Republic, Honduras, Islamic Republic of Iran, Italy, Netherlands, Netherlands: Netherlands Antilles, Peru, Serbia and Montenegro, Sri Lanka, Ukraine*); **Convention No. 132** (*Kenya, Portugal, Serbia and Montenegro, Spain, Ukraine, Uruguay, Yemen*); **Convention No. 171** (*Belgium, Cyprus, Czech Republic, Portugal*); **Convention No. 175** (*Italy, Netherlands, Slovenia*).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 1** (*Syrian Arab Republic*); **Convention No. 14** (*Comoros, Honduras*).

Occupational Safety and Health

Algeria

Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1962)

The Committee notes the information provided by the Government in reply to its previous comments. It wishes to draw the Government's attention to the following points.

1. The Committee notes the Government's indication that the Council of the Nation, at its session on 1 September 2004, adopted the draft Executive Decree issuing specific health and safety requirements applicable to the building, public works, hydraulic and related activities (BTPH). In this regard, the Government indicates that the draft text forms part of a series of five draft decrees relating to occupational health and safety issues and that a copy will be provided to the Office once it has been published in the *Official Journal*. The Committee hopes that the above draft Executive Decree will enter into force without delay and that it will give effect to the general provisions contained in *Parts II to IV of the Convention*. It further hopes that the Government's next report will indicate the adoption of the other four draft texts issued under Act No. 88-07 of 26 January 1988 on occupational health, safety and medicine which, according to the indications contained in the Government's previous reports, have been in the process of finalization since 1990.

2. *Article 6 of the Convention. Statistical information on accidents occurring to persons occupied on the types of work covered by the Convention.* The Committee notes the statistical data of the National Social Insurance Fund (CNAS) provided by the Government with its report. It notes with concern that the number of accidents in the building and public works sector has increased considerably in comparison with the data provided for 2000. The increase in the number of accidents in the building sector emphasizes the importance of the entry into force of the Executive Decree issuing specific health and safety requirements applicable to the building, public works, hydraulic and related activities (BTPH). The Committee therefore hopes that the implementation of the above Decree will serve as a means of securing effective protection for workers engaged in all types of work on worksites relating to the construction, repair, transformation, maintenance and demolition of any type of building, and that this will result in a lowering of the number of accidents in the sector.

3. *Part V of the report form. Application in practice.* The Committee requests the Government to provide information on the manner in which the Convention is applied in the country, including, in addition to the statistics provided in relation to *Article 6* of the Convention, extracts from the reports of the inspection services and information on the number of workers covered by the relevant legislation.

[The Government is asked to report in detail in 2005.]

Brazil

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1982)

The Committee notes the information provided by the Government in its report. It notes with interest the four priority principles which will guide Government policies and action, as well as the appointment of new trade unionists to the principal positions in the Ministry of Labour and Employment.

With reference to its previous comments, the Committee notes that the Government has not provided information on developments in the situation relating to the health and safety of workers in relation to noise at the various branches of the TELEMAR enterprise. It therefore once again requests the Government to provide this information, including data on the inspections carried out, statistics on occupational accidents and diseases, infringements and measures taken to correct them.

With regard to the observations made by the various organizations of public employees, SERGIPE, alleging, among other matters, that the Regional Delegate of the Ministry of Labour prohibited inspectors from being accompanied by workers' representatives, the Government indicates that the new Delegate is a person linked to the workers' movement. The participation of workers will serve as a parameter for the consolidation of the Ministry's inspection activities. The Committee notes the changes made in the Ministry of Labour. It requests the Government to keep it informed of the impact of the new changes on the application of *Article 5, paragraph 4, of the Convention*.

Central African Republic

Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1964)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

The Committee notes the information that the Government has taken due note of the comments of the Committee and that the necessary measures will be taken within the overall revision of the legislative and regulatory texts on labour envisaged by the

Department of Labour and that the technical assistance of the ILO's multidisciplinary advisory team for Central Africa will be requested. The Committee trusts this overall revision will be accomplished soon and that the Government will not fail to address the Committee's previous comments as set out below.

Introduction into national legislation of the standards set forth in ratified Conventions

In its previous comments, the Committee drew the Government's attention to the need to adopt measures in laws and regulations to give effect to the provisions contained in the Convention even if, as stated by the Government, under the Constitution of 4 January 1995, international agreements, treaties and Conventions that are duly ratified by the Republic have the force of national law.

The Committee recalls that the incorporation into national legislation of the provisions of ratified Conventions, from the mere fact of their ratification, is not sufficient to give effect to them at the national level in all cases in which the provisions are not *self-executing*, that is where they require special measures for their application, which is the case, at least, for Part I of the Convention. Furthermore, special measures are also needed to establish penalties for non-observance of the standards set forth in the instrument, which is the case of *Article 3(c) of the Convention*.

The Committee once again draws the Government's attention to *Article 1, paragraph 1*, of the Convention, in accordance with which each Member which ratifies the Convention undertakes to maintain in force, laws or regulations which ensure the application of the General Rules set forth in Parts II to IV of the Convention. In this respect, the Committee recalls that draft texts were prepared following the direct contacts which took place in 1978 and 1980 with the responsible government services. The Committee is bound to express the firm hope that the relevant texts will be adopted in the very near future.

Statistics of accidents (Article 6 of the Convention)

For a number of years, the Committee has been noting the absence, in the Government's reports, of statistical information relating to the number and classification of accidents occurring in the building sector. In its last report, the Government states that the Labour Department does not currently have at its disposal reliable statistics in this field.

The Committee recalls that, under this Article of the Convention, each Member which ratifies the Convention undertakes to communicate the latest statistical information indicating the number and classification of accidents in an enterprise or sector. The Committee once again hopes that the Government will soon be in a position to indicate the measures which have been taken to give effect to the Convention on this point and to supply the appropriate statistical information.

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: 1964)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

Further to the comments which it has made for many years on the application of *Article 2, paragraphs 3 and 4, of the Convention*, the Committee notes that the implementing regulations provided for in section 37(3) of General Order No. 3758 of 25 November 1954 with a view to designating machinery or dangerous parts thereof have still not been adopted. The Committee again notes the Government's statement that the Bill is being prepared by the competent authorities.

The Committee hopes that the future implementing regulations will also give effect to *Article 10, paragraph 1*, of the Convention establishing the obligation of an employer to take steps to bring national laws or regulations relating to the guarding of machinery and to the dangers arising and the precautions to be observed in the use of the machinery to the notice of workers, as well as to its *Article 11* which provides that workers shall not use machinery without the guards provided being in position, nor make such guards inoperative, while guaranteeing that, irrespective of the circumstances, workers shall not be required to use machinery when the guards provided are not in position or when they are inoperative.

The Committee recalls that, should it consider it to be appropriate, the Government may seek the assistance of the International Labour Office in the preparation of this text.

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

Chile

Occupational Health Services Convention, 1985 (No. 161) (ratification: 1999)

The Committee notes the comments of the Confederation of Autonomous Workers (CAT) forwarded by the Latin American Confederation of Workers (CLAT), and those of the World Confederation of Labour (WCL) dated 1 April, 3 May and 22 July 2004 respectively, alleging among other objections, shortcomings in the way the Convention is applied to workers of the Chilean National Copper Corporation CODELCO, División Andina. The Committee notes the abovementioned comments and requests the Government to provide detailed information on the matters raised in them. At its next meeting the Committee will examine the comments, together with any observations the Government may wish to make on them, in the light of the information contained in the Government's earlier reports.

Croatia

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1991)

With reference to its previous observation the Committee notes the information concerning the Labour Inspectorate's activities. It also notes the provisions of the Safety and Health Protection at the Workplace Act, 1996, dealing with the status, tasks, functions of the Labour Inspectorate as the main administrative supervisory body, and the envisaged development of its performance through the growth of the number of labour inspectors. The Committee

requests the Government to continue to provide detailed information related to the activities of the Labour Inspectorate in the field of occupational safety and health.

The Committee is addressing a request directly to the Government on the application of certain provisions of the Convention.

Asbestos Convention, 1986 (No. 162) (ratification: 1991)

The Committee takes note of the comments made by the Association of Workers Affected by Asbestosis-Vranjic, alleging the lack of substantial changes in the national legislation and practice to ensure that effect is given to the provisions of this Convention. In the view of the Association of Workers Affected by Asbestosis-Vranjic, the Government failed to make any significant effort in this respect. They claimed in particular shortcomings with regard to the carrying out of inspections. According to the Association, inspectors appear not to have adequate technical equipment at their disposal to measure the concentration of asbestos at workplaces. The Committee notes the comments transmitted by the Government in response to the matters raised by the Association of Workers Affected by Asbestosis-Vranjic, which the ILO received on 22 November 2004. The Government, for its part, while recognizing certain discrepancies between the requirements set out in the Convention and the Croatian legislation, indicates that a draft Law concerning the Production of and Trade in Asbestos Products in Croatia, has been elaborated, which contains provisions concerning the problems related to the processing of asbestos, such as the prohibition of the production and sale of asbestos products and the transition to non-asbestos production, the entitlement to old-age pensions for workers who have been exposed to asbestos in the course of their work, the granting of compensations for injuries, etc. The draft has been submitted to all interested in the settlement of the problem for their opinion. Moreover, the Government affirms its intention to elaborate draft regulations to harmonize national legislation with the Convention. The Committee, while hoping that the above draft Law will be adopted in the near future, would recall that the most representative organizations of employers and workers concerned need to be consulted on the legislative text before its adoption. With regard to inspections, the Government indicates that inspections are carried out on a regular basis. The Government confirms, however, that inspectors have called, in May 2004, for measures to be taken with regard to the stated incorrect deposit of asbestos waste, which caused the release of asbestos dust into the air of the working environment and that, in July 2004, the inspectors issued a ruling obliging the employer to cover temporarily stored asbestos with an impermeable foil. The Committee hopes that the Government will continue to take practical measures on a regular basis.

The Committee finally notes the discussions in the Conference Committee on the Application of Standards in June 2003. The Committee urges the Government to take the necessary measures to proceed to the adoption of the draft Law concerning the Production of and Trade in Asbestos Products in Croatia, and to elaborate, without further delay, the announced draft regulations to harmonize national legislation with the Convention, which prescribe the specific measures to be taken for the prevention, control of and protection of workers against health hazards due to occupational exposure to asbestos, in conformity with the provisions of the Convention. With respect to the elaboration of draft regulations, the Committee wishes to remind the Government of the possibility to have recourse to the technical assistance of the ILO. The Committee further would underline the need for taking the necessary measures quickly, as for example the apparent handling of asbestos waste seems to jeopardize not only the health of workers exposed, but also the health of the general public which comes into contact with asbestos released into the air due to the incorrect handling of asbestos waste.

The Committee will re-examine the matters raised by the Association of Workers Affected by Asbestosis-Vranjic in detail as well as the comments supplied by the Government thereon at its next session, in the light of the information provided by the Government in its next report.

Ecuador

Benzene Convention, 1971 (No. 136) (ratification: 1975)

The Committee takes note of the Government's latest report and the information communicated in response to its previous comments. It draws the Government's attention to the following points.

1. With reference to its previous comments, the Committee notes the Government's indication that the National Division on Occupational Risks, through the Industrial Hygiene Laboratory, has investigated over ten years into possible problems related to exposure to benzene in industrial branches where benzene is used as a solvent, like in the shoe, the chemical synthesis, the petrol and fuel, and the painting industry. The results, including those of the Province of Pichincha where the majority of the country's chemical synthesis industry is located, showed that other solvents than benzene were used. The Government adds that the Ecuadorian Institute of Standardization (INEN), a unit attached to the Ministry of Foreign Trade, Industrialization, and Fishing Competitiveness, executes the technical standardization, which comprises the verification whether technical standards are complied with and the technical assessment of enterprises and industries in order to maintain or establish quality standards. To this effect, the National Directorate on Development and Quality Certification, controls the production and quality of products, in general, in order to avoid the ingestion and the absorption of products produced with toxic components and chemicals detrimental to health. When using products such as paint, the quality standard ISO 9000 is to be met in order to get the quality label INEN, which represents a product guarantee valid on national and international level. With regard to the application of the Convention, the Committee observes that, while

noting the Government's indication that a first draft of the Regulations concerning the use of benzene, taking into account the technical criteria set forth in the Convention, would be submitted for consideration to the Interinstitutional Commission on Occupational Safety and Health, which is a unit of the Ministry of Labour and Human Resources. The Regulations on the health and safety of workers and the improvement of the working environment of 1986, is still the only legislation applicable. The Committee is therefore bound to recall its previous comments in which it had pointed out that the above Regulations applying generally to corrosive, irritant or toxic substances are not sufficient to give effect to the Convention, if they are not made explicitly applicable to benzene or products the benzene content of which exceeds 1 per cent by volume.

In this respect and in view of the fact that Ecuador has ratified this Convention already in 1975, the Committee would like the Government to take the necessary measures as soon as possible to give effect to the provisions of the Convention ratified and to indicate the actual status of the draft Regulations concerning the use of benzene within the legal procedure. It therefore hopes that the above draft Regulations will be adopted in the near future and that they will give effect particularly to the following Articles of the Convention: *Article 2, paragraph 1* (the obligation to use harmless or less harmful substitute substances, whenever they are available); *Article 4, paragraphs 1 and 2* (the prohibition of the use of benzene or products containing benzene in certain work processes, including, at least, the use of benzene as a solvent or diluent, except where the process is carried out in an enclosed system or where they are other equally safe methods of work); *Article 5* (occupational hygiene and technical measures to ensure effective protection of workers exposed to benzene); *Article 6, paragraphs 1 and 3* (measures to ensure prevention of the escape of benzene vapour into the air of places of employment; directions on carrying out the measurement of the concentration of benzene in the air); *Article 7, paragraphs 1 and 2* (work processes involving the use of benzene generally, shall be carried out, as far as practicable, in an enclosed system and, if not practicable, the workplace shall be equipped with effective means to ensure the removal of benzene vapour); *Article 8, paragraphs 1 and 2* (personal protective equipment against the risk of absorbing benzene through the skin and against the risk of inhaling benzene vapour when the concentration of benzene in the air exceeds the level of 25 parts per million established under the Convention and the limitation of the duration of exposure in the latter instance); *Articles 9 and 10* (measures to provide for free pre-employment and periodic medical examinations of workers employed in work processes involving exposure to benzene or products containing benzene; these medical examinations shall include the blood analysis and biological examinations carried out under the responsibility of a qualified physician with the help of a suitable laboratory as well as shall be certified under the adequate form); *Article 11, paragraphs 1 and 2* (the prohibition of employment of pregnant women, nursing mothers and young persons under 18 years of age in work processes involving exposure to benzene or products containing benzene); *Article 12* (measures to ensure that containers containing benzene are clearly marked with danger symbols); and *Article 13* (provision of appropriate instructions to workers on measures to safeguard health and prevent accidents, as well as of appropriate action to be taken in the event of poisoning).

2. In addition, the Committee requests the Government to communicate additional information on the following points:

Article 6, paragraph 2. The Committee notes the Government's indication that, while the Ministry of Labour and Human Resources does not have at its disposal the necessary equipment and material to sample and assess the exposure limits, reference is made to the limit values established by the American Conference of Governmental and Industrial Hygienists (ACGIH) whenever the country has not established its own limits. Since, in Ecuador, no research of this type exists, i.e. research on work involving workers' exposure to benzene, the Government refers to the general provisions contained in the Regulations on the health and safety of workers and the improvement of the working environment of 1986, for corrosive, irritant or toxic substances. The Committee, referring to its above comments, hopes that the draft Regulations concerning the use of benzene will contain, once they are adopted, a provision fixing an exposure limit value for the concentration of benzene in the air of the places of employment which corresponds to the limit value recommended by the ACGIH.

Article 14(c). The Committee notes that the General Directorate of Labour and its subdirectorates are authorized by law to fix rules determining preventive mechanisms against occupational risks for the different industries through technical collaboration with the Department on Occupational Safety and Health which is the advisory body to the inspectors carrying out inspection activities. However, the collaboration between the Ministry and its attached units has not been carried out due to the fact that a research on work involving workers' exposure to benzene does not exist in the country. In spite of this, the Committee would refer to the problems the Government revealed in its report in relation to the application of *Article 6, paragraph 2*, of the Convention, i.e. that Ministry of Labour and Human Resources does not have at its disposal the necessary equipment and material to sample and assess the exposure limits. It accordingly requests the Government to indicate the manner in which inspection activities are carried out to ensure an adequate supervision of the provisions of the Convention.

Egypt

Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1982)

The Committee notes with interest the adoption in 2003 of a Labour Code which contains provisions aiming at ensuring the safety in the building industry (article 209, paragraph B). It also notes that although the new Labour Code contains only general provisions on this subject, it provides in its article 213 that “*The concerned minister shall issue a decree indicating the limits of safety and the necessary conditions and precautions for preventing the risks defined in articles [... 209 ...] of the present Law, after consulting the view of the concerned authorities.*” The Committee hopes that, as provided in article 213 of the Labour Code, the concerned minister shall in the near future issue a decree including provisions regarding scaffolds, hoisting appliances and the information of the persons concerned, as provided for in *Articles 3(a), 7, 8, paragraphs 1(a) and 2(a), 14, paragraph 3, and 15, paragraphs 2 and 3, of the Convention.*

El Salvador

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2000)

The Committee notes the comments on the application of the Convention made by the Inter-Union Commission of El Salvador (CATS-CTD-CGT-CTS-CSTS-CUTS). The Committee notes the Government’s observations received in January 2003 in reply to these comments.

1. The Inter-Union Commission considers that El Salvador does not have a policy on occupational safety and health, nor an adequate level of implementation for such a policy. Nor does it have an effective and reliable system for the inspection of occupational safety and health conditions. Events which occurred in 2002 in the export processing sector, particularly the massive poisoning of around 600 workers, indicate that there are no inspections of workplaces and that, if any inspections are made, they do not correspond to the standards set out in national laws and international instruments. According to the Inter-Union Commission, there is a substantial and increasing number of cases of women machine workers whose health has been affected. The Inter-Union Commission adds that trade union organizations have not been consulted with regard to the development of more effective action in relation to occupational safety and health.

2. The Committee notes the information provided by the Government concerning the establishment of the National Occupational Safety and Health Commission and the regional occupational safety and health projects, in the context of which training is being provided for employers, workers and government officials with a view to achieving a new culture of the prevention of employment accidents. The Government adds that it is examining a Bill on occupational safety at the workplace with a view to its subsequent adoption. The Committee notes this information. However, it observes that the Government has not provided information on the points raised by the Inter-Union Commission with regard to the functioning of the inspection system in export processing enterprises. It accordingly requests it to provide information on this subject in its next report. It further requests the Government to indicate whether the new Bill on occupational safety at the workplace has been adopted and, if so, to provide a copy. It hopes that, when formulating the new legislation, the Government will, in accordance with *Article 8 of the Convention*, consult the most representative organizations of employers and workers.

At its next session, the Committee will examine the Government’s first report on the application of the Convention in the light of the reply that the Government is requested to make concerning the matters raised in this observation.

Guinea

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (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:

1. The Committee notes that the Government, in implementation of section 171 of the Labour Code, will be submitting draft decrees concerning sanitary facilities in workplaces and concerning the provision of drinking-water and non-alcoholic drinks in enterprises and establishments. The Committee also notes the draft decree establishing Committees on Hygiene, Safety and Working Conditions (CHSCT).

2. The Committee recalls that, since 1989, it has been asking the Government to adopt ministerial orders, in accordance with section 171 of the Labour Code, in the following areas: ventilation (*Article 8 of the Convention*); lighting (*Article 9*); drinking water (*Article 12*); seats for all workers (*Article 14*); and noise and vibrations (*Article 18*), in order to give effect to these provisions of the Convention. The Committee hopes that such decrees will be adopted after consultation with the representative organizations of employers and workers, in accordance with *Article 5* of the Convention.

3. *Article 1* of the Convention. Lastly, the Committee recalls its previous observation in which it drew attention to the fact that all workers who are mainly engaged in office work, including workers in the public services, are covered by the Convention. The Committee hopes that the Government will take the necessary measures in the near future to ensure full application of the Convention to the public services and requests the Government to indicate 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.

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:

The Committee noted the comments made by the Air Crew Trade Union of Alma Ata. The union indicated that 80 staff of Kazakhstan civil aviation who suffered occupational illness and became disabled as a result of noise and vibration in excess of the permitted levels, and members of the families of air crew staff who have been killed, have been awarded compensation from the State National Company NAAK "Kazakhstan aue zholy". On 20 August 1996, by a Government Decree and on the basis of NAAK assets, the state national airline "Air Kazakhstan", a closed joint stock company, was established and the state shares were transferred to it. Air Kazakhstan now refuses to pay the compensation awarded to the staff on grounds that it does not regard itself as the legal successor to NAAK with regard to payment of the latter's debts, since there is no specific mention of this in its constituent documents. Under sections 46 and 47 of the Kazakhstan Civil Code, if state-owned means of production are transferred, any obligations in respect of compensation to workers who become disabled as a result of work are also transferred. No mention of this was made in either the Government Decree which is the transfer document, or in any other documents of the new company.

The union further stated that in May 1997, the Prosecutor-General of the Republic of Kazakhstan acknowledged that the new law had been violated and proposed an appropriate amendment to the Government Decree and the company's constituent documents. However, the Government decided to go ahead with the closure of NAAK rather than bringing the Decree into conformity with the legislation. In February 1998, the NAAK was declared bankrupt. Under section 50(9) of the Civil Code, where such a company has insufficient assets to continue trading, the Government, as owner, was obliged to meet the legitimate demands of former employees of the state enterprise from its own funds, by returning part of the assets needed to meet the demands of creditors, especially citizens who have suffered loss because of the enterprise.

The union considered that, given sufficient goodwill, former aircrew members who are now disabled should have a legal basis for protecting their health and citizens below the age of majority should receive benefits for the loss of a parent.

The Committee recalled that *Article 11, paragraph 4, of the Convention*, requires that rights of workers under social security or social insurance legislation should not be adversely affected in implementing the Convention. It therefore requested the Government 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 hopes that the Government will make every effort to take the necessary action in the very near future.

Latvia

Radiation Protection Convention, 1960 (No. 115) (ratification: 1993)

The Committee notes with interest the adoption of the Radiation Safety and Nuclear Safety Act of 26 October 2000, enshrining the main basic principles governing radiation protection. It further notes the number of regulatory texts adopted during the reporting period, and in particular the Cabinet of Ministers Regulation No. 149 of 9 April 2002, on regulations for protection against ionising radiation, which reflect the dose limits for exposure to ionizing radiation of the different categories of workers and the general public which are in conformity with the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) to which the Committee refers in its 1992 general observation under the Convention. In this respect, it also notes the Government's indication that the above legislation has been adopted by taking into consideration the respective EU Directive and the requirements set forth in the relevant documents of the ILO and the International Atomic Energy Agency.

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

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1993)

The Committee takes note of the detailed information provided by the Government in its report. The Committee notes the adoption of legal texts including the Labour Law, 2001, the Labour Protection Law, 2001, the State Labour Inspection Law, 2001, the Law on Technical Supervision of Dangerous Equipment, 1998, as well as a series of Cabinet of Ministers' regulations.

With reference to its previous comments relating, inter alia, to the observation made by the Free Trade Union Federation of Latvia (LBAS), the Committee notes that the Government supplied no response or comments on this observation. The Committee recalls that the observation in question alleged that the Convention has only partly been applied because of the use of obsolete machines, and pointed out the high risk of accident to which employees are exposed using such machines.

The Committee therefore recalls that the Convention applies equally to new and to second-hand machinery (*Article 1 of the Convention* and paragraph 20 of the General Survey on the guarding of machinery and the working environment (air pollution, noise and vibration, 1987)). With respect to such obsolete machines, so as to new ones, the sale, hire, transfer in

any other manner, exhibition and use of machinery of which the dangerous parts are without appropriate guards, is prohibited or prevented by other equally effective measures (*Articles 2 and 6*); the obligation to ensure compliance with the abovementioned provisions rests on the vendor, the exhibitor, the person letting out on hire or transferring the machinery in any other manner, the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it, on their respective agents, when appropriate under national laws or regulations, and on the employer (*Articles 4 and 7*).

With respect to the provisions of *Article 9* and *Article 17* allowing temporary exemption or limited application of the Convention, the Committee notes from the Government's report that this instrument is applicable in all areas of economic activities and the country does not apply temporary exemptions in the field of machine safety.

The Committee requests the Government to indicate the measures taken to apply the abovementioned provisions of the Convention to those machines which are obsolete but still used.

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

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) ***(ratification: 1993)***

1. The Committee takes note of the adoption of the Labour Protection Law of 20 June 2001, effective since 1 January 2002, which repeals the Labour Protection Law of 1993, as well as the adoption of the Cabinet of Ministers' Regulations No. 125 of 19 March 2002 concerning the requirements for labour protection in workplaces, and the Cabinet of Ministers' Regulations No. 159 of 25 April 2000 concerning the use of personal protective equipment at work.

2. The Committee notes with satisfaction the Cabinet of Ministers' Regulations No. 125 of 19 March 2002 concerning the requirements for labour protection in workplaces, adopted by virtue of section 25 of the Labour Protection Law of 2001, to ensure the application of the general principles set forth in *Part II of the Convention* and thus applying *Article 4* of the Convention.

3. The Committee further notes the following provisions of the Cabinet of Ministers' Regulations No. 125 of 19 March 2002 concerning the requirements for labour protection in workplaces: paragraph 30.3 applying *Article 7* of the Convention; paragraph 12 applying *Article 8* of the Convention; paragraph 15 applying *Article 9* of the Convention; paragraph 14 applying *Article 10* of the Convention; paragraph 22 applying *Article 11* of the Convention; paragraph 25 applying *Article 13* and *Article 15* of the Convention; and paragraph 27 applying *Article 19* of the Convention.

4. The Committee finally notes paragraph 3.1, in conjunction with subparagraphs 3.1.4 and 3.1.7, of the Regulations of the National Tripartite Cooperation Council of 30 October 1998, providing for consultations on, inter alia, draft laws and regulations concerning health promotion and the implementation of ratified ILO Conventions to be held within the National Tripartite Cooperation Council for Labour Protection which is composed of representatives of the Government (Cabinet of Ministers), employers (Latvian Employers' Confederation) and workers (Latvian Free Trade Unions Association) which thus gives effect to *Article 5* of the Convention.

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

Lithuania

Maximum Weight Convention, 1967 (No. 127) (ratification: 1994)

The Committee takes note of the comments made by the Lietuvos Darbo Federacija (LDF), which has been transmitted to the Government on 25 October 2004. The federation alleges the lack of practical application of the Convention in the country, which runs counter to the Law of international agreements of the Lithuanian Republic.

The Committee will come back to the comments of the Lietuvos Darbo Federacija (LDF) at its next session, in the light of the information provided by the Government in response thereon.

Madagascar

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)

The Committee notes the brief information provided by the Government in reply to its previous comments. It notes that the Technical Advisory Committee (CTC), established under Order No. 20561 of 2 November 2003, will examine in the near future the texts implementing the new Decree and the application in practice of the provisions of the Convention. The Committee can therefore only express the sincere hope that the Government will finally adopt the implementing texts which have been announced for a number of years in order to give effect to the provisions of *Articles 2 and 4 of the Convention*. It hopes that these legislative texts will contain provisions giving effect to *Articles 2 and 4* of the Convention, which prohibit the sale, hire, transfer in any other manner or exhibition of machinery of which the dangerous parts specified in *Article 2, paragraphs 3 and 4*, are without appropriate guards, the obligation to ensure compliance with these prohibitions resting on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor or manufacturer who sells, lets out on hire, transfers in any other manner or exhibits machinery.

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1966)

The Committee notes the Government's report, containing summary information in response to its previous observation. It notes that a draft Decree (No. 2003-1162) organizing occupational medicine in Madagascar was approved on 2 November 2003 and adopted on 17 December 2003 by the Consultative Technical Committee (CRC) and the Government Council, respectively. Observing that the above Decree appears to have no direct impact on the application of the provisions of this Convention, the Committee notes that, according to the Government, the CRC is about to consider all the Committee's observations with a view to applying the provisions of the Convention effectively, particularly those of *Article 14 (sufficient and suitable seats to be made available for workers)* and *Article 18 (protection of workers against noise and vibrations likely to have harmful effects)* of the Convention, on which the Committee has been commenting for many years. The Committee requests the Government to indicate whether the draft Decree establishing "general prescriptions for occupational health, hygiene and safety and the working environment", referred to by the Government in its last report, is still under study in the CRC and, if so, to indicate progress made in this respect. In view of the time that has elapsed since it drew the Government's attention to the need to adopt legislation giving effect to the provisions of the Convention, particularly those of *Articles 14 and 18*, the Committee expresses the firm hope that the Government will do its utmost to see that such legislation is adopted in the near future.

Further to its previous comments, the Committee notes that, according to the Government, the courts have been contacted with the view to obtaining copies of the decisions contained in the case law Digest regarding matters of principle pertaining to the application of the Convention. The Committee understands that the above Digest has been prepared, but not published as yet. It requests the Government to provide a copy of it as soon as it is published.

Maximum Weight Convention, 1967 (No. 127) (ratification: 1971)

The Committee notes the brief information provided by the Government in reply to its previous comments.

Article 3 of the Convention. Establishment of maximum permissible weight for manual transport. In its previous observation, the Committee recalled that, since the ratification of the Convention by Madagascar, it has been emphasizing that the laws and regulations in force in the country do not give effect to this provision of the Convention. It further recalled that for a number of years the Government had given the undertaking that it would take the necessary measures to bring the laws and regulations concerned into conformity with the Convention. The Committee notes with regret that the Government confines itself to indicating that measures will be taken to achieve the adoption of a ministerial order. The Government therefore makes no further reference to the ministerial order setting the maximum weight for the manual transport of any load by a single male adult worker at 55 kg or 50 kg, in accordance with the Convention, which, according to the Government's previous report, had been forwarded to the Ministries of Industry, Trade and Transport, where it had already been discussed and approved. The Committee is therefore bound to express once again the firm hope that 33 years after the ratification of the Convention by Madagascar the Government will adopt the inter-ministerial order concerned with a view to giving full effect to the provisions of the Convention.

Mauritania

Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1963)

The Committee notes the brief information provided by the Government in reply to its previous comments. It wishes to draw the Government's attention to the following point.

Article 6 of the Convention. Statistical information. The Committee notes the Government's indication that it does not have precise statistics regarding the number of workers occupied in the building industry, and that it only has information concerning the number of occupational accidents reported to the National Social Security Fund (CNSS) for 1997. These are accidents which resulted in permanent disability or partial disability, 2 per cent of which in the building sector are due to falls from a height. The other accidents are characterized by injuries which were often minor but which still resulted in 117 lost working days. While noting this information, the Committee requests the Government to indicate the source of information for the statement concerning the principal causes of accidents. It also requests the Government to provide statistical information on the occupational accidents reported to the National Social Security Fund (CNSS) after 1997. In this regard, the Committee refers to its previous comments, in which it noted that a programme for the determination of employment policy and reorganization of the information system concerning the employment market would be implemented and that it would consequently be able to obtain information on the number and classification of accidents occurring to persons engaged in the work covered by the Convention. The Committee requests the Government to indicate whether this programme has been implemented and, if so, to communicate statistical information obtained in this regard. The Committee hopes that the Government will soon be in a position to provide the statistical information required by *Article 6* of the Convention, and that this will also show the number of persons occupied in the building industry and covered by the statistics.

Morocco

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1974)

The Committee notes the information communicated by the Government concerning the adoption and entry into force of the Labour Code. It also notes with satisfaction that sections 1 and 289(2) of the new Labour Code give effect respectively to the provisions of *Articles 11* (Prohibition on using machinery without guards) and *17* (Application of the Convention to all branches of economic activity) of the Convention, which had been the subject of comments by the Committee for many years.

Article 2(2). Prohibition of transfer in any other manner and exhibition of machinery without guards. The Committee notes that, under section 283 of the Labour Code, it is prohibited to purchase or hire machinery or parts which are dangerous and which are not equipped with guards of recognized effectiveness. The Committee recalls that this provision of the Convention also prohibits the transfer in any other manner or the exhibition of machinery of which the dangerous parts are without appropriate guards. The Committee also recalls that section 26 of the 1947 Labour Code gave effect to this provision of the Convention. In view of the fact that the new Labour Code repeals that of 1947, the Committee would be grateful if the Government would indicate what measures have been taken to give effect to this provision of the Convention.

Article 4. Obligation on the vendor, person letting out on hire or transferring the machinery in any other manner, or the exhibitor. The Committee requests the Government to indicate what measures have been taken to give effect to this provision of the Convention which states that the obligation to ensure compliance with the provisions of *Article 2* of the Convention shall rest on the vendor, hirer, manufacturer, person transferring the machinery in any other manner, or the exhibitor and, where appropriate under national laws, on their respective agents.

Part V of the report form. The Committee notes that, according to the Government's report, the difficulties arising from technical and technological changes may constitute a major obstacle to the supervisory task entrusted to labour inspection officers in this field, and that the Department of Employment is organizing training courses in the context of international cooperation, for labour inspectors and medical inspectors of labour, in order to overcome this type of difficulty. The Committee requests the Government to provide information in this regard in its next report.

Benzene Convention, 1971 (No. 136) (ratification: 1974)

The Committee notes with interest the adoption of a new Decree concerning the protection of workers against risks from benzene or products in which the benzene content is greater than 1 per cent by volume.

A request regarding certain points is being addressed directly to the Government.

Netherlands

Radiation Protection Convention, 1960 (No. 115) (ratification: 1966)

The Committee takes note of the comments provided by the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP) on the application of this Convention stating that the Committee, in its previous comments, was not in a position to determine precisely whether indeed effect is given to the provisions of the Convention. The MHP indicates that this is due to the fact that the text of the Radiation Protection Decree, to which the Government had referred, was not annexed to the Government's report. The Committee, taking note of the observation of the MHP, notes that, at the time of its previous comments, the Radiation Protection Decree was not yet adopted. It however notes from the Government's report that this Decree has been adopted on 16 July 2001, and came into force on 1 March 2002, as amended, to transpose the Basic Safety Directive 96/29/Euratom of 1996 and the Medical Radiation Treatment Directive 97/43/Euratom into national legislation, which reflect the 1990 Recommendations of the International Commission on Radiation Protection (ICRP) to which the Committee refers in determining the extent to which national legislations give effect to the provisions of this Convention. The Committee therefore requests the Government to supply a copy of the Radiation Protection Decree of 2001, as amended, for in-depth examination.

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1991)

The Committee takes note of the information provided by the Government in its report for the period 1999-2004. It notes that the Working Conditions Act, 1998, which came into force on 1 November 1999, gives effect to most of provisions of the Convention.

The Committee takes note of the comments made by the National Federation of Christian Trade Unions (CNV) and sent by the Government with its report. The Committee asks the Government to communicate the observations on the content of these comments which it may wish to make in this regard. The Committee will examine the Act together with all the received information at its next session.

[The Government is asked to reply to the comments in 2005.]

Asbestos Convention, 1986 (No. 162) (ratification: 1999)

The Committee notes the comments sent by the Trade Union of Middle Categories and Senior Staff Unions (MHP), dated 27 September 2004, containing information on the tasks of the national Institute for Asbestos Victims, which consist in the dissemination of the actual use of asbestos at workplaces. The Committee also notes the comments supplied by the Federation of Netherlands Trade Unions (FNU), which the ILO received on 25 November 2004. In its comments, the Federation particularly refers to possible entitlements to compensation of workers who suffer from asbestos-related occupational diseases, and to the issue currently under investigation as to whether or not the employer must pay a further amount in addition to the standard amount of compensation. The Committee will address these comments at its next session along with the replies received from the Government.

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

Prevention of Major Industrial Accidents Convention, 1993 (No. 174) (ratification: 1997)

The Committee takes note of the information provided by the Government in its report. It notes that, during the reporting period, a number of articles of the Working Conditions Decree have been changed, and that the part of the Decree which is applicable for establishments dealing with large quantities of hazardous substances has been modernized. As this text is not now available to the Committee in one of the ILO working languages, it will examine its version at the next session in order to determine the extent to which the Decree in question gives effect to the provisions of the Convention.

The Committee takes note of the Netherlands Trade Union Confederation's (FNV) comments on the Government's report, sent directly to the ILO. The Committee asks the Government to communicate the observations on the content of these comments which it may wish to make in this regard. The Committee will examine at its next session all the information, including that received from the Government.

[The Government is asked to reply to the comments in 2005.]

Nicaragua

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1981)

The Committee notes the information provided by the Government in its latest reports for the years 2002 and 2004, and the ministerial standards and resolutions provided with these reports.

1. The Committee notes that, in its report for the period which ended in May 1997, the Government referred to many provisions of the national legislation of a general nature and which therefore give partial effect to the provisions of the Convention. For example, under paragraph 6, Annex I, of the Ministerial Standard on minimum health and safety provisions for equipment used at work, of 4 March 1996, where the moving parts of equipment (machines, apparatus, etc.) give rise to the risk of aggressive mechanical contact, they shall be equipped with guards or devices which prevent access to dangerous areas; and, in accordance with Annex II of the Ministerial Standard on minimum health and safety provisions for equipment used at work, equipment (including machines) shall not be used without the protective guards provided for the operation concerned (paragraph 1), it shall be ascertained that the protective devices and conditions for use are adequate before using equipment (paragraph 2) and the appropriate precautions shall be adopted and individual protective devices used when accessible dangerous elements cannot be totally protected. The Committee notes these provisions. It requests the Government to indicate the provisions of the national legislation or equally effective measures which ensure, in compliance with the Convention, the prohibition of the sale, hire, transfer in any other manner or exhibition (*Articles 2 and 4*) and the use (*Articles 6 and 7*) of machinery any dangerous part of which is without appropriate guards.

2. *Article 11*. The Committee notes that sections 4 and 5 of the Ministerial Standard on minimum health and safety provisions for equipment used at work, of 1992, provide, among other measures, for the obligation of workers to use equipment under conditions and in the manner which complies with specific instructions. The Committee recalls that, under this provision of the Convention, no worker shall use, or be required to use any machinery without the guards provided being in position. The Committee requests the Government to indicate the measures adopted to give full effect to this Article of the Convention.

3. *Article 15, paragraph 1*. The Committee requests the Government to indicate the measures taken to ensure the effective application of the provisions of the Convention, including the appropriate penalties.

4. The Committee requests the Government to provide information on the programmes relating to the application of the Convention to which it refers in its report.

Maximum Weight Convention, 1967 (No. 127) (ratification: 1976)

The Committee notes the Government's report. It also notes with interest the Ministerial Health and Safety Resolution of 1998 respecting the maximum weight of a load which may be transported manually by a worker, which sets forth minimum occupational safety and health measures to protect workers performing tasks related to the manual handling of loads. It notes in particular with satisfaction that, under section 12 of the Resolution, a maximum weight is

established for the handling of loads which may be transported manually by men and women, thereby giving effect to *Articles 3 and 7 (Women) of the Convention*.

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

Norway

Chemicals Convention, 1990 (No. 170) (ratification: 1993)

The Committee takes note of the Government's report referring to the observations made by the Confederation of Norwegian Business and Industry (NHO). It would draw the Government's attention to the following points.

1. *Articles 3 and 4 of the Convention. Consultation with employers' and workers' organizations on national policy related to chemicals.* With regard to the comments of the NHO on the current development of a strategic legislation on chemicals in the EU, the Government acknowledges that the competent authorities are not always able to monitor the development of the new European chemicals rules "REACH" (Registration, Evaluation and Authorization of Chemicals) in detail as would be desirable due to lack of resources. The Committee requests the Government to explain the implications the above-indicated lack of monitoring it has with regard to consultations to be held with the most representative organizations of employers and workers with a view to the formulation, implementation and periodical review of a coherent national policy designed to give effect to the provisions of this Convention.

2. *Article 5. Prohibition and restriction of hazardous chemicals.* As concerns the competent authority having the power to prohibit or restrict the use of certain hazardous chemicals, the Government indicates that the Norwegian Pollution Control Authority governs the implementation of the European Restrictions Directive (76/769/EEC) through the Regulations on restrictions in the use of health – and environmentally – hazardous chemicals and other products. The Committee however notes that the provisions of the above Norwegian Regulation do not include provisions regarding the prohibition or restriction of certain hazardous chemicals. It therefore requests the Government to indicate the legal provision or text, which enables the Norwegian Pollution Control Authority to prohibit or restrict the use of certain hazardous chemicals.

3. *Article 6. Classification system of chemicals.* With regard to systems and specific criteria appropriate for the classification of chemicals according to their type and degree of their inherent health and physical hazards and for assessing the relevance of information required to determine whether a chemical is hazardous, the Committee notes the Government's indication that, following the comments of the NHO Regulation No. 1139 of 2002 on classification, labelling, etc., of dangerous chemicals, adopted to implement the European Directives on dangerous substances and preparations, have not been revised since. Hence, Regulation No. 1139 of 2002 still contains certain exceptions from the corresponding European Directives as regards the requirements set for the classification and labelling of 12 individual substances containing organic solvents. However, these exceptions will apply until 1 July 2005. Hence, given the deadline of 1 July 2005, the Committee requests the Government to indicate whether it intends to adopt regulations which do not provide for any exceptions regarding the classification requirements of dangerous chemicals, in order to give full effect to *Article 6* of the Convention. As to the competent authority responsible for the classification of chemicals as hazardous, the Committee notes the Government's indication that, following changes of names, the bodies competent for supervising compliance with Regulation No. 1139 of 2002, on classification, labelling, etc., of dangerous chemicals are the Norwegian Control Authority, the Directorate of Labour Inspection, the Directorate for Civil Protection and Emergency Planning and the Petroleum Safety Authority. The Committee requests the Government to explain whether the above authorities may act independently or whether they have to coordinate their activities.

4. *Part III of the report form. Tribunal decisions and investigations on cases involving questions related to the application of the Convention.* The Committee notes the compilation of cases which are under investigation or where fines have been imposed. It notes that the fines have been mostly imposed for violations of provisions of the Working Environment Act. The Committee further notes that in some cases the fines have not been accepted. It therefore requests the Government to indicate the legal consequences to be faced by enterprises which do not accept the fine imposed on them due to the violation of legislation. As to the cases which are still under investigation, the Committee asks the Government to keep it informed about their results. With regard to the case against "Jotun", the Committee notes the Government's indication that this case first was not pursued further in 2000 and that the National Authority for Investigation and Prosecution of Economic and Environmental Crime, after having considered reopening the case, had decided in December 2001 not to do so. The Committee therefore requests the Government to indicate the subject of this case and to specify the grounds for not having reopened the case.

5. *Part V of the report form. Practical application.* The Committee notes the Government's indication that no systematic study has been made regarding the effects of the Convention on employment and occupation. However, the Labour Inspection Authority has taken steps to enhance the scope and quality of its supervision related to chemical health hazards. To this effect, the inspection officers have been trained and the Labour Inspection Authority is currently conducting a major campaign in four different industries, the objective of which is to raise the knowledge on chemical health hazards and to reduce the probability that workers develop solvent-related disorders as well as skin and respiratory diseases. A further result of this campaign will be a better implementation of this Convention in enterprises. The Committee requests the Government to supply, with its next report, information on the outcome of this campaign. With

regard to statistics showing the manner in which the Convention is applied in the country, the Government indicates that, while no statistics are available on the number of violations of the chemicals legislation, statistics on the number of sanctions applied are available for the years 2002 and 2003. The Committee, while noting the statistical data on the number of sanctions applied, invites the Government to proceed to the establishment of statistics containing both the number of violations recorded and the number of sanctions imposed. The Committee would draw the Government's attention to the fact that information on the number of sanctions imposed could only serve as indicator for the application of a Convention in practice, if it is linked with information on the number of violations recorded.

Paraguay

Radiation Protection Convention, 1960 (No. 115) (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:

1. The Committee notes that the Minister of Public Health and Social Welfare has issued various resolutions concerning workers' exposure to ionizing radiations, in particular in the health sector. It further notes the Government's indication that resolution No. 678 of 16 July 1979 establishing standards concerning the risks related to the use of X-rays and radiotherapy in medical applications, has been repealed. The maximum permissible doses of ionizing radiations which may be received from sources external or internal to the body and maximum permissible amounts of radioactive substances which can be taken into the body are now fixed by resolution No. 488/90, issued by the Minister of Public Health and Social Welfare, approving technical standards and a manual on radiological protection and nuclear safety in the health sector. The Committee, noting that only the health sector is covered by resolution No. 488/90, requests the Government to indicate the activities, other than those in the health sector, which involve exposure to ionizing radiation and to provide information on the measures taken or contemplated to ensure that the provisions of the Convention are applied to *all* workers exposed to ionizing radiations in the course of their work, in accordance with *Article 2 of the Convention*.

2. *Article 3, paragraph 1, Article 6, paragraph 1, and Article 4.* The Committee notes that article 54 of resolution No. 488/90 refers to the dose limits established by the International Commission on Radiological Protection (ICRP) in 1990 to ensure effective protection of workers, which also served as a basis for the International Safety Standards of 1994. Pursuant to article 55(a) of resolution No. 488/90, the annual dose limit of exposure to ionizing radiation for workers directly engaged in radiation work is 50 mSv. The ICRP however adopted in 1990 a value of 20 mSv as the annual dose limit, averaged over five years (100 mSv), with the further provision that the effective dose should not exceed 50 mSv in any single year. With regard to the dose limits for pregnant women once the pregnancy is declared, article 58 in conjunction with article 66 of the above resolution provides for a dose limit which is three-tenths of the dose limits established for radiation workers, thus 15 mSv per year. The Committee would therefore draw the Government's attention to the explanations given in paragraph 13 of its 1992 general observation under the Convention where it referred to the Recommendations of the ICRP. In its current Recommendations, the ICRP recommends that the methods of protection at work for women who may be pregnant should provide a standard of protection for any unborn child broadly comparable with that provided for members of the general public, which are not to be exposed to more than 1 mSv. Once the pregnancy is declared, a supplementary equivalent dose limit of 2 mSv should be applied to the surface of the abdomen (lower trunk) for the remainder of the pregnancy. In this respect, the Committee notes with interest the Government's indication that in practice the dose limits adopted by the international organs are applied. At present, the Minister of Public Health and Social Welfare has submitted a draft law, which reflects the dose limits adopted by the ICRP in 1990. The Committee therefore requests the Government to indicate the present status of the above draft law within the legislative process. It further would ask the Government to supply a copy of the above draft law as soon as it has been adopted.

3. *Article 5.* The Committee notes that pursuant to article 54 of resolution No. 488/90, the objectives of effective radiation protection are determined by the application of the terms "justification", "optimization" and "limitation of individual doses", in conformity with the requirements set forth by the ICRP. It further notes that the above terms are defined in the introductory remarks to article 54 of resolution No. 488/90. However, this resolution as well as the other legislative texts adopted, neither do they really require that every effort has to be made to restrict the exposure of workers to the lowest practicable level, nor do they provide that any unnecessary exposure must be avoided by all parties concerned. The Committee therefore requests the Government to indicate the measures taken or contemplated to restrict workers' exposure to the lowest practicable level, and to ensure that any unnecessary exposure to ionizing radiations is avoided. In addition, the Committee asks the Government to explain the legal nature of the introductory remarks to each chapter of resolution No. 488/90, and to indicate in particular whether these remarks are binding and can therefore be used as a basis for legal claims.

4. *Article 6, paragraph 2.* The Committee notes that article 54 of resolution No. 488/90 refers to the dose limits established by the ICRP in order to optimize the protection of workers against ionizing radiations. The Committee understands from the above that the Government is obliged to review the maximum permissible dose limits established in the light of the current knowledge in order to comply with the dose limits adopted by the ICRP in 1990. In this respect, it notes again the Government's indication that a draft law is being prepared following the new dose limits adopted by the ICRP in 1990. The Committee hopes that the draft law will be adopted in the near future reflecting the current dose limits recommended by the ICRP concerning exposure to ionizing radiations.

5. *Article 7, paragraph 1(a).* Pursuant to article 55(a) of resolution No. 488/90, the dose limits for workers aged over 18 and who are directly engaged in radiation work is 50 mSv per year. The Committee recalls that the annual dose limit established by the ICRP for this category of workers is 20 mSv. The Committee accordingly hopes that the new draft law will be adopted in the near future and comply with the dose limit established by the ICRP which also served as a basis for the International Safety Standards of 1994.

6. *Part V of the report form.* The Committee notes the extracts of inspection reports which have been supplied with the Government's report, as well as the analysis of the results received by measurements carried out with dosimeters in order to supervise exposure to ionizing radiations of personnel employed at the "Centro de Imágenes Golden Center". The Committee invites the Government to continue to provide information on the practical application of the Convention in the country.

The Committee expresses its deep concern on the serious situation shown in its previous comments, as well as the absence of new information. The Committee urges the Government to make every effort to take the necessary action in the very near future.

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1967)

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

Article 6 and Part IV of the report form. The Committee notes the Government's indication that one of the inspection measures is the measurement of the temperature and the level of noise at the workplace. Depending on the results of these measurements, the inspector makes proposals and gives recommendations in order to improve the conditions prevailing at the workplace. The subsequent controls are carried out in intervals of 2, 7, 15, 30, 45, etc. days depending on the particular risk found during the inspection. The Committee, taking due note of this information, invites the Government to continue to supply information on the manner in which effect is given to the provisions 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.

Rwanda

Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1962)

The Committee takes note of the Government's report. It notes the comments of the Workers' Trade Union Confederation of Rwanda (CESTRAR) and the Government's reply thereto.

1. The Committee notes the adoption of Act No. 51/2001 of 30 December 2001 issuing the Labour Code. It notes in particular that section 198 of the Code repeals the orders implementing the Act of 28 February 1987 issuing the Labour Code. Ordinance No. 21/94 of 23 July 1953, referred to in the Government's report as the text regulating occupational safety in the building industry, has been repealed. CESTRAR likewise mentions in its comments that the abovementioned Ordinance appears to have been repealed, which leaves a legal void since it was the only text governing health and safety at work in the building industry. The Government states in this connection that the provisions that are not inconsistent with the 2001 Labour Code remain in force. It indicates, however, that it is in the process of drafting orders to implement section 135 of the new Labour Code. The Committee therefore hopes that in order to fill the legal vacuum and avoid any ambiguity, the Government will promptly take the necessary steps to draft and enact a regulatory text to apply the provisions of this Convention. It requests the Government to provide a copy of it as soon as it is adopted.

2. *Articles 4 and 6 of the Convention, in conjunction with Part V of the report form.* The Committee notes the labour inspectorate's report for 2003 on public buildings and works. It notes the information supplied by the Government, and confirmed by CESTRAR, that most workers in the building sector are day labourers and casual workers, but do not appear in the files of the labour inspectorate which contain the names only of permanent workers. This is because employers have no obligations to day labourers or casual workers other than a daily remuneration. The Committee therefore observes that the data in the report of the labour inspectorate do not reflect the real situation of the safety and health of workers employed in this sector. The Government indicates that in view of these circumstances inspection visits will be increased. The Committee accordingly requests the Government to indicate the measures taken or envisaged to ensure that the activities of the inspectorate cover all workers employed in the building industry and that, as a result, inspection reports cover not only permanent workers, but also day labourers and casual workers, who appear to make up the majority of the workers in this sector. The Committee recalls in this connection that it can assess the manner in which practical effect is given to the Convention in Rwanda only on the basis of information that covers all workers, regardless of the type of contracts they hold. The Committee notes that according to CESTRAR, the labour inspectorate lacks the capacity and means to carry out its work effectively because in Rwanda there is currently a boom in building and the construction sector in general. The Government indicates that efforts are under way to strengthen the capacity of the labour inspectorate. The Committee accordingly asks the Government to provide details of the measures taken or envisaged in this regard.

3. The Committee notes CESTRAR's indication deploring that the Minister in charge of social security has not yet issued an order setting specific arrangements for casual workers and day labourers. In the absence of such an order, this category of workers has no compensation for industrial accidents. The Government affirms that such an order is a necessity and indicates that one is being drafted. Day labourers or casual workers who sustain occupational injury will be able to seek compensation with the ordinary courts. The Committee takes due note of this information.

Senegal

White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1960)

With reference to its previous comments, the Committee notes the brief report provided by the Government in which it confines itself to reiterating the indications already given in its previous reports, namely that the statistics requested in the report form in relation to *Article 7 of the Convention* are in the process of being compiled, according to recent

information from the Social Security Fund, and that they will be supplied to the ILO as soon as they are available. The Committee therefore trusts that the Government will make every effort in the very near future to provide statistics on cases of morbidity and mortality resulting from lead poisoning among working painters, in accordance with *Article 7* of the Convention.

[The Government is asked to provide a report in 2006.]

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) ***(ratification: 1966)***

With reference to its previous comments, the Committee notes the Government's indication that 13 draft decrees on health and safety have been prepared by the Ministry of Labour and will be submitted to the National Advisory Labour and Social Security Council for its opinion. While noting this indication, the Committee regrets to note that as long ago as 1992 the Government was already referring to a draft decree on safety and health measures which had been forwarded for signature by the President of the Republic and, in its report in 1997, the Government referred to technical problems relating to the finalization of the above decree. The Committee therefore notes with concern that the legislative process commenced in 1992 has never been completed. The Committee is bound once again to express the strongest hope that the legislative process relating to the draft decrees concerned will be completed in the very near future to give effect to the provisions of the Convention, and particularly to *Articles 14 and 18 of the Convention* concerning suitable seats for workers and measures to be taken to reduce noise and vibration at the workplace, on which the Committee has been commenting for over 20 years. The Committee hopes that the Government's next report will indicate the progress achieved in this respect.

[The Government is asked to report in detail in 2006.]

South Africa

Underground Work (Women) Convention, 1935 (No. 45) (ratification: 1936)

The Committee notes with interest the Government's report confirming that there is at present no legislative provision prohibiting the employment of women on underground work in mines, section 32(2) of the Minerals Act No. 50 of 1991 having been repealed by item 8 of Schedule 3 to the Mine Health and Safety Act No. 29 of 1996.

In addition, the Committee notes that in an earlier report the Government had announced its intention to proceed with the denunciation of Convention No. 45 since it is considered to be inconsistent with section 9 of the Constitution, which prohibits unfair discrimination on the ground of gender.

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 with respect to underground work the States parties to Convention No. 45 should be invited to contemplate ratifying the Safety and Health in Mines Convention, 1995 (No. 176), and possibly denouncing Convention No. 45 even though the latter instrument has not been formally revised (see GB.283/LILS/WP/PRS/1/2, paragraph 13).

While noting with interest that the Government has already ratified Convention No. 176, which contains modern standards focusing on risk assessment and risk management and providing for sufficient preventive and protective measures for all mineworkers, irrespective of gender, the Committee recalls that Convention No. 45 will be next open to denunciation during a one-year period from 30 May 2007 to 30 May 2008. The Committee requests the Government to keep the Office informed of all future developments in this regard.

Sweden

Radiation Protection Convention, 1960 (No. 115) (ratification: 1961)

The Committee takes note of the Government's report and the number of regulations issued by the Swedish Radiation Protection Institute in the application of section 19 of the Radiation Protection Act (1988: 220) and the Radiation Protection Ordinance (1988: 293).

1. *Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention. Maximum permissible doses of ionizing radiation for pregnant and breastfeeding women directly engaged in radiation work.* With regard to the protection of pregnant women or breastfeeding women engaged in radiation work, the Committee notes with satisfaction sections 9 to 11 of the Regulations SSI FS 1998: 4 on dose limits at work with ionizing radiation which are in compliance with the 1990 ICRP Recommendations and thus giving effect to *Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention.*

2. *Article 8. Dose limits for non-radiation workers.* The Committee notes with satisfaction the provision of section 12 of the Regulations SSI FS 1998: 4 applying *Article 8 of the Convention.*

In addition, the Committee raises other points in a request addressed directly to the Government.

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1982)

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, which were based on the observations of the Swedish Trade Union Confederation, the Committee notes the reply contained in the Government's report. The Government states that the labour market parties always participate in the drafting of provisions issued by the National Board of Occupational Safety and Health, and this participation takes place through tripartite working groups and also through a consultation procedure. It adds that the labour market parties are consulted before the Board's directorate makes decisions.

The Committee recalls the observations of the Swedish Trade Union Confederation that, as a result of a government resolution, the central parties on both sides have not been represented on the regional supervisory bodies (Swedish Employers' Confederation – SAF – nominees having left the boards of all decision-making government authorities), and tripartite representation within the Work Environment Fund and on the governing bodies of testing and inspection organizations such as WEDAC and the National Testing and Research Institute had ceased for the same reason. The Trade Union Confederation had also indicated that complying with the requirements of *Articles 4 and 5 of the Convention* had become correspondingly difficult.

The Committee would be grateful if the Government would respond to this comment of the Swedish Trade Union Confederation, taking into account the requirement of *Article 4, paragraph 1*, of the Convention for consultation with the representative organizations of employers and workers in the formulation, implementation and periodic review of national policy on occupational safety and health.

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

Occupational Health Services Convention, 1985 (No. 161) (ratification: 1986)

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 that progress had been made in deciding whether to introduce legislative amendments on the subject of the provision of occupational health services. It noted that in May 1999, the Government introduced Government Bill Prop. 1998/99:120, which proposed a new provision on occupational health services in Chapter 3 of the Working Environment Act (1977:1160) and amendments to section 9 of the Medical Care (Compensation) Act (1993:1651) and to section 9 of the Physiotherapy (Compensation) Act (1993:1652). The Government indicated that the purpose of these amendments was to elucidate the duty of the employer to provide occupational health services. Furthermore, they are aimed at refining the tasks of occupational health services and at clarifying the cooperation between occupational health services and the publicly financed medical care. Under the proposed new provision of the Work Environment Act, an employer shall be responsible for the occupational health services demanded by the prevailing working conditions. Moreover, occupational health services are taken to mean an independent expert resource in the fields of the working environment and rehabilitation. Occupational health services shall work specifically to prevent and eliminate health hazards in workplaces and shall have the competence to identify and describe connections between the working environment, organization, productivity and health. The Government had indicated that the amendments would take effect on 1 January 2000.

The Committee also noted that when the Government's last report was received, the said amendments had not yet been discussed by the *Riksdag*, and that it had stated its difficulty in answering the Committee's previous observation.

The Committee hopes the amendments have since been adopted and that the Government would be in a position to answer its previous comments, which read as follows:

Article 2 of the Convention. Referring to its previous comments, the Committee notes the amendments to the national legislation and changes made in the funding system for occupational health care aimed at encouraging preventive activities under work environment policy. As to the Government's control of occupational health care, the National Audit Bureau concluded that the steering effects of the state grant were weak, for example, in increasing the affiliation of small undertakings, and the Government consequently abolished the general grant for occupational health services as from January 1993. In the meantime, a special investigator was appointed to study the organization and funding of occupational health services, and recommended the abolition of public control on occupational health services. This recommendation was based on the support expressed by the labour market parties of collective agreements for a flexible and efficient adjustment of resources for work relating to the occupational environment and rehabilitation. The special investigator proposed that provisions for occupational health services be added to the Work Environment Act. Most of the authorities and organizations upon examination of the investigator's report took the view that the question of occupational health services should be settled through collective bargaining. Agreements concerning occupational health care have been concluded in certain negotiating sectors. The Government intends to wait for the results of negotiations before deciding whether or not to introduce legislative amendments on the subject. In the Spring of 1993 a pilot study was undertaken by the National Board of Occupational Safety and Health in preparation of an ordinance relating to occupational health services.

The Committee also noted that the LO points out in its comments that since the cancellation in July 1992 of the Work Environment Agreement between the LO and the SAF that had governed the conditions applying to occupational health services in the private employment sector, such services have not been regulated by any collective agreements and that negotiations concerning a new agreement have been going on for more than two years.

The Committee further noted the comments by the SAF indicating that a significant number of agreements at the national federation level have been concluded and discussions are still in progress with several other federations. The main issue is the benefit that companies and employees derive from occupational health services. In conclusion, the SAF considers that, given the rules contained in the national legislation in the great majority of cases the employer cannot meet its responsibilities for the work environment and rehabilitation without assistance from occupational health services, and that no further legislation is needed for the implementation of the Convention.

The Committee hopes that the efforts undertaken by the Government in order to review the national policy on occupational health services will lead to a solution in the near future, in the light of national conditions and practice and in consultation with

the most representative organizations of employers and workers. It requests the Government to indicate progress achieved in this respect.

Article 3, paragraph 1. In its previous comments, the Committee requested the Government to provide information on the measures taken or contemplated to promote occupational health services for all workers and to indicate the progress made in this regard.

The Government indicated that a new agreement on occupational health services, effective as of 1 July 1992, had been concluded by the National Agency for Government Employers (SAV) and the union organizations for the national government sector; that in a special agreement for the local government sector, concluded in May 1993, the parties referred to occupational health services as a possible resource within the work environment and rehabilitation sphere; and that a number of agreements have been concluded in the private sector. According to the Government, the special provision concerning the Occupational Health Services Delegation in the Standing Instructions of the National Board of Occupational Safety and Health was contained by more generally worded rules to the effect that the Board and the Labour Inspectorate are to observe and encourage the development of occupational health services. The Committee asks the Government to provide copy of the said text. The Committee also notes that a study undertaken jointly by the OHS sectoral organization and the labour market parties referred to by the LO in its comments pointed to the trend of a significant diminution in the staff of occupational health services and in the number of units.

The SAF indicated that the reasons for this reduction of occupational health services were the previous glut of these services, the decline in the number of employees in the country, the growth of corporate expenditure on these services and the threat posed to the status of medical care by the reforms introduced in primary care. In the opinion of the SAF, too much attention has been focused on the coverage rate of occupational health services solely in terms of the number of persons covered. The evaluation of the actual utilization of occupational health services by companies showed that, even among companies affiliated to these services, barely half regarded them as a major corporate resource; for this reason, the SAF thinks it important to distinguish between formal coverage and the value of occupational health services inputs.

The Committee hopes that the Government will continue to make efforts to develop progressively occupational health services for all workers. The Government is requested to provide information on the measures taken or envisaged in this respect.

The Committee hopes that the Government will take the necessary action in the very near future.

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

Safety and Health in Construction Convention, 1988 (No. 167) (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:

Article 30 of the Convention. The Committee notes the Government's reply to its previous comments that had referred to the remarks made by the Swedish Trade Union Confederation (LO) regarding the need for inspection of personal protective equipment to rely on market control and the need for resources to be allotted to the authorities responsible for this in order to maintain a high standard of safety. The Government indicates that since 1 January 1994, it has incorporated EC Directive 89/686/EEC on personal protective equipment with its legislation through AFS 1993:11 Design of Personal Protective Equipment, revised through AFS 1996:7. The Directive requires national authorities to verify that the products of personal protection on the market satisfy the safety requirements of the Directive. The Government states that within the framework of inspection, a Nordic project has been conducted in which Swedish representatives acted as project leaders and all five Nordic countries took part. Various personal protective equipment were divided up between the different countries. The Committee notes the report of this activity from the Nordic Council of Ministers entitled *Market control of personal protective equipment of 1997*.

The Committee requests the Government, in its future reports, to continue to communicate information on the measures taken or envisaged to ensure the application of the Convention, including all necessary information on the application of the Convention in conformity with *Part VI of the report form* (labour inspection reports, information on the number of workers covered by the legislation, the number and nature of the contraventions reported and the resulting action taken, and the number of occupational accidents and diseases reported).

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

Syrian Arab Republic

Radiation Protection Convention, 1960 (No. 115) (ratification: 1964)

The Committee notes the information supplied by the Government in its report. It notes in particular the information supplied by the Government with regard to *Article 2, paragraph 1, of the Convention*.

The Committee notes, however, that the Government's report contains no reply to the following points, which have been the subject of the Committee's previous comments. It is therefore bound to draw the Government's attention again to the following points.

1. *Article 3, paragraph 1, and Article 6, paragraph 1, of the Convention.* The Committee notes that the Atomic Energy Commission has issued Order No. 99/112, in application of section 4 of Order No. 6514 of 1997, which empowers the latter to issue regulations providing for protection and safety requirements in relation to all activities involving exposure of persons to ionizing radiations. In this respect, the Committee notes that section 6(a), in conjunction with Annex II of Order No. 99/112 of 1999 provides for maximum permissible dose limits of the different categories of workers and the general public, which are consistent with the dose limits recommended by the ICRP in 1990 and which were reflected in the 1994 International Basic Safety Standards developed under the auspices of the IAEA, the ILO, the WHO and three other international organizations. However, by virtue of section 6(b) of the abovementioned Order, the established maximum permissible doses are not applicable in cases of authorized medical exposure. The Committee accordingly requests the Government to indicate the measures taken or

contemplated to ensure effective protection of workers exposed to ionizing radiation under these conditions. It further requests the Government to indicate whether special dose limits for pregnant women workers directly engaged in radiation work have been established. If this is not the case, the Committee would invite the Government to consider the possible incorporation of special dose limits of exposure to ionizing radiations for pregnant women workers. In this respect, the Committee would draw the Government's attention to paragraph 13 of its 1992 general observation under the Convention referring to the pertinent values recommended by the ICRP, which would provide some guidance for the Government in this matter.

2. *Article 7, paragraph 2.* The Committee notes the Government's indication that Order No. 1112 of 1973 has been repealed. While section 3 of Order No. 1112 of 1973 provided for a general interdiction to engage workers under the age of 16 in work involving ionizing radiations, Order No. 99/112 does not contain an equivalent provision prohibiting the employment of workers under the age of 16 in radiation work. The Committee further notes that, according to the Government, a new order concerning the protection of workers against ionizing radiations will be adopted and promulgated soon replacing Orders Nos. 269 of 1977 and 1112 of 1973. The Committee therefore requests the Government to indicate whether this order has been adopted yet and, if that is the case, to indicate whether it guarantees that young workers under the age of 16 cannot be engaged in work involving ionizing radiations. It also asks the Government to supply a copy of the new order upon its adoption.

3. *Article 8.* The Committee notes that Order No. 99/112 of 1999 does not contain provisions prescribing dose limits for non-radiation workers. However, paragraph 1(a) of Annex II to Order No. 99/112 establishes a permissible annual dose limit of 1 mSv for the general public, without indicating whether this value is equally applicable to workers who are not directly engaged in radiation work, but who remain or pass where they may be exposed to ionizing radiations. Referring once again to paragraph 14 of its 1992 general observation under the Convention, the Committee recalls that the employer has the same obligations towards workers not engaged in radiation work, as far as restricting their radiation exposure is concerned, as if they were members of the general public with respect to the sources or practices under the employer's control. Hence, the dose limits should be those applied to the individual members of the public, which is 1 mSv per year, in accordance with the recommendations of the ICRP adopted in 1990. In this context, the Committee notes that only for persons who are visiting patients at hospital or working in hospitals as volunteers to provide help to the patients when the diagnosis is established and during their prescribed treatment, section 6 in conjunction with paragraph 1(b), subparagraph 1, of Annex II to Order No. 9/112 fixes a dose limit of 5 mSv for exposure to ionizing radiations. The Committee accordingly invites the Government to take the necessary measures to establish the dose limits for non-radiation workers, in conformity with the 1990 ICRP recommendations. It requests the Government to indicate the measures taken or contemplated to revise the dose limits currently in force for the persons working in hospitals without being employed by the hospital in the light of the abovementioned ICRP recommendations.

4. *Occupational exposure during emergency situations.* With regard to workers' exposure to ionizing radiations during emergency situations, the Government indicates that the Atomic Energy Commission, in collaboration with the International Atomic Energy Agency in the framework of a pilot scheme to ensure protection against ionizing radiations in the East and West Asian countries, elaborates an emergency plan covering all levels of action (government, undertakings and laboratories). At an appropriate stage, the Atomic Energy Commission will invite all parties concerned to participate in the implementation of this emergency plan. The Committee, taking due note of the information, hopes that such emergency plans will be established in the near future. It requests the Government to supply information on any progress achieved in this respect.

5. *Part V of the report form.* The Committee notes the Government's indication that approximately 50 inspectors are assigned to supervise the strict application of the Convention, such as to evaluate the conditions in which the workers are exposed with regard to pollutants found in the working environment. These inspectors are empowered to take immediate steps to remedy the defects observed at enterprises concerning appliances or methods of work representing a danger for safety and health of the workers, in collaboration with the employer to maintain the workers' safety and health. Then, they draw up a minute indicating the infractions stated in order to bring the matter and the person responsible before the courts. However, if the inspector considers an infraction as not representing any danger, he nevertheless draws up a minute indicating the person responsible to bring this person before the courts so that adequate measures could be taken against him. The Committee, noting this development with interest, invites the Government to continue to supply information on the practical application of the Convention in the country.

Tunisia

Maximum Weight Convention, 1967 (No. 127) (ratification: 1970)

Referring to its previous comments, the Committee notes with regret that the draft order to amend the Order of 5 May 1988 determining the maximum weight that may be handled by a single worker has still not been adopted. Since 1997 the Government has been indicating that the draft in question has still to be submitted to the commission responsible for reviewing it and to the workers' and employers' organizations. In view of the time that has elapsed since then, the Committee is bound to express the hope that the draft order will be adopted promptly to give effect to *Articles 3 and 7 of the Convention*, which have been the subject of comments by the Committee for a very long time.

[The Government is requested to report in detail in 2006.]

Turkey

Radiation Protection Convention, 1960 (No. 115) (ratification: 1968)

The Committee takes note of the comments of the Confederation of Progressive Trade Unions of Turkey (DISK) and the Turkish Confederation of Public Worker Associations (TÜRKIYE KAMU-SEN) with regard to certain points on the application of the Convention, which were transmitted with the Government's report. In the views of the Confederation of Progressive Trade Unions of Turkey (DISK), the Convention is not applied in the country and the relevant legislation is not being adequately enforced. In particular, the protective measures prescribed under *Article 3 of the Convention* have not been taken, as well as the maximum dose limits for workers' exposure to ionizing radiation have not been fixed for the different categories of workers, in conformity with *Articles 6, 7 and 8*, of the Convention. Moreover, workers exposed do not undergo periodical medical examinations.

The TÜRKIYE KAMU-SEN, for its part, indicates that the Convention is not implemented in practice on a regular basis. It refers in particular to the apparent different level of protection between workers in the public and private sector, although the collective agreements concluded cover both the public and the private sector. The Committee will address these comments together with any comments the Government may wish to make thereon, at its next session.

[The Government is requested to respond in detail to the present comments in 2005.]

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)

1. The Committee notes the information provided by the Government in its report, as well as the Framework Law No. 4703 for harmonizing national legislation with community legislation (*Acquis Communautaire*) and of the Safety of Machinery Implementing Regulations prepared following Decisions Nos. 1/28 and 2/97 of the Turkey-EU Association Council. The Committee also notes the adoption of the new Labour Act No. 4857 of 25/05/2003, the Regulation on the conditions for health and safety on using working equipment No. 25370 of 11/01/2004, and the Regulations on working methods and procedures and the tasks, authority and responsibilities of engineers or technical staff responsible for occupational safety, which came into force on 20 January 2004. The Committee requests the Government to provide a version of Law No. 4703 in one of the ILO working languages and of the above Regulations, so that it can examine the extent to which these texts give effect to the provisions of the Convention.

2. *Article 17 of the Convention (the applicability of the Convention to all branches of economic activity)*. With reference to its previous comments, the Committee notes the Government's statement that the scope of the acts and regulations that came into force in recent years is broader than that of the regulation on the guarding of machinery and that the criteria set forth in Law No. 4703 on reliable products are applicable not only to machinery used in the industrial and commercial sectors but also to machinery used in all sectors of the economy. The Committee will examine the relevant provisions of the Acts once the texts in one of the ILO working languages are available.

3. *Article 15 and Part V of the report form (appropriate inspection services for the purpose of supervising the application of the provisions of the Convention)*. The Committee notes that the Board of Labour Inspection of the Ministry of Labour and Social Security has carried out, in 2003 and 2004, a number of projects for the effective inspection of hazardous economic sectors in terms of occupational health and safety. It notes that inspections to ensure effective control of all the sectors of the economy, including the informal economy, will continue to be carried out in the coming years. The Committee requests the Government to continue to provide information on the practical application of the Convention, including any difficulties encountered, as well as information on the results of the inspections carried out.

4. The Committee takes note of the comments on the application of the Convention made by the Turkish Confederation of Employers Associations (TISK), the Confederation of Progressive Trade Unions of Turkey (DISK) and of the Turkish Confederation of Public Worker Associations (TÜRKIYE KAMU-SEN). The Committee will examine these comments at its next session, together with any observations that the Government may wish to make in response to these comments.

Uganda

Asbestos Convention, 1986 (No. 162) (ratification: 1990)

1. *Article 3, paragraph 1, of the Convention. National laws or regulations on asbestos*. The Committee notes the Government's indication that the Factories Act is being modified to become the draft Occupational Safety and Health Bill, which is yet to be passed by Cabinet. Although the draft Occupational Safety and Health Bill does not contain specific provisions on asbestos, it covers all hazardous materials. In this regard and further to its previous comments, the Committee recalls that *Article 3, paragraph 1*, of the Convention, calls for the adoption of specific legislation prescribing measures to be taken for the prevention and control of, and protection against, health hazards due to occupational exposure to asbestos. Due to the time elapsed since the ratification of the Convention, the Committee hopes that the Government will take the necessary measures, in consultation with the most representative organizations of employers and workers concerned, in accordance with *Article 4*, of the Convention, to proceed to the adoption of laws or regulations ensuring effective application of the Convention. The Committee hopes that the next report of the Government will indicate the progress accomplished in this respect.

2. *Part V of the report form. Practical application*. The Committee notes the Government's indication that many steps still need to be taken to incorporate the provisions of the Convention into both national law and practice. In this regard, the Committee reminds the Government of the possibility to request technical assistance from the Office to overcome the existing obstacles.

[The Government is asked to report in detail in 2006.]

Ukraine

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1970)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

The Committee refers to its previous comments and to the communication sent by the International Labour Office to the Government on 26 September 2002 with a view to receiving the Government's comments on the observation made by the Federation of Trade Unions of Ukraine (FTUU) concerning the application of this Convention. The Committee notes that no answer has been provided by the Government to this letter.

The Committee takes note of the information from the Government's latest report received after the termination of its 73rd Session (November-December 2002).

The Committee recalls that in its comments the Federation of Trade Unions of Ukraine (FTUU), while acknowledging that the requirements of the provisions of the Convention were contained in the workers' protection laws and that they were generally respected, stated that unfortunately, due to the difficult financial situation, many enterprises in Ukraine currently use more than 800 machines, mechanisms and equipment which were not in conformity with the technical safety requirements mainly due to the absence of protective devices or features, which indeed constitute a potential danger to those working in these enterprises.

In its previous comments, the Committee noted that the national legislation within the occupational safety and health area gave only partial effect to the Convention. Indeed, the Workers' Protection Act of 14 October 1992 contains certain provisions giving too general effect to *Article 2, paragraphs 3 and 4, Articles 7 and 9, Article 10, paragraph 1, Article 11 and Article 15, paragraph 2, of the Convention*. The Committee refers to the information provided by the Government in its earlier report concerning the adoption of some regulations and texts of Ukrainian state standards relating to machinery as well as the elaboration of the Industrial Production Safety Bill which had been submitted for consideration to the Council of Ministers.

The Committee requests the Government to supply information concerning any progress made with respect to the application of the Convention and copies of laws and regulations, as well as state standards, codes of practice, technical guidelines and instructions, in order to make possible the examination of the conformity of the legislation and practice in Ukraine with the requirements of all provisions of the Convention.

Venezuela

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)

The Committee notes the information provided by the Government in reply to the previous comments relating to the application of *Article 17 of the Convention*.

1. *Article 4, paragraph 1, of the Convention (measures for the implementation and review of a national policy on occupational safety and health)*. The Committee notes the detailed information on the general and specific legal provisions governing conditions of work and occupational safety and health in any workplace. It notes the numerous industrial standards formulated by the Venezuelan Industrial Standards Commission (COVENIN), the application of which is compulsory in certain cases, and the activities to improve their application in practice. The Committee observes that these activities, and the legal provisions referred to in the Government's report, are of a preventive nature and are intended to avoid and reduce risks through vigilance and control of the working environment in workplaces.

The Committee notes the supervisory institutions enumerated in the Government's report, the objective of which is to establish follow-up and control mechanisms in the event of occupational accidents and diseases in compliance with its preventive mission. The Committee also notes the measures adopted, through the inspection activities carried out in various workplaces, the objective of which is to minimize accidents and dangers to the health of workers. The Committee requests the Government to provide examples of such programmes.

The Committee notes that, in accordance with section 8 of the Organic Act respecting prevention, working conditions and environment (LOPSYMAT) of 1986, the National Council of Occupational Prevention, Health and Safety has the fundamental objective of formulating a national policy in the fields of working conditions and environment relating to prevention, health, safety and well-being of workers. The Committee requests the Government to provide additional information on the activities of this Council and the progress achieved in formulating, implementing and periodically reviewing a coherent national policy on occupational safety, occupational health and the working environment.

2. *Article 5 (fields covered by a national policy)*. The Committee notes that occupational safety and health committees which, in accordance with section 35 of the Organic Act (LOPSYMAT), are established in all industrial or agricultural enterprises, concerns or establishments, are composed of representatives of workers and employers, as well as occupational safety technicians. The Committee recalls that, in accordance with *clause (d)* of this Article of the Convention, communication and cooperation at the levels of the working group and the enterprise and up to and including the national level is one of the main spheres of action to be taken into account in the formulation of the coherent national policy on occupational safety, occupational health and the working environment. The Committee requests the Government to provide information on the manner in which in practice communication and cooperation are achieved at the level of the working group and other appropriate levels, taking into account that at the national level they can be undertaken in the National Council of Prevention and Occupational Safety and Health.

The Committee also requests the Government to indicate the manner in which relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers are taken into account when formulating the coherent national policy on occupational safety, occupational health and the working environment (*clause (b)* of this Article).

3. *Article 8 (laws and regulations)*. The Committee notes the Government's indication that many proposals have been made for regulations under the Organic Act respecting prevention, working conditions and environment (LOPSYMAT) with the support and participation of employers, workers, the Government and universities. Nevertheless, the commission responsible for the formulation of the draft regulations has decided to suspend the activities undertaken for this purpose due to the fact that the Organic Act is also to be amended. The Committee hopes that the Government will provide information on the progress achieved in this respect.

4. *Article 11 (simultaneous exposure to several substances or agents (b) and annual publication of information (e))*. With reference to the previous comments, the Government indicates that labour supervision units, through their activities in the fields of inspection, the promotion of prevention and advice, adopt supervisory measures and provide guidance so that employers determine the health risks for workers based on the existing legal basis. The policy that has been implemented is reflected in the fact that the supervisory units are in a position, through the supervision of workplaces, to detect risks that exist in the working environment, so as to ensure that the risk of workers suffering an occupational accident or disease is diminished. All the details are contained in the monthly reports, which act as a database for national statistics and, in accordance with section 565 of the Organic Labour Act, within four days the employer has to notify the labour inspectorate of the data relating to the person suffering the accident, the establishment and the accident itself.

The Committee notes this information. It requests the Government to provide information on the manner in which health hazards due to the simultaneous exposure to several substances or agents shall be taken into consideration (*clause (b)* of this Article) and the manner in which the competent authority ensures the annual publication of information on measures taken in pursuance of the national policy on occupational safety, occupational health and the working environment (*clause (e)* of this Article).

5. *Article 12(b) and (c) (information concerning the correct installation and use of machinery and equipment)*. The Committee notes the list of publications of the Venezuelan Industrial Standards Commission (COVENIN) regulating equipment and the handling of hazardous substances. It also notes the Government's indication that producers of machinery currently issue standards to ensure that the machinery and equipment used at the workplace offer the highest level of safety and protection possible. The Committee requests the Government to provide examples of such standards.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 13** (Afghanistan, Cambodia, Central African Republic, Côte d'Ivoire, Guatemala, Guinea, Lao People's Democratic Republic, Latvia, Luxembourg, Mali, Morocco, Nicaragua, Norway, Romania, Russian Federation, Slovenia, Spain, Suriname, Togo); **Convention No. 45** (Kenya, Malaysia: Peninsular Malaysia, Malta, Mexico, Morocco, Nicaragua, Nigeria, Panama, Papua New Guinea, Poland, Portugal, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Tunisia, Turkey, Viet Nam, Zimbabwe); **Convention No. 62** (Egypt, Guinea, Poland, Suriname, Tunisia); **Convention No. 115** (Chile, Czech Republic, Latvia, Nicaragua, Poland, Sri Lanka, Sweden, Switzerland, Tajikistan); **Convention No. 119** (Brazil, Croatia, Latvia, Niger, Paraguay, Poland, Russian Federation); **Convention No. 120** (Azerbaijan, Denmark, France: French Guiana, Iraq, Latvia, Poland, Portugal, Sweden, Switzerland, Tunisia, Ukraine, United Kingdom, Venezuela, Viet Nam); **Convention No. 127** (Nicaragua, Poland, Turkey); **Convention No. 136** (Brazil, Chile, Morocco, Slovenia, Zambia); **Convention No. 139** (Afghanistan, Brazil, Czech Republic, Guinea, Ireland, Peru, Slovenia, Sweden, Switzerland); **Convention No. 148** (Azerbaijan, Brazil, Kyrgyzstan, Niger, Norway, Portugal, Russian Federation, Slovenia, Sweden, United Republic of Tanzania, United Kingdom: Anguilla, Uruguay, Zambia); **Convention No. 155** (Belarus, Latvia, Nigeria, Russian Federation, Slovakia, Sweden, Viet Nam); **Convention No. 161** (Mexico, Sweden); **Convention No. 162** (Canada, Netherlands, Russian Federation, Slovenia, Sweden, Uruguay); **Convention No. 167** (Mexico); **Convention No. 170** (Sweden).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 62** (Netherlands, Switzerland); **Convention No. 115** (United Kingdom: Bermuda); **Convention No. 119** (Denmark); **Convention No. 120** (Uruguay); **Convention No. 136** (Switzerland, Syrian Arab Republic).

Social Security

Antigua and Barbuda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (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:

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 allow full effect to be given to the Convention. In its last report, the Government indicates that there has been no change in the legislation, and that the latter is adequate for Antigua and Barbuda. In these circumstances the Committee must once again express the hope that the Government will be able to re-examine the matter and that it will take the necessary steps to bring national law and practice into full conformity with the Convention, as follows.

Article 5 of the Convention. 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. This provision of the Convention provides for additional compensation for victims of injuries who need the assistance of a third person. However, section 9 of the above Ordinance provides for additional compensation only in the event of temporary incapacity.

Article 9. 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. The Committee therefore asks the Government to take the necessary steps to give full effect to this provision of the Convention.

Article 10. The Committee notes that the legislation does not ensure the provision of surgical appliances and artificial limbs in general. Section 10 of the abovementioned Ordinance provides for the supply of artificial limbs only when this is likely to improve the 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 therefore asks the Government to take the necessary measures to bring its legislation into full conformity with 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.

Barbados

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1974)

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, which it has been making for a number of years, the Committee pointed out 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, which deprive a beneficiary, when residing abroad, of his right to ask for his benefit to be paid directly to him at his place of residence, are contrary to the provisions of *Article 5 of the Convention*. In its reply, the Government stated that approval has been given for direct payment of the benefits to the claimant in the country where he is currently residing, and that corresponding amendments of the National Insurance and Social Security Act have been approved by the Government to bring it in accordance with *Article 5* of the Convention, and that the procedural steps have been taken to submit these amendments to Parliament for enactment. The Committee notes this information with interest and would like the Government to provide a copy of the new provisions as soon as they are adopted. It would also appreciate receiving statistical information on the number and nationality of the beneficiaries to whom benefits are transferred abroad.

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

Chile

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1999)

The Committee takes note of the Government's first report. It also notes the comments sent by the Autonomous Confederation of Workers of Chile (CAT), the Latin-American Central of Workers (CLAT) and the World Confederation of Labour (WCL) on 1 April, 3 May and 22 July 2004, alleging failure to apply certain provisions of Convention No. 121 to the workers of CODELCO Chile – División Andina who have total or partial incapacity for work due to silicosis. The

Committee trusts that the Government will not fail to send full information in response to the comments of the above organizations. 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 2005.]

Democratic Republic of the Congo

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1967)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation, which read as follows:

In reply to the Committee's previous comments, the Government states that it is not currently 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 undertakes to transmit the extended schedule of occupational diseases as soon as it has been adopted by the National Labour Council.

The Committee notes this information. It hopes that, despite the current difficulties, the extended schedule of occupational diseases will be adopted in the very 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.

France

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1948)

The Committee notes the report provided by the Government in reply to its previous observation. It recalls that on many occasions it has drawn the Government's attention to the need to adopt measures to give full effect to the Convention as regards: (a) the *restrictive nature* of the pathological manifestations listed under each of the occupational diseases in the schedules of the national legislation; (b) the absence from these schedules of an item covering in general terms poisoning by *all halogen derivatives of hydrocarbons of the aliphatic series and all compounds of phosphorous*; and (c) the emission of certain products mentioned by the Convention, the handling or use of which are liable to cause *primary epitheliomatous cancer of the skin*. It also recalls that under the terms of section 7 of Act No. 93-121 of 27 January 1993 (amending section L.461-1 of the Social Security Code) a supplementary system has been established for the recognition of occupational diseases under which a characterized disease which is not included in a schedule may also be recognized as being occupational in origin where it is established that it is fundamentally and directly caused by the normal occupational activity of the victim and leads to the latter's death or partial permanent incapacity at least equal to a given percentage. The Committee previously welcomed this new procedure in so far as, by going beyond the limitative nature of the schedules of occupational diseases, it made it possible to consider diseases not enumerated in the schedules as being occupational in origin. It nevertheless considered that the scope of the new procedure was seriously limited by the fact that it was open only to workers suffering from partial permanent incapacity of at least 66.66 per cent, thus excluding diseases which result in a lower degree of invalidity but which are liable to prejudice the social and occupational situation of victims to a particularly significant degree. Furthermore, as the Government has acknowledged on several occasions, the establishment of a direct and fundamental link between the disease and the normal occupational activity of the victim is one of the most difficult issues to resolve for the regional committees responsible for the recognition of occupational diseases, particularly as the burden of proving the link, as the Government acknowledges, rests with the victim, whereas the Convention establishes a presumption of the occupational origin of the disease.

In its report, the Government indicates that, following the adoption of Decree No. 2002-543 of 18 April 2002, the rate of incapacity from which the supplementary system for the recognition of diseases not enumerated in the schedules is available, has been reduced from 66.66 to 25 per cent, when it can be proven that the disease is fundamentally and directly caused by the normal occupational activity of the victim. The Government further states that, although the principle of the presumption that a disease is caused by an occupational risk does not apply to the supplementary system for the recognition of occupational diseases, persons suffering from diseases which they wish to have recognized as being of occupational origin in practice receive the necessary assistance from social security institutions, labour inspectors and medical labour inspectors. Finally, it provides statistics compiled in 2000 and 2001, that is before the entry into force of the reform of the supplementary mechanism, according to which applications for the recognition of the occupational nature of diseases through this mechanism were accepted in 17 and 24 per cent of cases, respectively.

The Committee notes this information. In particular, it notes with interest the reduction of the rate of incapacity required for this purpose from 66.66 to 25 per cent, which should allow a larger number of beneficiaries to have recourse to the supplementary mechanism for the recognition of diseases not enumerated in the schedules of occupational diseases. With regard to the burden of proof, the Committee notes the Government's statement that a person suffering from a disease which she or he wishes to have recognized as being occupational in origin receives in practice the necessary assistance for this purpose. In this regard, the Committee would be grateful if the Government would provide additional detailed information in its next report on the assistance received in practice by such victims and on the duration of the procedures under the supplementary recognition mechanism in comparison with those established under section L.461-1(2) of the Social Security Code (principle of the presumption of the occupational origin of a disease). The Government is also requested to continue providing statistical data on the investigation of applications for the recognition of the occupational origin of diseases in the context of the supplementary mechanism established by section L.461-1(4) of the Social Security Code, as well as information on the number of cases in which applications examined by the regional committees for the recognition of occupational diseases have related to pathologies or substances covered by the Convention, but not by the schedules of occupational diseases in force in the country. Finally, the Committee hopes that the implementation of the procedure for the recognition of the occupational origin of diseases will lead to the adoption of measures to supplement the schedules contained in the French legislation in accordance with the objectives pursued by the Convention.

French Guiana

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)

Please refer to comments under Convention No. 42, France.

Guadeloupe

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)

Please refer to comments under Convention No. 42, France.

Martinique

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)

Please refer to comments under Convention No. 42, France.

Réunion

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)

Please refer to comments under Convention No. 42, France.

Guinea

Equality of Treatment (Social Security) Convention, 1962 (No. 118) ***(ratification: 1967)***

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

With reference to its earlier comments, the Committee notes the information provided by the Government in its report and has examined Act L/94/006/CTRN of 14 February 1994 establishing the new Social Security Code.

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 the abovementioned 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 deep regret that for the sixth consecutive time the Government’s report has not been received. It must therefore repeat its previous observation, which read as follows:

1. *Article 8 of the Convention.* The Committee notes with interest the Government’s statement that in 1992 the National Social Security Fund together with the National Occupational Medicine Service revised the list of occupational diseases, increasing it from 13 to 29 items, thus aligning it with the list appended to Schedule 1 of the Convention, as amended in 1980. The Committee asks the Government to provide a copy of the list, indicating whether it is now in force.

2. *Article 15(1).* In answer to the Committee’s previous comments, the Government indicates that, 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.

3. *Articles 19 and 20.* The Committee notes the Government’s reply. It notes however that the Government’s report does not contain 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. In these circumstances 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 2 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.

4. *Article 21.* In answer to the Committee’s comments, the Government states that it has increased the benefits so as to ensure better coverage for victims of occupational accidents; furthermore, studies are under way with a view to a further increase in order to take fuller account of the economic context. The Committee notes this information. 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.

5. *Article 22(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.

6. 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.

7. 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.

Haiti

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1955)

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 comments on the application of the Convention communicated by the Trade Union Federation of Haiti, which were forwarded to the Government in October 2002. These observations concern the operational difficulties of the Insurance Office for Occupational Injury, Sickness and Maternity (OFATMA). It hopes that a report will be provided for examination at its next session and that it will include information on the measures which have been taken or are envisaged with a view to the progressive establishment of a general sickness insurance system fulfilling the requirements of the Convention. In this respect, the Committee reminds the Government of the possibility of having recourse to the technical assistance of the International Labour Office.

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

Sickness Insurance (Agriculture) Convention, 1927 (No. 25) (ratification: 1955)

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 observations on the application of the Convention sent by the Trade Union Federation of Haiti alleging that agricultural workers have no medical coverage. These observations were sent to the Government in October 2002. It hopes that a report will be sent for examination at its next session and that it will contain information on the measures taken or envisaged gradually to establish a compulsory sickness insurance scheme for agricultural workers which will enable effect to be given to the Convention. It reminds the Government in this connection that it may seek technical assistance from the International Labour Office.

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

Libyan Arab Jamahiriya

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1975)

The Committee notes the information provided by the Government in its report. It also notes the mission carried out by the Office in October 2004, and the information provided to it by the technical committee responsible for reports. The Committee notes that the Libyan Government welcomes the mission and provides assurances of its commitment to comply with the obligations deriving from the Convention. The Committee notes with interest the Government's request to provide it with technical assistance to follow up the comments of the Committee and that this assistance will be provided during the course of 2005. It hopes that, as a result of this assistance, the Government will take the necessary measures to give full effect in law and practice to the provisions of the Convention on which it has been commenting and that it will provide information in its next report on the following points.

Part IV of the Convention. Unemployment benefit. With reference to its previous comments, the Committee recalls that, under the terms of section 38 of the Social Security Act, No. 13 of 1980, and Decision No. 303 of 1988 establishing rules governing the provision of cash unemployment benefits, in cases where a contract of work is terminated without the insured person being entitled to a pension, the insured person continues to receive the previous wage from the employer for a maximum period of six months or until he or she finds another job. Upon completion of this period, the competent people's committee of the public service takes over responsibility until the insured person is assigned to a suitable job. In relation to the minimum standards of protection set out in the Convention, which authorizes the limitation of unemployment benefit to 13 weeks at a replacement rate of 45 per cent, the Libyan system guarantees the protection during the whole period of unemployment with a replacement rate of 100 per cent. In the Government's opinion, these provisions of the national legislation are adequate to ensure effective protection against unemployment, which is the essential purpose of the Convention.

The Committee considers that, while the Libyan system may prove to be effective in the current national context in which there is practically no unemployment, with the result that the financial burden borne respectively by employers and local budgets remains under control, its effectiveness could rapidly become inadequate where, in the context of greater openness of the national economy to global markets, unemployment and production costs in the country were to rise. The Committee therefore wishes to draw the Government's attention to the fact that the Convention is intended to afford effective protection against unemployment by means of a system of social security which makes it possible to finance unemployment benefit through collective contributions from all those concerned, thereby avoiding the situation in which they are payable directly by employers, which may become too burdensome if the level of unemployment in the country rises. The Committee therefore hopes that the Government will be able to reconsider the question in the light of its position as expressed in its 1995 report, in which it indicated that it would endeavour to adopt the necessary rules to permit the Social Security Fund to receive contributions and to pay unemployment benefit, thereby giving effect to *Part IV* of the Convention through a system of social security and taking into account more fully the principles of organization and financing set out in *Articles 71 and 72*. In this respect, the Committee notes that the technical committee is of the opinion that provisions should be introduced into the national social security system to cover unemployment benefit with a view to giving effect to *Part IV* of the Convention, and that the submission to amend section 38 of Act No. 13 and Decision No. 303, referred to above, has been forwarded to the Social Security Fund with a view to bringing these provisions into conformity with the Convention. The Committee also notes the indication of the technical committee that it will ascertain whether the Social Security Fund has made progress in this respect and will provide information as soon as possible.

Part VII. Family benefit. In its previous comments, the Committee noted that section 24 of Act No. 13 of 1980 only provided for the granting of family allowances to pensioners under the social security system, whereas *Article 41* of the Convention covers other categories of employers or residents. In reply, the Government indicated in its previous report that the family benefit for the various categories of employees is covered by the legislation respecting labour and the public service and that the purpose of the Convention to provide family benefit to all employees without exception is fully attained. The Committee notes the decision of the People's Committee of 24 April 1978, a copy of which was provided by the Government, which provides in section 1 that "Libyan employees, in both the public sector and the private sector, shall receive in addition to their wage and other indemnities, a family allowance ...". The Committee recalls that the Convention also covers employees who are not nationals. It hopes that the Government will provide copies with its next report of the provisions which also ensure that non-nationals are entitled to benefit from family allowances.

[The Government is requested to report in detail in 2005.]

Equality of Treatment (Social Security) Convention, 1962 (No. 118) ***(ratification: 1975)***

The Committee notes the information supplied by the Government in its report of July 2004 and the information that the Technical Committee responsible for reports supplied to an ILO mission in October 2004. The Government undertakes to discharge its obligations and has requested technical assistance in order to take action on the Committee's comments. Such assistance should be forthcoming early in 2005. Noting the concern expressed by the Conference Committee that serious discrepancies remain between the Convention and national law and practice, the Committee hopes that following the ILO assistance, the Government will take the necessary steps to give full effect in law and in practice to the provisions of the Convention. It hopes that the Government will send a detailed report for examination at its next session and that it will contain full replies to all the Committee's previous comments, which addressed the following matters.

I. *Article 3, paragraph 1, of the Convention (in conjunction with Article 19).* (a) The Committee noted in its previous observations that section 38(b) of the Social Security Act, No. 13 of 1980, and Regulations 28 to 33 of the Pension Regulations of 1981 provide that non-Libyan residents receive only a lump sum in the event of premature termination of work, whereas nationals are guaranteed, under section 38(a) of the Act, the maintenance of their wages or remuneration. The Committee once again points out the importance of abolishing the difference between Libyan workers and foreign workers in the event of premature termination of employment. It hopes that the Government will take all necessary steps to this end in the near future.

(b) According to the information sent by the Government and pursuant to the national legislation (sections 5(c) and 8(b) of the Security Act), foreign workers engaged in the public administration and non-Libyan self-employed workers may be affiliated only on a voluntary basis to the social security scheme unless, in the case of the latter, an agreement exists with their country of origin. The Committee again points out that where affiliation of nationals to the social security scheme is compulsory, as it is in the Libyan Arab Jamahiriya, to make affiliation voluntary for some categories of foreign workers is contrary to the principle of equal treatment laid down in the Convention (except where arrangements exist between the members concerned under *Article 9*). The Committee reiterates the hope that the Government will take the necessary measures in the near future to bring the legislation into line with the Convention on this point.

II. The Committee notes with regret that the Government merely reproduces the arguments adduced in its earlier reports and before the Conference Committee in 2002 in an attempt to justify the discrepancy between the national legislation and the Convention. It must therefore draw the Government's attention to these matters once again.

1. Under the terms of Regulation 16, paragraphs 2 and 3, and Regulation 95, paragraph 3, of the Pensions Regulations of 1981, and without prejudice to special social security agreements, non-nationals who have not completed a period of ten years' contributions to the social security scheme (years that may be supplemented, where appropriate, by years of contributions paid to the social insurance scheme) are entitled neither to an old-age pension nor to a pension for total incapacity due to an injury of non-occupational origin. Furthermore, Regulation 174, paragraph 2, of the above Regulations seems to imply *a contrario* that this qualifying period is also required for pensions and allowances due to survivors of the deceased person by virtue of Title IV of the Regulations, when death is due to a disease or an accident of non-occupational origin. Since such a qualifying period is not required for insured nationals, the Committee points out that the above provisions of the Pension Regulations of 1981 are incompatible with *Article 3, paragraph 1*, of the Convention. It hopes that the Government will indicate the measures that it has taken or is envisaging to give effect to this provision of the Convention.

2. *Article 5*. Regulation 161 of the Pension Regulations of 1981 provides that pensions or other cash benefits *may* be transferred to beneficiaries resident abroad subject, where appropriate, to the agreements to which the Libyan Arab Jamahiriya is a party. The Committee recalls that, in accordance with *Article 5* of the Convention (read in conjunction with *Article 10*), each Member which has ratified the Convention *must* guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations of the Convention in respect of the branch in question, as well as to refugees and stateless persons, when they are resident abroad, the provision of invalidity benefits, old-age benefits, survivors' benefits, death grants and employment injury pensions. The Committee considers that the strict application of *Article 5* of the Convention is all the more necessary in the light of the mass expulsions which have taken place in the past of foreign workers from the national territory. It hopes that the Government will indicate in its next report the measures which have been taken or are envisaged to give effect to this basic provision of the Convention in both law and practice.

[The Government is asked to reply in detail to the present comments in 2005.]

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1975)

The Committee notes the information provided by the Government in its report. It also notes the mission undertaken by the Office in October 2004 and the information supplied to it by the technical committee responsible for reports. The Committee notes that the Libyan Government welcomed the mission and undertook to respect its obligations arising from the Convention. The Committee notes with interest the Government's request for technical assistance in order to respond to the Committee's comments and notes that this assistance will be provided during 2005. It hopes that, further to this assistance, the Government will take the necessary measures to give full effect in law and in practice to the provisions of the Convention which are the subject of the comments.

The Committee raises a number of issues in a direct request and hopes that the Government will provide the information requested for examination at its next session.

[The Government is asked to report in detail in 2005.]

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1975)

The Committee notes the information supplied by the Government in its report. It also notes the mission carried out by the Office in October 2004 and the information supplied to it by the technical committee responsible for reports. The Committee notes that the Government welcomes the mission and states that it undertakes to fulfil its obligations under the Convention. The Committee notes with interest the Government's request for technical assistance in order to act on the Committee's comments and that such assistance will be provided in the course of 2005. The Committee hopes that as a result of the assistance, the Government will take the necessary steps to give full effect in law and in practice to the provisions of the Convention on which the Committee has been commenting.

The Committee raises a number of issues in a direct request and hopes that the Government will not fail to provide the information requested for examination at its next session.

[The Government is asked to report in detail in 2005.]

Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1975)

The Committee notes the information supplied by the Government in its report. It also notes the mission carried out by the Office in October 2004 and the information supplied to it by the technical committee responsible for reports. The Committee notes that the Government welcomes the mission and states that it undertakes to fulfil the obligations arising from the Convention. The Committee notes with interest the Government's request for technical assistance in order to act on the Committee's comments and that such assistance will be supplied in the course of 2005. The Committee hopes that as a result of the assistance, the Government will take the necessary steps to give full effect in law and in practice to the provisions of the Convention that it has been commenting on.

The Committee raises other matters in a request addressed directly to the Government, and hopes that the Government will not fail to provide the information requested for examination at its next session.

[The Government is asked to report in detail in 2005.]

Malaysia

Peninsular Malaysia

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1957)

The Committee notes the reports provided by the Government.

Article 2 of the Convention. In its previous comments, the Committee has noted on many occasions that the Employees' Social Security Act, 1969, provides for a wage ceiling of 2,000 RM for compulsory coverage for both manual and non-manual workers and it recalled that, under the terms of the Convention, *manual* workers must be covered by the compulsory insurance scheme regardless of income levels.

In reply to these comments, the Government states that most manual workers normally receive wages that are below the above ceiling and are therefore covered by the Social Security Act. It adds that, in practice, the system covers many workers whose income is higher than the limit in so far as, on the one hand, most enterprises take out insurance for their employees who are not covered by the compulsory insurance scheme and, on the other, once covered by the scheme, workers continue to be covered even if their wages subsequently rise above the limit. Finally, the Government indicates that the coverage envisaged by the 1969 social security legislation is nevertheless improved from time to time.

The Committee notes this information. Since the manual workers currently excluded from compulsory insurance are, according to the Government's statements, insured in practice, the Committee considers that the Government will not have difficulties in amending the Social Security Act so as to ensure that all manual workers, irrespective of their income level, are *explicitly* covered by the Act. The Committee requests the Government to indicate the measures adopted or envisaged in this respect in its next report.

Myanmar

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1956)

The Committee notes the Government's report, according to which it is examining bringing the national legislation into conformity with the Convention. The Committee is therefore bound to note that no progress has been achieved in this respect and that the Government has referred on several occasions since 1967 to the revision of the Workmen's Compensation Act, without this however being carried out in practice. It is therefore bound to repeat its previous comments and strongly hopes that the Government will not fail to amend the above legislation so as to ensure that:

- (a) in accordance with *Article 5 of the Convention*, the compensation payable, where permanent incapacity or death results from injury, is paid to the worker or his dependants 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 utilized; and
- (b) in accordance with *Article 10*, no ceiling is imposed for the supply or renewal of artificial limbs and surgical appliances as are recognized to be necessary.

[The Government is asked to report in detail in 2005.]

Netherlands

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1964)

The Committee notes the Government's report for the period 1 June 2001 to 1 June 2004. It also notes the comments sent by the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP) and the National Federation of Christian Trade Unions (CNV), both dated 27 September 2004, as well as those of the Netherlands Trade Union Confederation (FNV), dated 18 November 2004. In their comments, the above trade union organizations refer to the statement communicated to the Director-General of the ILO on 22 May 2003 by the Government of the Netherlands under *Article 2, paragraph 6, of Convention No. 118*, as well as the consultation procedure regarding the Government's intention to denounce the Convention. The Committee requests the Government to transmit any comments it may wish to make on the matters raised therein.

With reference to its previous comments the Committee notes that at its 289th Session (March 2004), the Governing Body decided to set up a committee to examine the representation made by the Confederation of Turkish Trade Unions

under article 24 of the ILO Constitution alleging non-observance by the Netherlands of Convention No. 118. In accordance with its usual practice, the Committee has decided to suspend its examination of this Convention in the Netherlands while awaiting the outcome of the *Article 24* procedure.

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
(ratification: 1969)

The Committee notes the communication dated 25 August 2003 from the Netherlands' Trade Union Confederation (FNV), which contains extensive comments on the application by the Netherlands of the various provisions of the Convention. This communication, which was transmitted to the Government by the Office on 29 September 2003, contains a copy of the letter addressed by the FNV to the Dutch Ministry of Social Affairs and Employment concerning the Government's report on the Convention for the period from 1 June 2001 to 1 June 2003. In a letter dated 28 August 2003, the Government informed the Office that it has received FNV's comments on this report and needs some time to look into the question and to adjust the corresponding parts of its report. The said report was received in the ILO on 20 October 2003. The report however contained no reference whatsoever to the FNV's comments and up till now no reply to these comments has been received from the Government.

The FNV's comments concern the application in law and practice of Parts III (Old-Age benefit) and IV (Survivors' benefit) of the Convention. As far as the General Old-Age Pensions Act (AOW) is concerned, the FNV refers in particular to the advisory opinion solicited by the Parliament from the Dutch Social and Economic Council (SER), which suggested reconsidering the qualifying period for the full AOW benefit (50 years of residence) in view of the international commitments of the Netherlands. The Trade Union Confederation alleges also that some provisions of the General Survivors' Benefit Act (ANW) do not comply with the requirements of the Convention and that this fact was long brought to evidence by several legal experts, as well as in several important court rulings regarding the ANW, which directly invoked Conventions Nos. 121 and 128, including the decision of the Central Court of Appeal (CRvB) of 4 April 2003. The FNV indicates that after this court's decision it wrote to members of Parliament and to the Government with an urgent appeal to change the legislation in order to comply with Convention No. 128. As none of these developments has been reflected in the Government's report, the FNV considers that it is now time for the supervisory bodies of the ILO to express their views.

Taking into account the extensive and complex nature of the problems raised by the FNV, the Committee trusts that the Government will not fail to respond to the allegations made and will provide detailed information on all the points raised, including the text of the relevant documents and court rulings, to enable the Committee to assess the situation at its next session in 2005. The Committee also welcomes the willingness of the FNV to supply additional information on the problems raised. The Committee also refers to the questions raised in its previous direct request, which it will consider together with the future report of the Government.

[The Government is asked to reply in detail to the present comments in 2005.]

Peru

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1945)

Article 2 of the Convention. With reference to its previous comments, the Committee notes the detailed statistical information provided by the Government on the number of wage earners covered by health insurance under the general scheme and special schemes. With regard to the other information requested, that is on the total number of wage earners and the number of wage earners protected as a percentage of total wage earners, the Committee notes the Government's statement that it undertakes to provide these data when they become available.

In this respect, the Committee notes, from the information contained in the report on the application of the Social Security (Minimum Standards) Convention, 1952 (No. 102), that the proportion of insured persons covered by the social health insurance scheme (ESSALUD) in relation to the active population at the national level was 18.3 per cent in 2001. It observes that since 1994 there has been a stagnation in absolute terms of the number of insured persons which, combined with the increase in the rate of the active population since that date, has resulted in a significant decline in the rate of insured persons among the active population. In these circumstances, the Committee hopes that the Government will provide with its next report all the information requested so that the Committee has at its disposal all the necessary data to assess the application of the Convention in Peru.

With regard to the geographical coverage of the health scheme, the Committee notes the statistical data provided by the Government under Convention No. 102 on the number of wage earners covered by ESSALUD in the departments of Amazonia, Apurimac, Huancavelica, Huanuco, Madre de Dios, Moquegua et Pasco, and the distribution by type of the ESSALUD health-care establishments in these departments. It requests the Government to keep it informed of the measures adopted or envisaged to supplement the existing supply of health-care establishments in departments such as those of Huancavelica, Madre de Dios and Moquegua, where it is relatively lower for a comparable number of insured persons than in the other departments referred to above.

Article 6, paragraph 2. In its previous comments, the Committee requested the Government to indicate the measures that it plans to adopt to allow the participation by the persons protected in the administration of the health-care

providers (EPS) and health-care services at the enterprise level. In its report on the application of Convention No. 102, the Government indicates that, although the legislation in force does not provide for such participation, there exist supervisory and control mechanisms in the two systems. It adds, as it has indicated previously, that the regulation and supervision of the EPS is the responsibility of the EPS Supervisory Authority (SEPS), a public institution established for this purpose. It adds, with regard to enterprise health-care services, that they have to be accredited with the Ministry of Health and submit their health plans to ESSALUD to be authorized to operate. The Committee notes this information. It agrees with the Government that the procedures of accreditation and supervision offer certain guarantees that the rights of insured persons are respected. However, it recalls that the participation envisaged by this provision of the Convention is intended to associate insured persons in the management of these institutions and services, and not only to enable them to exercise *a posteriori* control over such management. It is in this spirit that the report form requests information on the proportion of seats or of votes assigned to the representatives of insured persons in the organs of these institutions. The Committee therefore trusts that the Government will re-examine the issue of the participation of insured persons in the management of self-governing insurance institutions and that it will provide information in the very near future on the measures adopted or envisaged with a view to bringing the national legislation into conformity with this provision of the Convention.

[The Committee is asked to reply in detail to the present comments in 2005.]

Sickness Insurance (Agriculture) Convention, 1927 (No. 25)
(ratification: 1960)

Please refer to the comments made under Convention No. 24.

[The Government is asked to reply in detail to the present comments in 2005.]

Social Security (Minimum Standards) Convention, 1952 (No. 102)
(ratification: 1961)

The Committee takes notes of the information supplied by the Government in its report and of the documents appended thereto. It notes with interest that technical assistance was supplied by the ILO to the competent Peruvian authorities with a view to improving application of the Convention.

Health-care scheme

Part II (Medical care), Article 10 of the Convention (in conjunction with Article 8). In response to the Committee's previous comments and request for information on the provision of medical care, including home visits, without any age requirement, the Government indicates in its report that there are several channels through which the Health Care Social Security System (ESSALUD) provides domiciliary care and visiting, including the Domiciliary Care Programme (PADOMI), open to persons over 70 years of age and persons of under 70 with physical difficulties. Apart from PADOMI, the Government refers to primary and secondary health-care centres, which also offer domiciliary visiting for medical follow-up of patients, regardless of age, as part of the measures for families of at-risk users or for treatment follow-up, and to domiciliary care visits carried out by the services of third-category large hospitals. The Committee notes with interest this information and the related statistical information supplied by the Government. Since the Government's report provides information on the ESSALUD system, the Committee would be grateful for information, including statistics, showing the situation with regard to domiciliary visiting for persons affiliated to Health Care Providers (EPS).

Part II (Medical care), Article 9, Part III (Sickness benefit), Article 15 and Part VIII (Maternity benefit), Article 48. With reference to its previous comments, the Committee notes the information and the statistics supplied by the Government concerning the care and benefits provided by ESSALUD in the departments of Amazonas, Huancavélica, Huanuco, Madre de Dios, Moquegua and Pasco. It notes in particular that, according to the Government, the EPS system has received no applications for membership in the abovementioned departments because there are few workers in the formal economy in these regions, and requests the Government to keep it informed of any developments in this respect.

The Committee also notes the information on the number of employees protected by ESSALUD in the abovementioned departments and the distribution, according to type, of ESSALUD health-care establishments in these departments. It requests the Government to keep it informed of any measures taken or envisaged to supplement existing health establishments in departments such as Huancavélica, Madre de Dios and Moquegua, where, by comparison with the other departments mentioned above, there are relatively fewer such establishments in relation to the number of persons ensured by ESSALUD.

Part XIII (Common provisions) (in conjunction with Parts II, III and VIII), Article 71. In reply to the Committee's previous comments on the manner in which the Health Care Providers Supervisory Authority (SEPS) supervises the operation of the health-care system, the Government states that it appends to its report copies of reports on the supervision of Novasalud EPS and Rimac Internacional EPS, the feasibility studies requested previously and decisions issuing penalties under resolution No. 026-2000-SEPS/CD. The Committee notes, however, that these documents are not appended to the report and requests the Government to send them with its next report.

Article 72. In its previous comments, the Committee requested the Government to indicate the measures it intended to take to allow the participation of the persons protected in the administration of EPS and the health-care services of individual enterprises. In its report, the Government indicates that, although the legislation does not provide for such

participation, there are supervision and control mechanisms in the two areas referred to by the Committee. It again indicates that the regulation and supervision of EPS is the responsibility of the SEPS, a public body created for this purpose. It adds, with regard to the health-care services of individual enterprises, that the latter must have the approval of the Ministry of Health and must submit their health plans to ESSALUD in order to be allowed to carry out their activities. The Committee takes note of this information. It shares the Government's view that such approval and supervision procedures do provide some guarantee for the rights of insured persons. However, it points out that the purpose of the participation provided for in this provision of the Convention is to associate the insured persons with the management of these institutions and services. This is the more necessary in the case of EPS because according to the legislation (sections 15 and 16 of Act No. 26790), enterprises which provide health care, through EPS or their own care services, are entitled to a credit drawn from workers' contributions equal, in principle, to 25 per cent of the latter. The Committee therefore hopes that the Government will re-examine the matter of participation by insured persons in the management of independent insurance institutions and that it will very shortly report on measures taken or envisaged to bring the legislation into line with this provision of the Convention.

Pensions scheme

I. Private pensions system

Part V (Old-age benefit), Articles 28 and 29, paragraph 1 (in conjunction with Article 65 or Article 66). In answer to the Committee's previous comments requesting information on the rates of pensions in the private system, together with the statistics on this subject requested in the report form, the Government again indicates that the rates of the pensions provided under the private pensions system (SPP) cannot be determined in advance since they depend on the capital accumulated in individual capitalization accounts, and in particular on the earnings of these accounts. With regard to the minimum of 40 per cent of the reference wage applying to old-age benefit, the Government indicates that the SPP having existed for only ten years, it is only possible to estimate or project on the basis of the average earnings obtained since the SPP was set up, which gives higher percentages than the 40 per cent established by the Convention. The Government furthermore provides statistical data indicating that 7,730 people received old-age benefit under the SPP, the average pension being 840 new soles.

While noting the abovementioned information and statistics, the Committee considers that they do not allow it to determine whether full effect is given to the Convention. It must therefore reiterate its request to the Government to provide all the statistics required by the report form so that it can fully assess the extent to which old-age benefit attains, in all instances and regardless of the type of system selected, the level prescribed by the Convention.

With reference to its previous comments, Committee notes the information supplied by the Government to the effect that pursuant to Act No. 27617 of 1 January 2002 the amount of the minimum pension under the SPP is 415 new soles. It notes in particular that this pension may be granted to persons born before 31 December 1945 who, on reaching the age of 65 years, have been affiliated for at least 20 years to the SNP or the SPP and whose contributions amount to not less than the statutory minimum wage. The Committee reminds the Government that *Article 66* of the Convention may be applied within the framework of a private pensions system provided that the minimum old-age benefits payable to a standard beneficiary with 30 years of contribution are not less than the minimum required by the Convention (40 per cent of the wage of an ordinary adult unskilled male labourer as defined in *paragraphs 4 and 5* of the abovementioned Article).

Article 30. With reference to its previous comments, the Committee notes that according to the Government, programmed retirement is based on life expectancy, reassessed yearly, and may be revoked where the insured person is able to switch to another retirement regime. The Government again refers to the abovementioned minimum pension, financed from public funds, which may be paid to persons fulfilling the applicable age and contribution requirements. The Committee takes note of this information. It requests the Government to indicate whether this minimum pension is also granted to insured persons of 65 years of age with 20 years of contribution who have opted for programmed retirement and who have exhausted the capital accumulated in their individual accounts. If so, please indicate the relevant legal provisions. The Committee once again points out that under *Article 29, paragraph 1*, read in conjunction with *Articles 28 and 65 or 66*, an old-age benefit at least equal to 40 per cent of the reference wage must be secured to a protected person who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution.

Part IX (Invalidity benefit), Article 58. With reference to its previous comments, the Committee notes the Government's statement that a worker with invalidity and survivors' coverage is entitled to invalidity benefit for life payable by the insurance company. The Government adds that insured persons who are not covered for invalidity under the private pensions system receive a pension drawn from their capitalization accounts and may, under this regime, receive a pension in the form of a life annuity payable until their death. While noting this information, the Committee points out that by virtue of section 44 of Supreme Decree No. 054-97-EF issuing the single text of the law on the private pension fund administration system, and of section 131 of Supreme Decree No. 004-98-EF, a worker suffering from permanent or partial invalidity may choose between four forms of benefit, which include programmed retirement. Since, under the programmed retirement system insured persons may make monthly withdrawals until they have exhausted the capital in their individual accounts, which is contrary to the principle that the benefit must be paid throughout the contingency, the Committee again requests the Government to indicate the measures taken or envisaged to ensure that full

effect is given to this provision of the Convention in the event of total permanent invalidity of a worker who has opted for programmed retirement.

Part XIII (Common provisions), Article 71, paragraph 1. In response to the Committee's previous comments, the Government reiterates that workers' contributions are fixed on the basis of their earnings, which allows differentiated distribution of the costs of fund administration by private pension fund administrators (AFP). The Government adds that there was a reduction of such costs in 2002 and that it hopes that this trend will continue. The Committee notes this information but observes that the Government's report provides no response to its previous observation that the cost of the benefits, certain administrative expenses and the cost of certain commissions are *at the exclusive charge of workers* who are insured under an AFP, with employers' contributions being of a voluntary nature. Consequently, the Committee must again point out that by virtue of *Article 71, paragraph 1*, "the cost of the benefits ... and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected". The Committee hopes that the Government will take all necessary steps to ensure that full effect is given to the Convention on this point.

Article 71, paragraph 2. The Committee once again points out that according to this provision of the Convention, the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their spouses and children. So that the Committee can assess the effect given to this provision of the Convention, it trusts that the Government will provide in its next report the statistics requested in the report form under this Article of the Convention both for the private and for the public pensions and health systems.

II. System of pensions administered by the ONP

Part V (Old-age benefit), Article 29, paragraph 2(a). In its previous comments, noting that there was a qualifying period of 20 years of contribution for entitlement to a full retirement pension, the Committee reiterated that according to *paragraph 2(a) of Article 29*, where the old-age benefit is conditional upon a minimum qualifying period, a reduced benefit shall be secured to a protected person who has completed a qualifying period of 15 years of contribution or employment. In its last report, the Government states that this provision applies only to pension systems in which the length of the qualifying period for entitlement to a pension is 30 years and so should not apply to the Peruvian system, in which the length of the qualifying period has not been set at 30 years. The Government refers in this connection to Act No. 25967, which requires a qualifying period of at least 20 years of contribution for entitlement to old-age benefit. The Committee must nevertheless point out once again that this provision of the Convention applies to all old-age benefit schemes which establish a minimum period of contribution or employment, whether 20, 25 or 30 years, and provides for entitlement to a *reduced pension* for workers completing a qualifying period of 15 years of contribution or employment. In these circumstances, the Committee can only hope that the Government will re-examine this matter and will take the necessary steps in the near future to ensure that the protected persons may benefit from a reduced pension after 15 years of contribution, in accordance with this provision of the Convention.

The Committee further notes that under the SNP, minimum pensions are secured to persons who have not completed the minimum requirement of 20 years of contribution to the scheme pursuant to Act No. 27655 and Supreme Decree No. 028-2002-EF. It would be grateful if the Government would provide further information on the effect given to these texts in practice.

Part XI (Standards to be complied with by periodical payments), Articles 65 and 66. The Committee notes with interest the measures taken – and the progress made – to increase the amount of the pensions paid by the SNP. It observes in particular that between December 1997 and September 2004 these pensions increased by 86 per cent on average, and by 65 per cent in the case of persons with a total of between 20 and 33 years of contribution. In view of the importance it attaches to this matter, the Committee requests the Government to keep it informed of the application of measures to review the rates of periodical payments in order to take account, inter alia, of rises in the cost of living, in accordance with *Articles 65, paragraph 10, and 66, paragraph 8*. Please also provide statistical information on the adjustment of pensions, taking into account factors such as the cost of living.

III. Supervision of the private and public pension systems

In its previous comments, the Committee pointed out the need for actuarial studies and calculations to be carried out regularly in order to ensure application of *Articles 71, paragraph 3, and 72, paragraph 2*, in both the private and the public pensions systems. In reply, the Government states that it appended to its report a technical study used as a basis for a bill on maintenance of the rates of compulsory contributions to pension funds. Since the document in question was not attached to the Government's report, the Committee requests the Government to supply with its next report other, up-to-date examples of studies on sound finances in public and private institutions that provide old-age benefit.

With regard to the private system, the Committee takes note of Supreme Decree No. 079-2000-EF, and Resolution No. 052-98-EF/SAFP, which concern the minimum earnings of AFPs and the rules for supervision of the SPP. It also notes that, according to the Government, where an AFP fails to reach the profitability threshold, it is liable from its own resources up to the established threshold, failure to meet this obligation being duly penalized. The Committee nonetheless notes that the minimum profitability threshold is determined on the basis of the average earnings of all private pension

funds and does not necessarily guarantee real, above-inflation profitability able to protect affiliates effectively. It would be grateful if the Government would indicate whether there are any mechanisms, including prudential arrangements, to preserve the rights of insured persons where profitability thresholds are not met.

IV. Participation of protected persons in the administration of the systems

With regard to the public pensions system, the Committee notes with interest that following the adoption of Act No. 27617 of 1 January 2002 to reorganize the public and private pensions systems, section 3 of which amends section 17 of Legislative Decree No. 817 of 23 April 1996, the Consolidated Reserve Fund (FCR) is now administered by a Board, the officers of which include two representatives of retired persons appointed at the proposal of the National Labour Council.

With regard to the private pensions system, the Committee notes that the Government provides no information as to the measures taken or envisaged to give effect, under the private pensions system, to *Article 72, paragraph 1*, which provides that where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to the legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions. The Committee therefore expresses the hope that the Government will take the necessary steps as soon as possible to bring national laws and regulations into full conformity with this provision of the Convention as regards the private pensions system.

V. Communications from representative organizations on the application of the Convention

The Committee notes that in its last report, received in December 2003, the Government does not reply to the communication, received by the Office on 10 April 2003, from the Association of Former Employees of the Peruvian Social Security Institute alleging non-compliance with a decision of 12 January 2001 issued by the Constitutional Court ordering adjustment of the pensions provided under Legislative Decree No. 20530. The Committee trusts that the Government will reply to these allegations in its next report.

With reference to the observations made by the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao, the Committee notes the Government's statement that it will keep the Committee informed of the outcome of the legal proceedings currently under way. In these circumstances, the Committee can only refer the Government to its previous comments and hope that the Government will in due course provide the final court decisions on the cases brought in connection with the observations made by the abovementioned association.

With regard to the communication submitted by the World Federation of Trade Unions (WFTU), the Committee notes that the Government's report contains no information pertaining to this communication. The Government will no doubt reply in its next report to the allegations made by the National Central Association of Retired Workers and Pensioners of Peru (CENAJUPE) regarding the adjustment of pensions.

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 2005.]

Sao Tome and Principe

Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1982)

The Committee notes the report provided by the Government. It notes in particular the Government's indication that the Ministry of Labour, in collaboration with the Ministry of Health, is to benefit from UNDP financing for the establishment of the schedule of occupational diseases supplementing Act No. 1/90 on social security. The Government adds that the examination of the framework legislation on social protection, which envisages the establishment of several social protection schemes, has commenced and should provide a basis for the establishment of the schedule of diseases recognized as occupational diseases. The Committee notes this information with interest and hopes that the Government will be in a position to provide information in the very near future on the tangible progress achieved in this field for the establishment of a list of occupational diseases, including as a minimum those enumerated in the Schedule annexed to *Article 2 of the Convention*. It recalls that there are currently no technical standards in the country identifying certain diseases as being occupational diseases and that no occupational disease has therefore been diagnosed or compensated.

[The Government is asked to report in detail in 2005.]

Sierra Leone

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1961)

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.

Turkey

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1974)

With reference to its previous observation, the Committee notes *with satisfaction* that section 3, subsection II-A, of the Social Insurance Act No. 506 of 1964, which subordinated participation of foreign workers in invalidity, old-age and survivors' insurance schemes to a written request on their part, has been abolished as of 06 August 2003 by the promulgation of Act No. 4958. Consequently, as stated in the Government's report on Convention No. 102, all foreign workers have been brought under the compulsory coverage of the statutory long-term insurance schemes in conformity with *Article 3(1) of the Convention*.

The Committee hopes that the Government's next report will contain full information on the other issues raised in its previous observation.

Uganda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1963)

The Committee notes with deep regret that for the fourth consecutive year the Government's report has not been received. It must therefore repeat its observation of 1999, which read as follows:

Article 5 of the Convention. The Committee notes the information provided by the Government in its last report that the Bill to revise the legislation on workers' compensation has received its first reading in Parliament. It trusts that the Government will take all the necessary measures for the adoption of this Bill so as to give full effect to *Article 5* of the Convention, on which the Committee has been commenting since 1966. The Committee recalls that, under this provision of the Convention, the compensation payable in the event of accidents which result in permanent incapacity or death shall be paid in the form of periodical payments throughout the contingency, although these payments may be paid in the form of a lump sum if the competent authority is satisfied that it will be properly utilized. It requests the Government to provide a copy of the new Act as soon as it has been adopted.

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 with regard to: **Convention No. 17** (*Algeria, Lebanon*); **Convention No. 18** (*Mali, Pakistan*); **Convention No. 19** (*Cape Verde, Republic of Korea*); **Convention No. 102** (*Democratic Republic of the Congo, Denmark, France, Libyan Arab Jamahiriya, Peru, Serbia and Montenegro, Slovakia*); **Convention No. 118** (*Denmark, Egypt, Guinea, Libyan Arab Jamahiriya*); **Convention No. 121** (*Chile, Libyan Arab Jamahiriya*); **Convention No. 128** (*Libyan Arab Jamahiriya, Slovakia, Sweden*); **Convention No. 130** (*Libyan Arab Jamahiriya, Slovakia*).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 102** (*Iceland, Turkey*).

Maternity Protection

Chile

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1994)

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 hopes that in its next report the Government will provide information on the application of *Article 4, paragraphs 3 and 5, of the Convention* and it requests it in this respect to refer to the observation that it made in 1997.

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

Ghana

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1986)

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 information supplied by the Government in its report on the application of the Convention. Referring to the Committee's previous observations, the Government states that the points raised therein have been well noted and appropriate amendments included in the new Labour Code, which is currently before the National Parliament for enactment into law, after having been prepared by a technical tripartite committee. The Committee therefore expresses the hope that the new Labour Code will be adopted in the very near future and will ensure that the national legislation gives full effect to *Article 1, paragraph 3(h)* (application of the Convention to women engaged in domestic work for wages in private households), *Article 3, paragraph 4* (extension of the prenatal leave when confinement takes place after the presumed date), *Article 3, paragraphs 5 and 6* (additional leave before and after confinement in case of illness, medically certified arising out of pregnancy or confinement), *Article 4, paragraphs 1 and 3* (entitlement to medical benefits while absent from work on maternity leave) and *Article 4, paragraphs 4-8* (provision of cash and medical benefits by means of compulsory social insurance or from public funds, prohibition to hold the employer individually liable for the cost of such benefits). The Committee requests the Government to supply a copy of the new legislation once it has been adopted, so that it may examine its 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 with regard to: **Convention No. 3** (*France: French Guiana, Guinea*); **Convention No. 103** (*Bahamas, Belize, Equatorial Guinea, Papua New Guinea, Serbia and Montenegro, Tajikistan*).

Social Policy

Direct requests

Requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 82** (*Belgium*); **Convention No. 117** (*Central African Republic, Georgia, Ghana, Israel, Paraguay*).

Migrant Workers

China

Hong Kong Special Administrative Region

Migration for Employment Convention (Revised), 1949 (No. 97) (notification: 1997)

1. *Article 6 of the Convention. Equality of treatment.* The Committee recalls that at its 288th Session (November 2003) the Governing Body approved the report of the tripartite committee set up to examine 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 Special Administrative Region (SAR) of Hong Kong. The allegations related to certain measures approved by the Government of Hong Kong SAR affecting the wages and the social security rights of foreign domestic workers and which were harmful for Filipino workers and in violation of *Article 6* of the Convention. The Governing Body had concluded that the proposed residence requirement of seven years in Hong Kong SAR in order to be eligible to public health-care services would be too long and that the automatic exclusion of foreign domestic helpers from these services would contravene *Article 6(1)(b)* of the Convention. Furthermore, the Governing Body had found that imposing an employees' retraining levy of HK\$400 on the employers of all imported workers and foreign domestic workers whose wages were already the lowest amongst migrant workers, while at the same time reducing the Minimum Allowable Wage (MAW) of these foreign domestic workers with the same amount, would not be equitable.

Equality of treatment with respect to social security

2. In its previous observation, the Committee followed up the Governing Body's request to the Government not to implement the proposed measure to apply a residence requirement of seven years and to take the necessary steps to ensure that the social security provisions in the standard contract for foreign domestic helpers and imported workers were strictly enforced. The Committee notes that the Government is still considering the application of a seven-year residence rule to all immigrants for eligibility for public health-care benefits. The Government insists that imported workers and foreign domestic workers would not be affected by this measure because they would continue to be provided with free medical care by their employers under the standard employment contract. The Government adds that foreign domestic workers and imported workers failing to obtain free medical treatment from their employers could always lodge a complaint with the Labour Department or the Labour Tribunal. For those genuinely lacking the means to pay for medical services in public hospitals and clinics, the Social Welfare Department or Hospital Authority has the discretion to waive the fees and charges.

3. While acknowledging the explanations given by the Government, the Committee recalls that the principle of equal treatment under *Article 6(1)(b)* of the Convention concerns equality of treatment with respect to social security of all migrant workers with nationals. It is concerned that while the contractual protections provided with regard to medical treatment may be sufficient in some instances, they may not cover all the instances for which the need to access public health-care services would be indispensable and as such deprive certain migrant workers, especially those with lower wages, from their right to enjoy health-care benefits available to national workers. Noting that the Government is still considering the details for the implementation of the policy, the Committee urges the Government once again to review its proposal to apply a seven-year residence requirement for eligibility for public health care, especially its impact on the equality of treatment between nationals and non-nationals as regards social security. Please also provide information on the estimated number of imported workers and foreign domestic helpers that are currently making use of public health-care services.

4. Further to the above, the Committee notes the efforts by the Hong Kong Government to publicize the statutory and contractual rights and benefits of foreign domestic helpers and to help them to lodge complaints. It asks the Government to provide information on the number of 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, and the remedies provided in case of non-compliance.

Equality of treatment with regard to remuneration

5. In its previous observation, the Committee had followed the Governing Body in its request to the Government to provide information on any planned or ongoing review of the wage and levy policies, taking into account the principle of equality of treatment between nationals and non-nationals laid down in *Article 6(1)(a)* of the Convention, and the principles of proportionality and equity. The Government also has been asked to provide further information on: (a) the wages of local domestic helpers and of local employees in comparable jobs; (b) on any underpayment claims made by foreign domestic workers; and (c) on the impact of the measures taken by the Government to encourage these workers to forward complaints.

6. The Committee thanks the Government for its explanation on the underlying economic reasons for the adopted wage and levy policies but must point out that these explanations had already been taken into account by the Governing Body in its examination of the representation made by the TUCP. The Committee notes the Government's statement that it is not in a position to provide statistics on wages of full-time live-in local domestic helpers as their number is negligibly small and local domestic helpers mostly service households that do not require live-in workers. As for statistics on comparable categories of local employees working in elementary occupations, the Government merely states that they have suffered from a higher wage reduction (16 per cent) than the reduction bore by foreign domestic helpers (11 per cent). The Committee recalls that in order to reach definite conclusions as to whether *Article 6(1)(a)* of the Convention is fully applied in Hong Kong SAR, it would need statistical data, disaggregated by sex on the wages of local domestic workers and other local employees in elementary occupations. It therefore urges the Government to provide this information in its next report and to indicate the impact of the abovementioned wage and levy policies on the equality of treatment between nationals, on the one hand, and imported migrant workers and foreign domestic helpers, on the other.

7. With regard to the points raised by the Indonesian Migrant Workers Union (IMWU), and the Asian Domestic Workers Union (ADWU) in their communication of January 2003 regarding the possible underpayment of foreign domestic helpers as a result of the wage and levy policies, the Committee notes that between June 2002 and May 2004, the Labour Department has handled 287 claims involving underpayment of wages and that 193 of them were subsequently referred to the Labour Tribunal or Minor Employment Claims Adjudication Board. While appreciating the measures indicated by the Government in its report to encourage foreign domestic helpers to lodge complaints and the assistance provided to these workers in recovering underpaid wages, the Committee would welcome specific information comparing the number of underpayment claims received before and after the entering into force of the abovementioned measures in April and October 2003, and on the number of these claims that have actually resulted in compensation for the underpaid wages of the foreign domestic workers concerned.

Equality of treatment with regard to conditions of work

8. With regard to comments by the IMWU and the ADWU on the vulnerability of foreign domestic workers, especially Indian, Indonesian and Sri Lankan domestic workers, to physical, mental and sexual abuse and violations of their standard employment contract, the Committee notes the commitment expressed by the Government to step up the protection of the labour rights of foreign domestic workers. It also notes the information provided by the Government on the sentences imposed on a number of employers for abusing foreign domestic workers, and on measures taken to raise awareness amongst employers and migrant workers with respect to their contractual and statutory rights and obligations. The Committee asks the Government to continue to provide information on the measures it is taking to prevent and punish abuse of migrant workers, especially foreign domestic workers, and the impact of these measures on their conditions of work. Please also provide information on the number and nature of complaints received by the Labour Department, the Police and Immigration Department, and the Labour Tribunal, as well as the penalties imposed and the remedies provided.

The Committee is raising other and related points in a request addressed directly to the Government.

Spain

Migration for Employment Convention (Revised), 1949 (No. 97) ***(ratification: 1967)***

Discrimination on the basis of race, national extraction and colour

1. The Committee notes a communication, dated 19 November 2003, from the Democratic Federation of Labour (FDT) of Morocco. The communication alleges that Moroccan workers in El Ejido (Province of Almeria) have been victims of racism and xenophobia in a number of recent incidents. The FDT also sent copies of letters addressed to the Prime Minister of the Spanish Government and the General Secretary of the Spanish General Union of Workers (UGT) stressing the gravity of the situation resulting from a recurrence of violence against foreigners, which, according to the FDT, is now systematic and shows signs of becoming organized and of posing a real threat to the Moroccan community in Spain.

2. The Committee notes the Government's reply to these allegations. According to the Government, the Almeria provincial labour inspection services received no complaints between September 2003 and May 2004 and have detected no breaches of the law against discrimination in employment on the basis of nationality or race. The alleged violence should therefore be seen in the broader context of social relations and local law and order. In September 2003, the local police reported an assault by three Spanish nationals against a Moroccan immigrant worker the reasons for which have not been ascertained. The police also indicated that, following complaints of – in some instances serious – violence filed by immigrants from the Magreb, an investigation was carried out and three Spanish nationals were arrested on 7 November 2003 and charged. Other police reports refer to lawful police action against immigrants from the Magreb who forcibly resisted expulsion orders. In every case, the incidents are unrelated to the world of work and concern acts by individuals. Consequently, they cannot be regarded as a wave of xenophobia involving organized extremist groups.

3. The Government of Spain condemns any act or conduct of a racist or xenophobic nature against foreigners on Spanish territory, whatever their nationality or administrative status. Combating racism and xenophobia and imposing

sanctions for such acts or conduct is an integral part of its immigration policy. It consistently takes measures at provincial level to prevent and deal with all racist or xenophobic violence against immigrants. These measures include: constant surveillance of extremist groups and individuals known for their racist or xenophobic ideology; positive treatment of immigration in the press and media; contacts with political, trade union and immigrants' organizations; immediate action on any complaints of ill-treatment or exploitation of immigrant workers; educating police in observance of the rights of immigrants and the immediate sanctioning of any ill-treatment of immigrants by the police; and support for any initiatives for the social integration of migrants, whether from the Magreb or elsewhere.

4. The Committee observes that in February 2000, there were serious acts of violence in the El Ejido region against Moroccan workers and their families (see the observations of 2000 and 2002). The Committee notes that, according to the detailed information supplied by the Government in response to the FDT's new allegations, in the autumn of 2003 Moroccan immigrant workers were assaulted in the El Ejido region, but the assaults were perpetrated by individuals and were not part of some organized wave of xenophobia. In the Committee's view, since serious incidents already occurred in 2000 in the same region, any violence, even isolated instances, against immigrants or persons of foreign extraction warrants the utmost attention. The Committee takes due note that the Government strongly condemns any racist or xenophobic acts against foreigners on Spanish soil, and notes the measures that the Government has taken to prevent and deal with such occurrences. Since, as the Government points out, the incidents in question would appear to stem from the coexistence of different communities and not from unequal treatment or discrimination in employment of the kind dealt with in this Convention, the Committee will pursue its examination of the matter in the more general context of measures to be taken by the Government under Convention No. 111 to eliminate discrimination in employment on grounds of race, colour, religion and national extraction.

5. The Committee hopes that the Government's next report will contain the information it requested in its 2002 observation concerning the activities of the bodies responsible for immigration policy that were created in 2001, and on the measures taken to provide immigrant workers with employment and working conditions that meet the requirements of the Convention.

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

[The Government is asked to report in detail in 2006.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 97** (*Belize, China: Hong Kong Special Administrative Region, Cyprus, Serbia and Montenegro, Spain*); **Convention No. 143** (*Serbia and Montenegro, Uganda*).

Seafarers

General observation

Food and Catering (Ships' Crews) Convention, 1946 (No. 68)

The Committee requests all governments to forward a copy of the annual report on food and catering and ships' crews as required under *Article 10(3) of the Convention*.

Algeria

Food and Catering (Ships' Crews) Convention, 1946 (No. 68) (ratification: 1962)

The Committee refers to its previous requests for statistical information in the form of an annual report on inspection activities regarding food and catering, as required under *Article 10 of the Convention*.

The Committee renews its request for the Government to forward the required annual report, and in particular to provide full information concerning: (i) the number of inspectors assigned to carry out the required food and hygiene inspections; (ii) the number of crew complaints received and complaint-generated inspections carried out and the results; (iii) the number of programmed inspections of national and foreign vessels and the results; and (iv) the number and results of inspections carried out at sea.

Accommodation of Crews Convention (Revised), 1949 (No. 92) (ratification: 1962)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

The Committee notes the information in the Government's reports on the application of the Convention from 30 June 1997 to 30 June 2002, including the text of Law No. 98-05 of 26 June 1998 amending the 1976 Maritime Code. It also notes the reports of ship inspections.

Articles 6 to 17 of the Convention. The Committee recalls its comments since 1981 requesting the Government to supply a copy of the implementing legislation for article 446 of the Maritime Code, according to which the Minister sets by Order detailed conditions concerning, inter alia, the installations and fittings for the accommodation of the crew.

It notes with concern that the Government's report in 1999 again states that the implementing text for article 446 on crew accommodation of the 1976 Maritime Code has still not been promulgated. Consequently, the Convention is not fully applied in law.

The Committee calls on the Government to take all necessary action to remedy this situation and to report on the measures taken.

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

Barbados

Seafarers' Identity Documents Convention, 1958 (No. 108) (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:

The Committee notes with regret from the Government's report that the seafarers' identity document required under the Convention does not exist for national seafarers in Barbados, and that foreign seafarers holding identity documents issued pursuant to the Convention are not accorded the facilities provided for in that instrument.

It further notes from the Government's report that the Immigration Department has no objections to accepting the responsibility for issuing the seafarers' identity document provided for in the Convention, although it has never been charged to do so. The report refers to two possible solutions: amending the Immigration Act; or enacting new legislation to empower the Immigration Department to issue such documents.

The Committee urges the Government to take the necessary steps to ensure that its obligations under the Convention are fully respected and to inform it of measures taken in this regard.

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

Costa Rica

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1979)

1. The Committee notes the Government's reports, according to which, with a view to ensuring the application in practice of *Articles 4, 5, 7 and 8 of the Convention* and bringing its legal provisions into conformity with the principles of the ILO, the Government has suggested that the National Insurance Institute might seek the technical assistance of the ILO Subregional Office with a view to finding a solution which is in accordance with the comments made by the Committee.

The Committee hopes that, with the technical assistance of the ILO, the Government will adopt the necessary provisions in the near future concerning the prevention of accidents for seafarers (*Article 4*), the appointment of persons or of technical committees (*Article 7*) and on programmes for the prevention of occupational accidents (*Article 8*). With regard to this latter Article, the Committee notes with interest that, in the context of the strategy initiated by the National Insurance Institute, the first workshop on preventive management and occupational health in fishing was held in September 2003.

2. *Article 2 of the Convention and Part V of the report form.* The Committee notes the information provided by the National Insurance Institute concerning 16 cases of fatal accidents to seafarers (including four relating to the water transport service and coastal transport) which occurred in the second half of 2003.

It also notes the information on the incidence of accidents and their causes in 2002, which refers to a number of factors causing the accidents reported (musculoskeletal problems of a physiological nature related to the need for too much effort, the workload and stacking, as well as deficiencies related to negligence). It notes that the National Insurance Institute only publishes occupational risk statistics for seafarers related to the incidence of accidents, while maintaining for its internal purposes the data provided by employers, and that the Government does not have available statistics on the number of workers covered by the legislation, the number and nature of the contraventions reported and the resulting action taken. The Committee therefore hopes that, in accordance with *Article 2, paragraph 1*, of the Convention, the Government will take the necessary measures to compile and analyse the information requested and hopes that it will provide this information in due course.

3. *Article 5.* The Committee notes that despite the absence of provisions (such as checklists of recommendations or other specific measures) concerning the prevention of accidents, the Government has adopted and implemented measures for training and accident prevention through the Department of Business Management and Occupational Health, in coordination with the authorities of the Port Chief of the Ministry of Public Works and Transport, with the participation of chambers representing fishermen on both coasts of the country. The Committee requests the Government to provide detailed information in this respect and to describe the extent to which effect is given to *paragraph 1* of this Article of the Convention, which provides that the obligation shall be clearly laid out to comply with the respective provisions for the prevention of accidents.

Denmark

Officers' Competency Certificates Convention, 1936 (No. 53) (ratification: 1938)

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. Section 16, paragraph 2, of the Law on the Manning of Ships No. 239 of 1985 and section 12 of Act No. 15 of 1997 on Manning of Ships permit a person not holding the certificate required for service as officer in charge of the watch under special circumstances to carry out this function for a single voyage or for a specific period not exceeding six months. The Committee recalls that the exceptional clause in *Article 3, paragraph 2*, permits a person not holding the certificate required for service in a particular position to serve in the position concerned only in cases of *force majeure*. It, therefore, asks the Government to take the necessary steps to give full effect to this Article of the Convention and to provide full information on the exact number of applications for exceptions.

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

Djibouti

Sickness Insurance (Sea) Convention, 1936 (No. 56) (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:

In reply to the Committee's previous comments, the Government states in its last report that the texts to implement Act No. 212/AN/82 issuing the Shipping Code have not been adopted, so there is still no sickness insurance scheme for seafarers. The Government adds that it undertakes to provide information on any measures envisaged to bring the national legislation into line with the provisions of the Convention. The Committee takes note of this information and of the information sent subsequently by

the Government indicating that very few seafarers are registered in Djibouti and that they are subject to the general sickness insurance scheme. In this connection, the Committee notes from the information sent by the Government on the application of Convention No. 24, that the Social Protection Body (OPS) has no sickness insurance branch able to provide the protection for seafarers laid down in the Convention. In these circumstances, the Committee again expresses the hope that the Government will be able to provide information in its next report on the adoption of measures denoting real progress in the establishment of a sickness insurance scheme for seafarers which will ensure that they enjoy protection in accordance with that established in the Convention.

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

Seafarers' Pensions Convention, 1946 (No. 71) (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 that according to the information supplied by the Government in its latest report no measures have been taken for the purpose of establishing a pension scheme for seafarers, as provided for by section 142 of Act No. 212/AN/82 issuing the Shipping Code. The Government indicates in this regard that such a scheme will be established in due course when there is a sufficient number of seafarers in the country. In these circumstances, the Committee once again expresses the hope that the Government will be able to indicate in its next report the adoption of measures constituting tangible progress in the establishment of a pension scheme for seafarers in accordance with the provisions of the Convention. Meanwhile, it requests the Government to indicate in what manner the protection provided by the Convention is guaranteed for seafarers employed on board vessels registered in Djibouti.

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

Egypt

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1982)

For many years, the Committee has pointed out that section 2(b) of the Social Insurance Act (No. 79, 1975) – one of the pieces of legislation ensuring the implementation of the Convention – subjects equal treatment for foreign workers to two requirements, namely the holding of a contract of at least one year and the conclusion of a reciprocity agreement, which is contrary to the provisions of *Article 11 of the Convention*. The Government indicated in its previous report of 2001 that the Ministry of Social Insurance was in the process of revising the Social Insurance Act and that it would take due account of the Committee's comments on the abovementioned section of the Act in the course of such revision. The Committee notes from the Government's last report, sent in 2004, that the said amendment is still in progress and that the Act as amended to give effect to the Convention has not yet been promulgated. The Committee trusts that the amendment envisaged will take effect very shortly and will ensure, in law and in practice, that the provisions of the Convention are applied to foreign seafarers whatever be the length of their contract and whether or not a reciprocity agreement has been concluded. The Committee requests the Government to provide a copy of the text of the amended law as soon as it is adopted.

Accommodation of Crews Convention (Revised), 1949 (No. 92) (ratification: 1982)

The Committee notes the general provision, contained in section 25 of Order No. 211 of 2003, that accommodation on board vessels shall be in conformity with the conditions approved by national and international legislation. Once again the Committee urges the Government to take – where this has not already been done – the necessary action to adopt laws or regulations giving full effect to each specific requirement prescribed by *Parts II, III and IV of the Convention* and to provide information on any progress made in this regard.

France

Seamen's Articles of Agreement Convention, 1926 (No. 22) (ratification: 1928)

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 interest the amendments made to the Maritime Labour Code by the Acts of 26 February 1996 and 18 November 1997 amending, inter alia, section 101 which now gives the seaman the right to request termination of the articles of agreement for failure by the shipowner to fulfil his obligations as well as the possibility for the authority responsible for maritime labour inspection to authorize the seaman to disembark immediately on serious grounds as required by *Article 12 of the Convention*.

Article 9, paragraph 1. The Committee notes, nevertheless, that section 101 of the Code does not provide that the seaman shall have the right to terminate an agreement for an indefinite period in any port where the vessel loads or unloads, provided that the notice specified in the agreement shall have been given, which shall not be less than 24 hours, as provided in this Article of

the Convention. The Committee requests the Government to indicate the measures it intends to take to bring its legislation into full conformity with the Convention on this matter.

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

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

Officers' Competency Certificates Convention, 1936 (No. 53) (ratification: 1947)

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 Decree No. 99-439 of 25 May 1999 on the issue of seafarers' occupational training certificates and conditions for the performance of duties on board trading and fishing vessels as well as pleasure vessels equipped with a muster roll, thus repealing, as from 1 February 2002, Decree No. 85-379 of 27 March 1985, amended, as well as certain provisions of the Decree of 20 November 1991, amended, on the issue of seafarers' occupational training certificates.

Article 3, paragraph 2, of the Convention. The Committee notes that under section 5 of the Decree of 25 May 1999 it is possible to make an exception, in cases of *force majeure*, and only for a period as short as possible, to qualification requirements stipulated by the Decree in regard to the functions of master or chief engineer, it being understood that in such cases these duties may be performed only by a person possessing the certificate required to perform the duties immediately below. The Committee notes, however, that in regard to the other duties falling within the scope of the Convention such as navigating officer in charge of a watch and engineer officer in charge of a watch, these derogations are possible in cases of extreme need, for a time not exceeding six months and for a given vessel. It recalls that the Convention allows exceptions to this Article in regard to all the duties mentioned therein only in cases of *force majeure* and hopes that the Government will take all the necessary measures to bring its regulations into conformity with the provisions of the Convention on this point.

The Committee also requests the Government to indicate, in accordance with article 23, paragraph 2, of the ILO Constitution, the representative organizations of shipowners and seamen to which the latest report has been communicated and whether any observations have been received from these organizations concerning the application in practice of the provisions of the Convention or the application of legislative or other measures giving effect to 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.

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1978)

The Committee notes the information provided by the Government in its reports for 2002 and 2003.

The Committee notes with interest the information on the amendments made to Decree No. 84-810 of 30 August 1984 concerning the protection of human life at sea by Decree No. 96-859 of 26 September 1996 (JORF, 3 October 1996). It notes with satisfaction that section 51-1 of the Decree of 1984, as amended, gives effect to *Article 4, paragraph 3(c), (g) and (i)* (provisions intended to prevent occupational accidents to seafarers caused by machinery, anchors, chains and lines, and to ensure the provision and use of personal protective equipment), and *Article 5, paragraph 1, of the Convention* (clear specification of the obligation of shipowners and seafarers to comply with accident prevention provisions).

The Committee also notes that the instructions and programmes relating to accident prevention measures in maritime work have been disseminated by the Maritime Health and Safety Institute in Lorient, by seafarers' medical services or by the maritime labour inspectorate with regard to the risk of falls aboard ship or at sea. The Committee notes that this practice gives effect to *Article 9, paragraph 2, of the Convention*.

Article 6, paragraphs 2 and 4. Appropriate measures taken to ensure compliance with the provisions on the prevention of accidents to seafarers. The Committee notes with interest the information concerning the preparation of a preliminary draft Act establishing the Higher Council for the Prevention of Occupational Risks in the Maritime Sector and for Seafarers' Welfare, an advisory body participating in the drawing-up of national policy for the prevention of occupational risks in maritime work and for the welfare of seafarers at sea and in port. The Council will propose to the minister responsible for seafarers any measures likely to improve safety and health, working conditions and welfare for seafarers. It will also give an opinion on the laws and regulations adopted in these areas and will promote any initiative designed to improve the prevention of occupational risks. The Committee requests the Government to provide a copy of the abovementioned Act once it is adopted.

French Guiana

Officers' Competency Certificates Convention, 1936 (No. 53)

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 comments under Convention No. 53, France.

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

French Southern and Antarctic Territories

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)

The Committee notes 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 drawing the Government's attention to the fact that the legislation applicable to vessels registered in the French Southern and Antarctic Territory, namely the Overseas Labour Code of 1952 and Chapter VI of Act No. 96-151 of 1996 respecting the registration of vessels in the Territory, contain no provisions regarding the indemnity to be paid to seafarers in the event of shipwreck.

In this respect, the Government indicates in the information provided in June 2002 that it is considered that the provisions of the Convention are of direct application and that individual articles of agreement would therefore include the unemployment indemnity guaranteed by the Convention. The Government adds that the obligation to provide this indemnity could nevertheless usefully be considered in the context of a proposed amendment of the Overseas Labour Code, based on the provisions of the Act of 15 February 1929. An order issued by the highest administrator of the French Southern and Antarctic Territory would then establish the procedures for the implementation of this obligation.

The Committee notes this information. On the subject of the direct application of the Convention, it does not appear to the Committee that its provisions are of such a nature as to be self-executing, that is, formulated in terms allowing their immediate application in national law. On the contrary, their application requires the adoption of laws or regulations. The Committee considers that it would be desirable for legislative measures or regulations to be adopted so as to give full effect to the provisions of the Convention in the French Southern and Antarctic Territory, as was done for Metropolitan France with the adoption of the Act of 15 February 1929 establishing an unemployment indemnity for seafarers in the event of the seizure, shipwreck or declaration of unseaworthiness of a vessel, and the circular implementing the Act. The Committee hopes that the Government will take advantage of the fact that amendments are envisaged to the Overseas Labour Code in order to take the necessary measures, as suggested in its report. It requests the Government to provide information on 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.

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

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 of the Convention. In its most recent report, the Government indicates that although Convention No. 147 is not directly applicable to the French Southern and Antarctic Territories, any developments in law concerning the conditions of work of seafarers of Metropolitan France and the Overseas Departments are generally reflected in the *contracts* of seafarers employed on board ships registered in these Territories. The Committee recalls that the Government, in a letter to the Director-General dated 13 June 1990, communicated its decision, in accordance with article 35 of the Constitution of the ILO, to extend the application of Convention No. 147 to these Territories, and that under the terms of the Convention, each Member which ratifies this Convention undertakes, among other things, *to have laws or regulations* and to exercise effective jurisdiction or control over ships which are registered in its territory in respect of safety standards, appropriate social security measures, and shipboard conditions of employment and shipboard living arrangements. The Convention also contains other provisions requiring ratifying States to ensure by means of inspections that ships registered in their territory are in conformity with the applicable international labour standards which they have ratified. The Committee recalls the decision to extend to the French Southern and Antarctic Territories all the Conventions listed in the appendix to Convention No. 147, except the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), and the Sickness Insurance (Sea) Convention, 1936 (No. 56), for which the French authorities have undertaken to enact legislation broadly equivalent to the provisions of one or other of these two Conventions. The Committee notes, however, that despite the extension, the applicability of these instruments remains relative, since the Overseas Labour Code established by Act No. 52-1322 of 15 December 1952, which is applicable to all crew members without distinction, was not complemented by Orders of the *Administrateur supérieur* of the French Southern and Antarctic Territories implementing its provisions in areas of fundamental importance to the safety of ships and their crews, such as the form and content of the employment contract, the minimum wage, the duration of work, rest periods or trade union rights. The Committee notes that this also applies to Act No. 96-151 of 26 February 1996 concerning the registration of ships in the French Southern and Antarctic Territories for which, as far as the Committee is aware, the Council of State Decrees needed for its implementation have not been adopted. The Committee is furthermore concerned at the *de facto* existence of different social security systems for French seafarers (or those of comparable status) and non-resident foreign personnel serving on board ships registered in the Territories, who are covered by special provisions under the "Interim Instruction" No. 56GM/1 of 3 May 1996 of the Maritime Affairs Department, which establishes the rules for applying the conditions of employment in force on board such ships to foreign seafarers. The Committee notes lastly that non-resident foreign seafarers working on ships registered in the French Southern and Antarctic Territories do not enjoy the social security protection provided by the *Etablissement national des invalides de la marine*, unlike their French counterparts on the same ships. The Committee notes that this legal deficiency is prejudicial above all to this category of seafarer – non-resident foreign seafarers recruited to work on ships registered in the French Southern and Antarctic Territories who, in addition, suffer discrimination by being employed under conditions that differ from those applied to French crew members.

The Committee requests the Government to reply to the questions which it raised in its previous observation, and hopes that the Government will soon be able to report on measures taken or envisaged with a view to adopting or effectively applying the Convention, including by adopting the necessary implementing texts and by carrying out appropriate inspections to ensure that national laws and regulations are in conformity with the present Convention.

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

Guadeloupe

Officers' Competency Certificates Convention, 1936 (No. 53)

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 comments under Convention No. 53, France.

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

Martinique

Seamen's Articles of Agreement Convention, 1926 (No. 22)

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 9, paragraph 1, of the Convention. See under Convention No. 22, France.

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

Officers' Competency Certificates Convention, 1936 (No. 53)

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 Convention No. 53, France.

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

Réunion

Seamen's Articles of Agreement Convention, 1926 (No. 22)

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 9, paragraph 1, of the Convention. See under Convention No. 22, France.

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

Officers' Competency Certificates Convention, 1936 (No. 53)

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 Convention No. 53, France.

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

St. Pierre and Miquelon

Seamen's Articles of Agreement Convention, 1926 (No. 22)

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 9, paragraph 1, of the Convention. See under Convention No. 22, France.

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

Officers' Competency Certificates Convention, 1936 (No. 53)

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 Convention No. 53, France.

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

Iraq

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) (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 2 and 3 of the Convention. For many years, the Committee has been noting that the provisions of the Labour Code do not provide for the application of these Articles of the Convention and it has therefore been drawing the Government's attention to the need to adopt legislation providing: (a) in accordance with *Article 2* of the Convention, that, in every case of loss or foundering of any vessel, each person employed thereon shall be paid an indemnity against unemployment at the same rate as the wages payable under the contract for the days during which they in fact remain unemployed, although the total indemnity payable to any one seafarer may be limited to two months' wages; and (b) in accordance with *Article 3*, that seafarers shall have the same remedies for recovering the indemnities as they have for recovering arrears of wages earned. In this regard, the Government states once again in its report that section 150 of the Labour Code provides in a clear manner that, in the absence of an explicit provision in the Labour Code, the provisions of international labour Conventions ratified by Iraq shall apply. It adds that it will endeavour to adopt the necessary legislative measures to dispel any ambiguity in this respect. The Committee notes this information once again. It trusts that, in accordance with the assurances given, the Government will take all the necessary measures to adopt legislation giving full effect to *Articles 2 and 3* and that it will provide copies of it in its next report.

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

Japan

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 1983)

Article 2(a)(i) and (e) of the Convention. (Conventions listed in the Appendix to Convention No. 147, but not ratified by Japan.)

Convention No. 53, Article 3, paragraph 1. The Committee notes that the consultations between the Government and the organizations of shipowners and seafarers have led to an agreement and that the parties concerned are preparing for changing the system. As a result of these consultations, the Government and the organizations concerned have agreed that a crew, which takes charge of "voyage duty", must have a certificate attesting competency and that at least one of the crew should have such a certificate when performing voyage duty by plurality.

The Committee requests the Government to clarify whether this agreement aims at ensuring that any person in charge of a navigational watch must be a certificated crew member, as required by *Convention No. 53, Article 3, paragraph 1*. Application of this agreement to ensure that any watch must at least include one certified crew member would also address the observations made by the All Japan Seamen's Union of January 1995. The Committee requests the Government to keep it informed on all progress made in law and in practice on the substantially equivalent application of Convention No. 53 and the agreement between the Government and the organizations of shipowners and seafarers.

A request on certain points is being addressed directly to the Government.

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 for the seventh consecutive year, 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 seaman in cases of sickness or accident while he is off the vessel provided that he 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 a sick or injured seaman has to be repatriated to a port other than the port at which he was engaged, or the port at which the journey commenced, or a port in his own country or the country to which he belongs. 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 notes this information. It 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, set 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 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 first report has not been received. It must therefore repeat its previous observation, which read as follows:

In the 89th Session of the International Labour Conference 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 International Labour Conference, 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*). The Committee wishes to point out that 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.

Mauritania

Officers' Competency Certificates Convention, 1936 (No. 53) (ratification: 1963)

The Committee notes the information provided in the Government's latest report. It requests the Government to provide further information on the following points.

Article 3, paragraph 2, of the Convention. According to article 275 of the Maritime Code, the maritime authority may make exceptions to the requirement for holding a certificate for exercising the duties of captain, officer, etc., in cases of recognized necessity ("*nécessité reconnue*"). The Committee recalls that, under this provision of the Convention, exceptions to the requirement for holding a certificate may be made only in cases of *force majeure*, which is different from cases of recognized necessity ("*nécessité reconnue*"). The Government is asked to indicate in detail, the measures it takes to ensure that exceptions are only made in cases of *force majeure*. Please indicate how cases of *force majeure* are defined in national legislation.

Article 4, paragraph 1(c). Article 275 of the Maritime Code stipulates that the officers' functions enumerated can only be exercised by seafarers holding certain certificates. Article 276 states that the conditions to obtain a certificate are regulated by the minister in charge of merchant shipping. These articles appear not to require the seafarer to pass an examination in order to obtain a certificate of competency. The Government is requested to indicate the measures taken to ensure that, in accordance with *Article 4, paragraph 1(c)*, no person shall be granted a certificate of competency unless he passed the exams organized and supervised by the competent authority.

Article 4, paragraph 2(b). The Government's report is silent on laws or regulations providing for the organization and supervision of examinations. According to this provision of the Convention, the national legislation shall provide for the organization and supervision by the competent authority of one or more examinations for the purpose of testing whether candidates for the competency certificate possess the qualifications necessary for performing the duties corresponding to the certificate for which they are candidates. The Government is asked to indicate the measures it has taken to ensure that the national legislation provides for the organization and supervision of the exams in accordance with the Convention. Please indicate the nature (practical or theoretical or both) and a brief outline of the examinations for each class of certificate, and the methods of the organization and supervision of the examinations by the competent authority.

Article 5, paragraph 2. The Committee notes from the Government's report that the Maritime Authority can detain ships in certain cases. The cases described in the report, however, do not fully coincide with those under the terms of the Convention. The Government is requested to supply information on the national laws or regulations concerning the cases in which, and the procedure by which, a vessel may be detained on account of a breach of the provisions of this Convention.

New Zealand

Seamen's Articles of Agreement Convention, 1926 (No. 22) (ratification: 1938)

With regard to its previous comments, the Committee notes the confirmation in the Government's report that no specific legislation exists in New Zealand to implement the Convention and that there is reliance on texts of a general scope to give effect to the provisions of the Convention, in particular the Employment Relations Act. The Committee further notes that the Government is presently amending this Act, and that it will update the ILO on this legislation, the Employment Relations Amendment Act (No. 2), in its next report. The Committee recalls however, that the subject matter of this Convention – seafarers' Articles of Agreement – requires legislation adapted to the specificities of maritime employment. Therefore, it is unlikely that the points raised in the Committee's observations would be remedied by labour

law texts of general application concerning employment conditions and contracts. Moreover, the Committee again draws the Government's attention to the requirement in *Article 15 of the Convention* that "national law shall provide the measures to ensure compliance with the terms of the present Convention". The Committee will revert to this matter in due course.

Workers' and employers' comments/Government's reply. The Committee takes note of comments made by Business New Zealand and the New Zealand Council of Trade Unions (NZCTU) concerning the Government's report on the application of the Convention. Similarly, it takes note of the Government's response thereto.

Article 6(11) of the Convention. Annual leave with pay. Business New Zealand states that it is impossible to give seafarers on board ship an alternative holiday or lieu day when their service falls on a public holiday and disagrees with the pay calculations required under the Holidays Act 2003.

Government. The Government has replied that the problem of working on a public holiday existed under the previous legislation and is not new. In the case of seafarers, alternative and annual holidays can be taken when they return from their service on board ship.

The Committee considers that under the Convention annual leave with pay granted after one year's service with the same shipping company is an entitlement "if such leave is provided for by national law". To the extent that this is an entitlement, the Convention requires that the articles of agreement "shall clearly state the respective rights and obligations of each of the parties". The Committee considers that the question of the adequacy of national law in transposing this entitlement in its maritime context is essentially a question to be dealt with at the national level, bearing in mind the aforementioned requirement of *Article 15*. The Government states that it has consulted Business New Zealand and that this has been taken up under the report on Convention No. 122. As such, the Committee need not pursue this point under this Convention.

New Zealand Council of Trade Unions. In its comment, the NZCTU cites its concern regarding foreign workers recruited at differential rates of pay for work on New Zealand ships operating in territorial waters. It states that this takes the form of "lower, in-the-hand payments" or "excessive accommodation/board deductions from pay" for foreign seafarers. It cites these practices to explain pressure brought by some shipowners on the New Zealand Government "to grant immigrant employment concessions" for work on board ships. NZCTU states that it welcomes a forthcoming investigation ordered by the Government (Ministries of Fisheries and Labour) into this matter.

Government. In its reply to these comments, the Government confirms that it has begun an investigation into the terms and conditions of employment as well as the workplace practices of fishing crew employers in order to assess their compliance with New Zealand's immigration policies and employment law.

The Committee fully recognizes the serious nature of the complaint brought by the NZCTU and taken up by the Government, which is carrying out a formal investigation. Whether this problem is limited to the fishing sector, however, is presently unclear; the Committee requests clarification on this point. However, the Committee is obliged to draw the attention of the Government and the social partners to *Article 1(2)(f)* of the Convention, which excludes fishing vessels from the scope of this instrument.

Notwithstanding the aforementioned proviso, the Committee would appreciate if the Government would communicate the findings of this investigation and requests it to provide in its next report, particular information concerning: (i) the number of foreign seafarers employed on New Zealand vessels (with statistics indicating whether these are fishing or non-fishing personnel); (ii) the nationality of these seafarers/maritime workers; (iii) the law applicable to their employment contract(s)/articles of agreement; and (iv) how and where they are recruited.

The Committee again draws the Government's attention to the requirement in *Article 15* of the Convention that "national law shall provide the measures to ensure compliance with the terms of the present Convention". The essence of this Convention – 11 of 15 substantive articles – involves three points: (i) the conditions under which the maritime labour contract is formed, rescinded/terminated; (ii) the required and optional documentation to which the seafarer is entitled; and (iii) the conditions of employment on board ship. Given the specificity and complexity of maritime employment, compliance can only be ensured by texts adapted to these special and often unique conditions. The instruments that implement the Convention must provide both legal security and clear guidance to parties often required to take decisions on short notice. Therefore, the Committee hopes that as the Government is presently revising its labour legislation, it will make every effort to take these points on board.

[The Government is asked to reply in detail in 2005.]

Peru

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) ***(ratification: 1962)***

The Committee notes the information supplied by the Government in reply to its previous comments and asks it to provide additional information in its next report on the following points.

Strengthening of inspections to verify discharge of the obligation to affiliate seafarers to the supplementary insurance scheme for high-risk activities

In its previous comments the Committee requested the Government to provide information on the measures taken by the inspection services to promote and enforce the obligation placed on shipowners performing high-risk activities, which include fishing, to take out the supplementary insurance (SCTR) for such risks under Act No. 26790. The reason for the Committee's request was that the statistics supplied by the Government on visits carried out by the inspection services appeared to account little for seafarers and that according to observations submitted by a trade union, many employers and shipowners had failed to subscribe to the SCTR.

It notes in this connection that the Government's report does not contain the general information requested, such as the measures taken to strengthen the capacity of the inspectorate to supervise application of the national legislation in the maritime navigation and fishing sector, statistical information on the number of enterprises in the maritime fishing and navigation sectors affiliated to the SCTR for health, invalidity and survivors' coverage. The Committee hopes that the Government will do its utmost to gather all this information and trusts that every effort will be made to enable the labour inspectorate to fulfil its duty of informing and supervising the maritime navigation and fishing sectors.

Complaints against the Chapsa and Atlántida fishing enterprises

In reply to the Committee's previous comments on the complaints against the two abovementioned companies, the Government includes in its report the requested extracts of these proceedings. With regard to the Chapsa case, the inspection report finds that the legislation was complied with to the extent that Chapsa did subscribe to the SCTR for health, invalidity and survivors' coverage. Listing the Chapsa workers registered with the SCTR, the report goes on to declare the case closed, citing compliance with the legislation. In the Atlántida case, the inspection report sent by the Government establishes, as noted by the Government in its previous report, that the company was fined because, although registered with the SCTR, it had failed to pay by 21 January 2002 the premium for invalidity and survivors' coverage in the name of Mr. Juan Morales de la Cruz, victim of an occupational accident on 23 June 1998. The report also indicates that thereafter, in June 2002, a further inspection of the enterprise established that the premiums for invalidity and survivors' coverage had still not been paid. A last visit to the enterprise in January 2003 to verify payment of the bonuses revealed that this worker no longer had an employment relationship with Atlántida, and the case was therefore closed.

The Committee notes this information. As regards the Atlántida case, it notes that the inspection report shows that although ordered to pay a fine, Atlántida had still not paid the contributions for invalidity and survivors' coverage at the time of the worker's departure from the enterprise, following which the case was closed. The Government explained earlier that when an enterprise fails to take out supplementary insurance for high-risk activities, or takes out inadequate insurance, it is liable vis-à-vis the social insurance institutions (ESSALUD and the Insurance Standardization Office (ONP)) for payment of benefits in the event of an accident sustained by one of its workers. The Committee requests the Government to indicate the manner in which the case of Mr. Juan Morales de la Cruz was managed, specifying in particular whether this worker actually received the assistance to which he was entitled under the Convention, and stating the body which actually covered the risk. Please also indicate whether Atlántida paid the fine, pursuant to Legislative Decree No. 910 and, if not, please specify the penalties imposed on it.

The Committee requests the Government to indicate the measures taken or envisaged, such as a review of the applicable penalties, to ensure that in practice shipowners do take out accident and sickness insurance for seafarers where this is compulsory, and that where they fail to do so, seafarers may nevertheless be paid all the benefits guaranteed by the Convention. Please provide in this connection information on the number of seafarers who have received assistance pursuant to the provisions of the Convention.

[The Government is asked to reply in detail to the present comments in 2005.]

Sickness Insurance (Sea) Convention, 1936 (No. 56) (ratification: 1962)

The Committee notes the information provided by the Government in reply to its previous comments and wishes to draw its attention to the following points.

Article 4, paragraph 1, of the Convention. Payment to the family of the seafarer of sickness benefit to which he would have been entitled had he not been abroad. Further to the Committee's previous comments, the Government indicates that effect is given to this provision of the Convention through the provisions of the Civil Code authorizing representation between spouses, and those of Presidential Decree No. 002-79-RE issuing the consular regulations of the Republic. The Government indicates, with reference to the provisions of the above Decree relating to notarial functions, that sworn consular officials are empowered, in accordance with the national legislation, to authenticate the acts and contracts submitted to them. It adds that, under the terms of these provisions, a person could, from abroad, authorize another person to represent her or him for purposes such as receiving on her or his behalf the benefits to which she or he would have been entitled. The Committee takes due note of this information. Nevertheless, as the objective of this provision of the Convention is to protect the family of a seafarer who falls sick abroad and has lost his right to wages, it would be grateful if the Government would examine the possibility of introducing into the national legislation on sickness insurance a specific provision giving effect to this Article of the Convention. The Committee also requests the Government to provide information on the manner in which the payment is arranged in practice to the family, in whole or

in part, of the cash benefit due to a seafarer who is abroad and has lost his right to wages. Furthermore, with reference to its previous comments, the Committee requests the Government to provide with its next report the information requested previously with regard to the benefits paid to the family members of insured persons.

Article 7. Continuation of the right to insurance benefit after the termination of the engagement. The Committee takes due note of the information provided by the Government that section 37 of Presidential Decree No. 00-97-SA, as amended by Presidential Decree No. 004-2000-TR, is in effect applicable to seafarers. It recalls that this provision establishes that, in the event of unemployment or the total interruption of occupational activity resulting in the loss of entitlement to social coverage, the persons protected by the regular scheme who have a minimum of five months of contributions, whether or not they are consecutive, during the three years prior to the cessation or interruption of occupational activity, are entitled to medical benefits for a period of two months of coverage for every five months of contribution. The Committee requests the Government to provide information in its next report, including statistics, on the application of this provision of the Convention in practice, with an indication of the time that normally elapses between successive engagements.

[The Government is asked to reply in detail to the present comments in 2005.]

Seafarers' Pensions Convention, 1946 (No. 71) (ratification: 1962)

The Committee notes the information provided by the Government in its report in reply to its previous comments and would like to draw the Government's attention to the following points.

1. *Impact of the new pension scheme on the application of the Convention.* In reply to the Committee's requests concerning the impact of the new pension scheme on the application of the Convention, the Government provides with its report a document drawn up by the Banking and Insurance Supervisory Agency (SBS) and statistics on the number of retired seafarers receiving pensions from the various pension schemes which apply to them. In this regard, the communication from the SBS recalls that there is no specific scheme applicable to seafarers within the private pension system (SPP) and that affiliation to the SPP is on a voluntary basis. The SBS also refers to Act No. 27617 of 1 January 2002 under which persons affiliated to the SPP at the date of entry into force of the abovementioned Act and who were entitled at the time of their affiliation to early retirement under the national pension scheme (SNP) may also avail themselves of this entitlement under the SPP.

The Committee notes this information. However, inasmuch as there have been many changes in recent years in the legislation and regulations giving effect to the Convention and in order to be able to carry out a precise evaluation of the manner in which the Convention is applied, the Committee requests the Government to provide in its next report the detailed information on the application of the Convention requested in the report form in respect of each of the Articles of the Convention.

2. *Payment of pensions to retirees and former employees of the Peruvian Steamship Company (CPV).* In its previous comments, the Committee requested the Government to provide information on any developments in the situation concerning the payment of pensions to retirees and former employees of the CPV. It also requested the Government to provide information on the situation in relation to the Convention, reported by the Association of Crew Members for the Protection of CPV Workers, of former pensioners of this enterprise who had been excluded from the Pension Fund and had been unable to obtain their reinstatement through a court ruling.

With regard to the first point, the Government indicates in its report that, further to the adoption of Supreme Decree No. 104-2003-EF of 25 July 2003, the adjustment of the pensions of the persons concerned is no longer the responsibility of the Insurance Standardization Office (ONP). In this regard, the Government's report indicates that, under new Act No. 28047 of 31 July 2003, each entity is responsible, in respect of the retirees affiliated to the scheme under Act No. 20530 but who were not public servants, for establishing the equivalent public positions with respect to adjustment of the pensions paid to the persons in the abovementioned category. The Government also adds that Decision No. 57 of 30 January 2003 of the administrative court (*juzgado de derecho público*) declared the Ministry for Economic and Financial Affairs to be the competent authority as successor to the ONP, and that an application was made to the administrative judge in order to determine whether, in view of all the legal amendments that had taken place, the Ministry of Economic and Financial Affairs was also responsible for adjustment of the pensions of the CPV retirees. The Government concludes by stating that, since the matter is still before the courts, it will provide information in its next report on any developments in the situation.

The Committee notes this information. It hopes that all necessary measures will actually be taken by the Government, if necessary by amending the legislative texts in order to clarify them by clearly designating the responsible bodies, and that it will be in a position to inform the Office very soon that the matter under consideration has had a favourable outcome. With regard to the second point referred to above, it notes that the Government has still not provided information on it and hopes that it will provide all necessary information in its next report, in line with the previous undertaking that it made.

3. *Procedures for the adjustment of pensions of certain retirees of the National Ports Enterprise (ENAPU).* In its previous comments, while again noting that the Insurance Standardization Office (ONP) had still not determined the internal procedures for implementing the court decision in favour of the Association of Former Employees and Retirees of the National Ports Enterprise (ACJENAPU), the Committee expressed the hope that the Government would take the

necessary measures in this regard. In its last report, the Government refers to a communication from the ONP, which stated that it gave effect to the decision ordering the adjustment of pensions on the basis of the wages paid to employees in the same category of the ENAPU, with the exception of three cases. The aforementioned communication adds that the files relating to these three persons were sent to the Ministry of Economic and Financial Affairs pursuant to the entry into force of Act No. 27719 of 12 May 2002 and Supreme Decree No. 104-2003-EF of 25 July 2003 having the effect of removing the matter from the competence of the ONP. The Committee notes this information with interest. It would be grateful if the Government would provide information in its next report on any subsequent developments in this matter and specify in particular: (i) whether the adjusted pensions are actually being paid to the retirees concerned; and (ii) whether the three persons whose pensions had not been adjusted by the ONP have had their pensions adjusted by the Ministry of Economic and Financial Affairs.

[The Government is asked to reply in detail to the present comments in 2005.]

Portugal

Seamen's Articles of Agreement Convention, 1926 (No. 22) (ratification: 1983)

The Government has, once again, stated that the revision of the legal regime governing individual contracts for maritime work is currently under way, duly reflecting the Committee's recommendations. The Committee regrets that the drafting process has been ongoing since 1986. It notes that Decree Laws Nos. 280/2001 and 257/2002, cited in the Government's report, do not concern seamen's articles of agreement. It hopes that the drafting process will soon be brought to a fruitful conclusion and that the legal regime governing individual contracts for maritime work will be enacted soon. The Committee again recalls that this legislation should be, inter alia, in line with *Article 9(1)* (notice for termination of an agreement for an indefinite period), *Article 13* (conditions under which the seafarer can claim discharge) and *Article 14(1)* (recording of discharge in the service document and the crew list) of the *Convention*.

Saint Vincent and the Grenadines

Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16) (ratification: 1998)

The Committee notes from the Government's report that there are no laws or regulations to give effect to the provisions of the Convention.

It refers to its previous observation in 2001 on this point and comments made since 2000 concerning the lack of texts to implement the Convention as well as the Government's obligation to adopt texts to ensure compliance with its provisions.

With reference to *Parts III and V of the report form*, the Committee requests the Government to: (i) indicate the authority or authorities responsible for the application of the Convention; (ii) provide full information concerning the number of young persons employed on vessels registered in Saint Vincent and the Grenadines; and (iii) to provide full particulars concerning the pre-employment and periodic medical examinations they are given.

The Committee renews its request for the Government to enact legislation and to provide information in this regard in its next report on the application of the Convention.

[The Government is asked to report in detail in 2006.]

Sierra Leone

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) (ratification: 1961)

The Committee regrets to note that the Government's report reproduces the statement made previously according to which the matters raised in previous observations have been with the law officer's department and that, in the near future, it shall inform the Committee of amendments in the legislation intended to give full effect to the Convention. The Committee recalls that, for many years, it has repeatedly been stressing the need to adopt legislative measures amending the merchant shipping legislation in order to eliminate the bar against receipt of unemployment indemnity in case of shipwreck where it is proven that a seaman did not exert himself to the utmost to save the ship. In view of the lack of progress made in this regard, the Committee urges the Government to take, in the very near future, the necessary measures in order to make the required amendments to the legislation and ensure that full effect is given to the Convention.

Solomon Islands

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) (ratification: 1985)

The Committee notes with deep regret that for the 11th consecutive year 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, together with the text of the Labour (Seamen) Rules adopted in 1985, which, according to the Government's previous statement, provides for indemnity against unemployment in case of loss or foundering of a ship, without any qualification, in conformity with this provision of the Convention. The Committee hopes, while taking note of the national situation, that the Government will make every effort to take the necessary action, as soon as the circumstances so permit.

United Republic of Tanzania

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1983)

The Committee notes that the provisions of the Convention will henceforth be applied by the Occupational Health and Safety Act, 2003, which was adopted by the National Assembly at its February 2003 session and is only awaiting the proclamation of its coming into force. The Committee notes with interest that this Act is wider in its coverage and will therefore give effect to *Article 1, paragraph 3, of the Convention*. The Committee requests the Government to indicate when the above Act will come into force.

Article 2, paragraph 4. Mandatory investigation into the causes of occupational accidents. The Committee notes that, under section 7 of the Occupational Health and Safety Act, 2003, an inspector may investigate the circumstances of any accident which has occurred at or originated from a factory or workplace, or in connection with the use of machinery, and which has resulted in the injury, illness or death of any person. The formal inquiry into any accident at work which has resulted or could have resulted in injury, illness or the death of any person may, in accordance with section 8 of the same Act, be conducted by an inspector under the instructions of the Chief Inspector upon receipt of a complaint. The Committee notes that investigations, according to both provisions, seem to be optional. The Committee is therefore bound to recall that the Convention provides for mandatory investigations into the causes and circumstances of occupational accidents resulting in loss of life or serious personal injury. The Government is requested to indicate the measures adopted or envisaged to give effect to this provision of the Convention.

Article 3. Research into specific hazards. The Committee notes with interest that, under section 34, subsections (3) and (4), of the Occupational Health and Safety Act, 2003, the Chief Inspector shall undertake or promote studies and research to identify hazards in the working environment and develop innovative ways of dealing with occupational safety and health problems, and the results of such studies and research shall be made public and be used to promote occupational safety and health. The Government is requested to supply information in its next report on the research undertaken in this regard.

Article 4, paragraphs 2, 3(b), (h), (i). Provisions on the prevention of occupational accidents. The Committee notes that, by virtue of section 109 of the Occupational Health and Safety Act, 2003, the Minister is empowered to make rules/regulations in the interest of the health and safety of persons at work or in connection with the use of the plant or machinery. The Committee hopes that such rules/regulations will be adopted without delay and will contain specific provisions referring to any general provisions on the prevention of accidents and the protection of health in employment which may be applicable to the work of seafarers, and that it will specify measures for the prevention of accidents which are particular to maritime employment in such areas as structural features of the ship, dangerous cargo and ballast and personal protective equipment for seafarers.

Article 6, paragraph 3. Information on inspection and enforcement authorities. The Committee notes that the Government has transformed the factories' inspectorate into an autonomous executive agency. The Chief Inspector is appointed as a chief executive, in accordance with the Executive Agency Act, 1997, and section 4 of the Occupational Health and Safety Act, 2003. The Government is requested to provide information, with its next report, on the training activities carried out with the Occupational Safety and Health Authority (OSHA) with a view to ensuring that the inspection and enforcement authorities are familiar with maritime employment and its practice.

Article 6, paragraph 4. Means of bringing to the attention of seafarers the provisions on the prevention of accidents. The Committee notes that it is the Government's intention to hold consultations following the enactment of the Occupational Health and Safety Act, 2003, with the Ministry of Communication as well as with two trade unions – the Communication and Transport Workers' Union (COTWU) and the Tanzania Seamen's Union (TASU) – on the issue covered by this provision of the Convention. The Committee requests the Government to indicate the manner in which it envisages bringing to the attention of seafarers copies or summaries of the provisions on the prevention of accidents to seafarers.

Article 8, paragraphs 1 and 2. Programmes for the prevention of occupational accidents. The Committee notes that the competent authority is still working on the appropriate means for the inclusion of the prevention of accidents and the

protection of health in employment in vocational training programmes. It hopes that these efforts will soon result in the establishment of specific programmes (or components of general vocational programmes) on the prevention of occupational accidents, and that shipowners and seafarers or their organizations will participate in the establishment of the programmes in question and their implementation.

Article 8, paragraph 3. Establishment of prevention committees. The Committee notes that, under section 13 of the Occupational Health and Safety Act, 2003, a committee composed of employees' health and safety representatives will be established in each factory or workplace and will be consulted for the purposes of initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of the employees at work. The Committee requests the Government to supply information on the measures envisaged in order to extend the practice of the establishment of similar committees, as bodies for accident prevention, to workplaces where seafarers are employed.

Article 9. Instruction in professional duties. The Committee notes that, under section 34 of the Occupational Health and Safety Act, 2003, no person shall be employed on any process that is liable to cause bodily injury or injury to health, unless he has been fully instructed as to the dangers likely to arise in connection with the process and has received sufficient training in the process. The Government is requested to indicate the manner in which such general provisions will be supplemented by a specific provision providing for instruction in the prevention of accidents and in measures for the protection of health in employment to be included in the curricula for all categories and grades of seafarers (*paragraph 1 of Article 9*), including measures to bring to the attention of seafarers information concerning particular hazards (*paragraph 2 of Article 9*).

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 7** (Guinea-Bissau); **Convention No. 8** (Australia, Bosnia and Herzegovina, Croatia, Dominica, Fiji); **Convention No. 9** (Germany, Latvia, Romania); **Convention No. 16** (Azerbaijan, Dominica, France: St. Pierre and Miquelon, Guinea, Japan, Slovenia, Solomon Islands, United Republic of Tanzania); **Convention No. 22** (Bahamas, China, Djibouti, Egypt, France, Ghana, India, Iraq, Pakistan, Slovenia); **Convention No. 23** (Azerbaijan, China, Cyprus, Djibouti, Egypt, Iraq, Ireland); **Convention No. 53** (Djibouti, France: French Southern and Antarctic Territories, Liberia); **Convention No. 55** (Djibouti); **Convention No. 56** (Algeria, Egypt); **Convention No. 58** (France: French Southern and Antarctic Territories, Lebanon, Sri Lanka, United Republic of Tanzania: Zanzibar, United Kingdom: Gibraltar); **Convention No. 68** (China: Macau Special Administrative Region, France: French Southern and Antarctic Territories, United Kingdom); **Convention No. 69** (Algeria, Azerbaijan, China: Macau Special Administrative Region, Djibouti, France, France: French Guiana, France: French Polynesia, France: French Southern and Antarctic Territories, France: Guadeloupe, France: Martinique, France: New Caledonia, France: Réunion, France: St. Pierre and Miquelon, Slovenia); **Convention No. 73** (Algeria, Azerbaijan, Djibouti, Slovenia); **Convention No. 74** (Angola, China: Macau Special Administrative Region, Ghana, Slovenia); **Convention No. 91** (Djibouti); **Convention No. 92** (Angola, Luxembourg, Serbia and Montenegro); **Convention No. 108** (Algeria, Azerbaijan, Djibouti, France: French Southern and Antarctic Territories, Guinea-Bissau, Iceland, Islamic Republic of Iran, Iraq, Latvia, Republic of Moldova, Morocco); **Convention No. 133** (Côte d'Ivoire, United Kingdom: Gibraltar, United Kingdom: Isle of Man); **Convention No. 134** (Azerbaijan, Egypt, Israel); **Convention No. 145** (Costa Rica, Egypt); **Convention No. 147** (Azerbaijan, Barbados, China: Hong Kong Special Administrative Region, Egypt, Iraq, Japan, Lebanon, Liberia); **Convention No. 163** (Hungary, Romania); **Convention No. 164** (Hungary); **Convention No. 166** (Guyana); **Convention No. 180** (Netherlands).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 9** (Denmark: Faeroe Islands, Japan); **Convention No. 16** (Argentina, China: Hong Kong Special Administrative Region, Denmark: Faeroe Islands, Hungary, India, Ireland, Myanmar); **Convention No. 22** (China: Hong Kong Special Administrative Region, Mauritania); **Convention No. 23** (China: Hong Kong Special Administrative Region); **Convention No. 53** (Denmark: Faeroe Islands); **Convention No. 69** (Australia); **Convention No. 73** (Australia, Egypt, Japan); **Convention No. 74** (China: Hong Kong Special Administrative Region); **Convention No. 108** (Czech Republic); **Convention No. 134** (Greece); **Convention No. 163** (Czech Republic); **Convention No. 164** (Czech Republic); **Convention No. 166** (Australia).

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. It must therefore repeat its previous observation, which read as follows:

Further to its previous comments, 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 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. Requirements for Merchant Marine Personnel (RLM-118) and Maritime Regulation No. 10.325(ii) 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*, 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 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 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 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 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 with regard to: **Convention No. 125 (Djibouti)**; **Convention No. 126 (Azerbaijan, Serbia and Montenegro, Tajikistan)**.

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 113 (France)**; **Convention No. 114 (Mauritania)**.

Dockworkers

Algeria

Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1962)

The Committee notes the summary information provided by the Government in response to its comments. It takes note of Executive Decree No. 93-120 of 15 May 1993 to organize occupational medicine, Executive Decree No. 96-209 of 5 June 1996 establishing the composition, organization and working of the National Council on Occupational Health, Safety and Medicine, which, according to the Government, give effect to the provisions of the Convention. While noting the importance of the abovementioned instruments, the Committee observes that they appear to have no direct impact on the application of the Convention. It likewise notes the provisions on occupational health, safety and medicine in the collective agreement establishing work relations in the Arziew dock company and in the regulations of the dock company of Algiers. It notes in particular that under article 168 of the collective agreement, employers are responsible for ensuring that premises are so designed and furnished as to ensure the workers' safety. The Committee is nonetheless of the view that this provision is too general in nature to give proper effect to the provisions of the Convention.

Further to the comments it has been making for several years, the Committee notes with regret that the Government's report still contains no information on the adoption of implementing regulations covering ports and docks, based on the general framework for the prevention of occupational risks established by Act No. 88-07 of 26 January 1988. The Committee emphasizes once again in this connection that the existence, referred to by the Government, of a classification of posts established in collective agreements that relate to cargo handling, does not meet the requirements set in the Convention. Consequently, the Committee can but express the hope that the Government will adopt without delay the regulations to give effect to the provisions of the Convention. It hopes that the regulations will contain a definition of "dockers" and "dock work", which, according to the Government, are not defined in the national legislation.

Article 17 of the Convention. Inspection. Further to its previous comments, the Committee once again requests the Government to provide a copy of "documents 1 and 2" issued by the Ministry of Transport and appended to the Interministerial Order of 5 November 1989 which set forth the supervisory procedure pursuant to article 2 of this Order.

In view of the time that has elapsed since the Convention was ratified, the Committee hopes that the Government will take the necessary steps in the near future to give full effect to the provisions of the Convention. It requests the Government to report on all progress made in this respect.

[The Government is asked to reply in detail to the present comments in 2005.]

Angola

Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27) (ratification: 1976)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

The Committee notes that the General Labour Act No. 2/00 of 11 February 2000 has been adopted.

The Committee notes that this Act does not contain provisions giving effect to *Article 1, paragraph 1, of the Convention*, under the terms of which any package or object of 1,000 kg or more gross weight consigned for transport by sea or inland waterway shall have its gross weight plainly and durably marked upon it on the outside before it is loaded on a ship or vessel. The Committee therefore notes, as it has been doing for a certain number of years, the absence from the national legislation of provisions giving effect to this Article of the Convention. In this respect, the Committee notes that the Government, in its reports received in 1986 and 1987, stated its intention of taking the necessary measures to give effect to this provision of the Convention. Subsequently, the Committee noted on several occasions the Government's indication that a draft legislative text along these lines was under examination. However, in its last report the Government no longer refers to this draft text. The Committee is therefore bound to reiterate its firm hope that the Government will make every effort to ensure that a legislative text giving effect to *Article 1, paragraph 1, of the Convention* is adopted in the very near future, and that it will also give effect to *paragraph 4 of Article 1*, by indicating who is vested with the obligation to have the weight marked.

The Committee trusts that the Government's next report will contain information on the adoption of a legislative text giving full effect to the Convention.

[The Government is asked to reply in detail to the present comments in 2005.]

Brazil

Dock Work Convention, 1973 (No. 137) (ratification: 1994)

1. The Committee notes the observations by the dockworkers' union *Intersindical da Orla Portuária do Estado do Espírito Santo* (ES), forwarded to the Government in February 2004, and the Government's comments thereon received in October 2004. The abovementioned union recalls the provisions of Act No. 8630 and those of Convention No. 137 and

asserts that in the Vila Velha port terminal, which is under private administration, the principles laid down in the Convention are not being observed and that there are no decent working conditions. It states that in the Vila Velha terminal, workers are being hired who are not qualified for dock work and are not registered in the “*cadastro*” established in the national legislation. In the interests of lower and competitive prices, pay is much lower and working conditions very precarious, all of which amounts to a form of social dumping. In its observations the Government recalls the applicable national legislation adopted to give effect to Convention No. 137, and indicates that the federal Government is taking steps to integrate the activities of all the public bodies concerned by dock work, focusing in particular on negotiation between the social partners and giving practical effect to the specific occupational safety and health standards that apply to dock work. The Government states that a Standing National Committee has been established (September 2003) and formed (March 2004) as a tripartite forum for reaching consensus on issues pertaining to labour relations and occupational safety and health in dock work. The activity of the above committee should serve to strengthen nationwide the institutional model of Act No. 8630 and of the international labour standards on dock work (Convention No. 137 and Recommendation No. 145).

2. The Committee refers to the comments it has been making for many years in which it has reflected the worries of the trade unions concerned. The Committee hopes that in its next report the Government will be in a position to provide more detailed information on the manner in which the Convention is applied in all ports of the State of Santo Espírito, and to report on the measures adopted to overcome the difficulties referred to by the aforementioned *Intersindical Portuária*. The Committee refers in particular to its observation of 2003 and hopes that the Government will be able to provide information on the results achieved at the tripartite level to give effect to the provisions of *Articles 2 and 5 of the Convention*, including information on achievements under the Integrated Programme for the Modernization of National Ports (*Part V of the report form*).

Netherlands

Dock Work Convention, 1973 (No. 137) (ratification: 1976)

1. *Registration of dockworkers.* In its 2002 observation, the Committee asked for a report on the progress made by the Government and the social partners in reaching a consensus about the way in which the Convention should be applied in the port of Rotterdam. In its reply, the Government indicates that it has continued its efforts to facilitate the social partners coming to a solution regarding *Article 3 of the Convention*. The Government has called on the social partners to start negotiating an agreement. However, this has not led to the opening of discussions. In January 2004, after it had become apparent that the employers were not able or willing to compromise, the Government concluded that there was no other option than to denounce the Convention. The Government recalls that the labour market policy is not geared towards special policies for certain sectors of the economy. It also refers to the general regulations on unemployment and the labour market policies which aim to assist workers who are outside the labour market to rejoin it as quickly as possible and which provide a safety net for those who have not yet returned to the labour market. It also states that the ratification of Convention No. 137 was based on a collective agreement by the social partners, not on the adoption of legislation. The Government recognizes that it is not applying the Convention and concludes that the only option is to denounce it.

2. The Committee also notes that, in its report on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Government reports that the organizations of workers and employers were consulted in written form on the proposal to denounce Convention No. 137. The proposal is still to be submitted to Parliament.

3. In its observations on the Government’s report, the Trade Union Confederation of Middle and Higher Level Employees’ Unions (MHP) states that the reasoning leading to the need to denounce the Convention might be dangerous. The MHP recognizes that the Convention is to be applied on the basis of an agreement between the employers and the workers, but notes that the Government has its own responsibility when they do not reach an agreement. The MHP has also invited the Government to better explain the reasons for denouncing the Convention. The National Federation of Christian Trade Unions (CNV-Ports) also states in its comments that dock work requires specific elements of protection, taking due account of the specific needs of safety and health in ports. Comments by the Netherlands Trade Union Confederation (FNV) were received in November 2004 and have been communicated to the Government.

4. In view of the ongoing discussions, the Committee invites the Government to keep it informed of any development on the issues raised in this observation. In the meantime, it trusts that the Government will ensure compliance with the provisions of Convention No. 137.

United Republic of Tanzania

Dock Work Convention, 1973 (No. 137) (ratification: 1983)

1. The Committee notes with regret that no report has been received from the Government since 1992 on the situation of dockworkers. This is of particular concern as the Government had indicated that the number of dockworkers was likely to be affected by the introduction of high-technology facilities. It hopes that a report will be supplied for examination at its next session and that it will contain full information on the following matters.

2. *Article 3, paragraphs 2 and 3, of the Convention.* Please indicate the manner in which registered dockworkers are assured priority of engagement for dock work and are required to make themselves available for work. Please also provide particulars of the numbers of dockworkers (including those in Zanzibar) on the registers maintained in accordance with this Article and of variations in their numbers during the period covered by the report, in accordance with *Part V of the report form*.

3. *Article 4.* Please describe in detail the measures instituted to prevent or minimize detrimental effects on dockworkers of a reduction in the strength of registers, and the criteria and procedures laid down for the implementation of these measures.

4. *Article 5.* Please state whether any measures have been taken to encourage further cooperation between employers or their organizations, on the one hand, and workers' organizations, on the other hand, in improving the efficiency of work in ports.

[The Government is asked to reply in detail to the present comments in 2005.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 32** (*Ukraine*); **Convention No. 137** (*Sweden, Uruguay*); **Convention No. 152** (*Congo, Guinea*).

Indigenous and Tribal Peoples

Argentina

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2000)

1. The Committee notes the Government's report and the enclosed legislative texts. The Committee notes once again that the Government does not state the employers' and workers' organizations to which it has sent a copy of the report, and urges it to comply with article 23(2) of the ILO Constitution.

2. The Committee takes note of the Government's reply to the comments made by the Congress of Argentine Workers (CTA), dated 30 September 2002, supplementing those of 27 September 2001. The Committee also takes note of the content of the Alternative Report of the National Team for Social Pastoral Work and the Ecumenical Movement for Human Rights sent to the ILO Office in Argentina on 7 August 2003 noting the membership of the Confederation of Education Workers of the Argentine Republic (CETERA). The Committee also notes the communication of 28 November 2003 from the Association of Provincial Educators (ADEP) which was sent to the Government of 10 February 2004 for its observations. The Committee notes that as yet the Government has not replied to these communications.

3. The Committee notes that, according to the Government, it has sent a request for detailed information to each province, which will provide inputs to the recently formed "Committee to Align Domestic Legislation with the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization". The Committee trusts that the Government will send information in its next report on the matters raised in both the communications of the CTA, particularly on those to which the Committee drew attention in its previous comments.

4. *Article 1, paragraph 2, of the Convention. Legal personality.* In its previous comments the Committee noted the information from the CTA to the effect that the recognition of indigenous peoples was encountering numerous problems, especially regarding legal personality, which is difficult to obtain owing to long and complicated procedures. The Committee refers to this matter in a direct request.

5. *Article 4. Special measures of protection.* The Committee notes that, according to the ADEP, deficiencies in health, education and work are affecting the health of members of the indigenous communities in the province of Jujuy, particularly in La Puna, La Quebrada de Humahuaca, Ramal and Valles del Sur, which were brought to light in two field studies carried out in February 2001 and January 2002. The Committee requests the Government to provide information on the measures taken or envisaged, with the participation of the peoples concerned, to safeguard the persons, institutions, property, labour, cultures and environment of the indigenous communities in the abovementioned regions.

6. *Article 6. Consultation and participation.* The Committee expresses its concern at the lack of information on consultation and participation of indigenous peoples pursuant to the Convention, and requests the Government to provide further information on this matter in its next report. The Committee also notes the information in the Government's report that representatives of the indigenous communities participate, through the Episcopal Commission, in the "Committee to Align Domestic Legislation with the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization". The Committee requests the Government to provide information in its next report on the number of representatives of these communities who participate in the abovementioned committee and the criteria for appointing them.

7. *Article 14. Ownership and possession of lands.* The Committee notes the information in the Government's report that the legislation is to be aligned with the legal situation deriving from the constitutional reform of 1994 with regard to the regulation of land property rights in the case of indigenous communities. The Committee requests the Government to provide information on the measures adopted or envisaged – with the participation of representatives of the indigenous communities – to align the national and the provincial legislation with the Constitution.

8. In connection with this matter, the Committee notes the communication from the Ministry of Labour, dated 4 October 2004, indicating that the Executive submitted a bill to the Chamber of Deputies to declare an emergency with regard to indigenous ownership and possession of lands traditionally occupied by indigenous communities. The Committee notes that under the proposed legislation, there is to be a stay of execution of judicial decisions ordering removal of indigenous communities from lands they traditionally occupy. There is also to be a procedure for the holding of an indigenous census and the identification of lands that are currently occupied by indigenous communities or from which they have been removed or expelled. Please indicate whether the abovementioned bill has been adopted and provide information on the manner in which the indigenous peoples were consulted. The Committee recalls that according to *Article 6* of the Convention, "governments shall ... consult the peoples concerned ... in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly". Such consultations must furthermore be held before the adoption of such measures. As the bodies in charge of supervising application on the Convention have noted, consultation and participation constitute the cornerstone of Convention No. 169 on which all its provisions are based. The Committee hopes that the Government will provide information on this matter in its next report.

9. The Committee notes with interest the information supplied by the Government in its report indicating the expropriation of three estates located in the provinces of Salta and Jujuy for the benefit of the indigenous communities occupying them. The Committee trusts that the Government will continue to provide information on measures taken to pursue the land award process.

10. The Committee notes that, according to the Government, an agreement has been concluded between the province of Rio Negro and the *Mapuche* community for the award of lands, in which the Council for the Development of Indigenous communities intervened. The Committee asks the Government to provide information in its next report on the extension of the lands that have been awarded since this agreement was concluded.

11. The Committee notes that, according to the ADEP, there is a lack of information concerning compliance with an agreement concluded between the province of Jujuy and the federal Government – approved by Provincial Law No. 5030 in 1966 – to regularize within two years 1,238,300 hectares of state-owned rural land and 15,583 state-owned urban plots. The Committee requests the Government to provide information on this matter in its next report.

12. *Article 15. Natural resources.* The Committee notes the information supplied by the Government to the effect that the National Constitution establishes that indigenous peoples have the right to participate in the preparation, execution and supervision of any measures that the State or an individual may carry out in their lands and/or area of influence which concern the presence of natural resources including the receipt of benefits therefrom. The Government also indicates that legislation is to be adopted to regulate mechanisms for such participation, and that the State has ownership of raw materials. The Committee requests the Government to keep it informed of progress made in drafting legislation enabling effect to be given to this provision of the National Constitution. Please also indicate whether provision is to be made for the consultation or participation of indigenous representatives in the formulation of such legislation.

13. *Article 17, paragraph 1. Transmission of lands.* The Committee notes that the information supplied by the Government in its report that there is compliance with the customary rules governing individual or community use and enjoyment of lands awarded on the basis of suitability, use and custom. The Committee observes that the Government says nothing about compliance with the procedures for transmission, and trusts that it will provide such information in its next report and together with any relevant legislative texts.

14. *Article 30. Means of communication.* The Committee notes with interest the adoption of Act No. 25.607 of 2002 on a campaign to disseminate information on indigenous rights. The Committee would be grateful if the Government would provide information in its next report on the measures taken or envisaged, with the participation of the indigenous communities, to give effect to this Act.

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 2006.]

Bangladesh

Indigenous and Tribal Populations Convention, 1957 (No. 107) ***(ratification: 1972)***

1. The Committee recalls that it has been examining the situation in Bangladesh under this Convention for many years, against the background of allegations of human rights abuses, large-scale migration into tribal areas by Bengali settlers from other parts of Bangladesh and consequent displacement of tribal people from their traditional lands, and an armed insurgency by tribal militants – resolved by the Chittagong Hill Tracts Peace Accord, 1997. The Government's report arrived too late to be examined at the Committee's previous session, and therefore covers the period up to May 2003 only.

2. The Committee notes in general that the report was quite brief, and contained summary information in reply to its previous comments. It hopes that the next report will go beyond a brief response to the questions posed, and will provide more detailed information including supporting documentation on how the various matters involved in the Convention's implementation are being dealt with.

3. *Chittagong Hill Tracts Peace Accord, 1997.* The Committee notes the statement in the report that many of the provisions of the Peace Accord have been implemented, and that the present Government has “decided to implement the unimplemented provisions gradually within the framework of the Constitution (...) ensuring sovereignty, territorial integrity and security of the country as well as the rights of the people living in the CHT”. The Committee requests the Government to indicate which provisions are now under implementation, and which remain to be implemented, and to provide more detailed information on the efforts being made in this respect.

4. It notes in addition the reference to those “living in the CHT”. It recalls the concern previously expressed that the displacement of tribal people from their lands in the face of continued immigration will submerge the traditional occupants of these areas, and notes estimates that the proportion of those living in the CHT who are tribal has gone from over 90 per cent to about 60 per cent in the last few years. It hopes the Government will take this into consideration in its development efforts, and in deciding whether to continue to encourage non-tribal settlers in this region.

5. *Legislation in force.* The Committee has previously asked about the legislation in force in the CHT, and particularly whether the CHT Regulations 1900 were still in force and what had replaced them if not. It notes that the enactment of other legislation has meant that the provisions of the CHT Regulation have now been superseded. The Committee requests the Government to provide a consolidated list of the legislation now in force in this area.

6. *Articles 11-14 of the Convention. Land rights.* The Committee recalls that in its previous comments in 2001, it noted that “(o)ne of the principal causes of the conflicts has been the loss of tribal land to non-tribals. The Peace Agreement provides that the Government is to carry out a cadastral survey in consultation with the Regional Council, with the objective of the Ministry of Land providing two acres of land to landless tribal families”. It notes the statement in the report that a Land Commission Act has been passed by the Parliament and a Land Commission has been constituted with a Judge of the Supreme Court as its chairman to resolve the land disputes of three hill districts. It notes further that the Land Commission “is expected to function soon”.

7. In this regard, the Committee recalls that it already noted in its 2001 comments that a Land Commission had been constituted in June 1999, and that it had not yet begun functioning. The report received in 2003 indicated that the Government was taking steps to establish the offices of the Land Commission and to recruit the necessary personnel. Please indicate whether the reference is to the same Land Commission referred to previously; whether it has now begun functioning; and what results have so far been achieved. Please also forward a copy of this legislation.

8. In its previous comments, the Committee noted that the Government had indicated that, in accordance with the CHT Peace Accords, the Divisional Commissioner, Chittagong Division of the Ministry of Land, and the deputy commissioners of the three hill districts were instructed to take steps to cancel the lease agreements of non-tribals who were allotted lands in the CHT for rubber and other plantations and failed to use the lands for the purpose for which they were leased, and that some such leases had been cancelled. The Government indicated in its last report that it was yet to receive detailed information in this respect, and asks it to provide such information in its next report.

9. *Landless families.* The Committee notes that no further action was taken for the 3,000 landless families referred to in the previous report and comments, but that the Ministry of CHT Affairs has undertaken projects under which around 4,300 landless tribal people are being “rehabilitated”. Please provide information on the number of landless tribal people that presently exist, and provide information on the success of these and other projects to provide them with lands.

10. *Jhum cultivation.* The Committee recalls that it had noted previously its concern over the Government’s efforts to abolish “jhum” cultivation, which is the traditional shifting cultivation method of many of the tribal people in the CHT, and asked for further information on the alternatives being explored. The Government again refers in its report to efforts to eliminate jhum, which it considers harmful to the environment. Please indicate what measures are being taken, in accordance with the requirements of *paragraphs (b) and (c) of Article 4 of the Convention*:

- (b) the danger involved in disrupting the values and institutions of the said populations unless they can be replaced by appropriate substitutes which the groups concerned are willing to accept shall be recognized;
- (c) policies aimed at mitigating the difficulties experienced by these populations in adjusting themselves to new conditions of life and work shall be adopted.

11. In the same respect, the Committee notes the reference to various development efforts under way in the CHT with international financing. The Committee requests the Government to indicate how consultations have been held with tribal leaders before development projects affecting their situation were undertaken, and how concerns about the preservation of their traditional ways of life have been dealt with.

12. *Return of refugees.* The Committee recalls that in 2001 it noted that “the return of these refugees from Tripura State in India was completed in February 1998 with the return to Bangladesh of 64,433 people belonging to 12,222 families”. It asked for further information on the return of other refugees. The Committee notes that the report received in 2003 refers to exactly the same number of refugees having been returned. It also indicates that the task force that had been constituted after the signing of the Peace Accord to continue to deal with this question met several times but could not submit a comprehensive report; that its activities are suspended; and that the Government has decided to reconstitute it. Please indicate whether this task force is now functioning and whether it has now resolved the plight of these refugees. Please indicate in this connection whether further refugees remain in India or elsewhere, and what is their situation.

Bolivia

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1991)

1. The Committee takes note of the Government’s detailed report, received shortly before the Committee of Experts began its work and containing the information requested in its previous comments. It also notes the various attachments containing information, inter alia, on legislation enacted, draft legislation and court decisions.

2. *Follow-up to the representation of 1999.* In March 1999, the Governing Body adopted the report of the committee set up to examine a representation made the Bolivian Central of Workers (COB) on the application of Convention No. 169 (Document GB.274/16/7). In that representation, the COB alleged that the National Forestry

Superintendency had issued administrative decisions granting, without prior consultation, 27 renewable forestry concessions for a term of 40 years, which overlap with community lands of indigenous origin. These lands are undergoing a review in order to determine third-party entitlements within them. The abovementioned tripartite committee noted that in view of the fact that the measures to review title to the lands claimed, the expropriations and concessions for the exploitation of resources may directly affect the viability and interests of the indigenous peoples concerned, *Article 15 of the Convention* should be applied in conjunction with *Articles 6 and 7*, and recalled that by ratifying the Convention governments undertake to ensure that the indigenous communities concerned are consulted promptly and adequately on the extent and implications of exploration and exploitation activities, whether these are mining, oil or forestry activities. Furthermore, while noting that the lands with which the forestry concessions overlap had not yet been titled as community lands of origin, the abovementioned committee observed that it had not received any evidence indicating that such consultations, whether under *Article 6(a)* or *Article 15(2)*, of the Convention had been carried out or whether provision had been made for the peoples concerned to participate wherever possible in the benefits of such activities.

3. In its last observation, the Committee requested detailed information on action taken on the recommendations made by the tripartite committee. With regard to consultation procedures, the Government indicates that section 8 of the Forestry Act establishes machinery for participation by citizens as well as guarantees of transparency giving all natural and legal persons the right to request information on the forestry system. As to the duration of the forestry concessions, the Government states that contracts concluded prior to the grant of title could be converted to concessions, though not for a term of 40 years but for the duration of the original contract. It also indicates that following unsuccessful applications for revocation and appeals, the indigenous organizations with outstanding land claims filed appeals to the Supreme Court of Justice pending grant of land titles which were dismissed as unproven. With regard to the review process, the Government indicates that its results may affect and bring about a reduction of forestry concessions. The Government also provides information on the forestry concessions that overlap with indigenous lands. The Committee notes that there is no new information on the main issues that gave rise to the representation. It requests the Government to provide detailed information in its next report on the action taken on the recommendations in the report adopted by the Governing Body on the representation of the COB.

4. *Comments by the ICFTU – Consultation on oil drilling.* The Committee also notes a communication of 1 September 2004, and the documents attached thereto, from the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention, forwarded to the Government on 13 September 2004, and the Government's reply thereto. The ICFTU refers to the *guarani* indigenous community of Tentayapi, which it describes as the community that most strongly defends its culture, values and way of life. The community is located in the Department of Chuquisaca, an area coveted for its oil reserves, and has legal title to an area covering 20,000 hectares. According to the ICFTU, an oil company (MAXUS-REPSOL) is seeking, without consulting or obtaining approval from the communities concerned, to explore and drill in their territory (Bloque Caipependi), on the strength of a few signatures which it obtained through deceit, the signatories being unable to read or understand what they were signing. The indigenous people have been highly active in opposing exploration and drilling and have even succeeded in getting the Chamber of Deputies to approve in July 2004 a bill to preserve Tentayapi (currently before the Senate). Finally, they alerted the Committee that in that same month, MAXUS-REPSOL started prospecting on community land.

5. The Committee notes the Government's comments on the communication from the ICFTU and the two volumes of documents attached pertaining to studies carried out by MAXUS which include a document for public distribution together with a copy (six pages), a document recording delivery and receipt of the latter, a document for public consultation in Tentayapi, signed by six inhabitants of Tentayapi and a number of documents entitled "Private document – agreement for obtention of ownership, undertaking to compensate".

6. The Committee notes first that MAXUS held a briefing with the Tentayapi community and secondly, that the latter is not satisfied with the procedure used or the results, and took its claims to various national bodies prior to the abovementioned communication. *Articles 6, 7 and 15* of the Convention, which lay down requirements for consultation, establish that consultation is not an information exercise but a process carried out for the purpose of reaching an agreement with the peoples affected, and lay down specific requirements where natural resources are involved. As the Governing Body noted in its report on another representation (GB.282/14/2, paragraph 38) "the concept of consulting the indigenous communities that could be affected by the exploration or exploitation of natural resources includes establishing a genuine dialogue between both parties characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord. A simple information meeting cannot be considered as complying with the provisions of the Convention." The Committee further points out that the obligation to ensure that consultations are held in a manner consistent with the requirements established in the Convention is an obligation to be discharged by governments, not by private persons or companies.

7. In conclusion, the Committee hopes that the Government will promote real dialogue with the communities affected in the manner laid down in the Convention, and that it will order the suspension of actions that violate the interest of the *guarani* indigenous community of Tentayapi and that relevant consultations will be held. It also asks the Government to keep the Committee informed of any developments in the situation.

8. *Towards a culture of consultation.* At a general level, the Committee observes that the events behind both the COB's representation and the ICFTU's communication arose from a failure to apply *Articles 6, 7 and 15* of the

Convention together, and that because there was no progress in this matter, the flaws in the consultations in the case of the forestry concessions were repeated in the oil case. The Committee hopes that the Government will take all necessary steps to establish consultation mechanisms that enable effect to be given to the provisions of the Convention.

9. The Committee notes that among the documents appended to its report, the Government included two bills, a “Draft Supreme Decree on Consultation and Participation of Indigenous Peoples of Origin – ILO Convention No. 169” and a “Draft Regulation on Mining Operations in Community Lands of Origin, and Indigenous Community and Communities of Origin. The Committee expresses the hope that these bills herald progress and its conviction that they warrant a process of consultation between the Government and the International Labour Office with the essential participation of the indigenous peoples.

10. The Committee also notes that the Government is working closely with the Office to implement effective measures to eradicate forced labour, the main victims of which are members of indigenous peoples. It further notes that in September 2004 the Government stated that the Forced Labour Convention, 1930 (No. 29), is in the process of being ratified by the National Congress. Moreover, the Government has been in contact with the Office and other bodies in the United Nations system with a view to setting up joint technical assistance programmes that will help it to develop coordinated and systematic action on indigenous issues (*Article 2* of the Convention). The Committee hopes that in its next report the Government will provide information on progress made in this matter.

11. The Committee will carry out a detailed examination of the Government’s report in 2005 and requests the Government in its next report to provide information on developments in the situations that gave rise to the COB’s representation and the ICFTU’s communication.

[The Government is asked to reply in detail to the present comments in 2005.]

Denmark

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1996)

1. The Committee notes with regret that the Government’s report has not been received. It is therefore forced to recall its previous observation. It noted in that observation that in March 2001 the Governing Body adopted a report concluding its consideration of a representation filed in November 1999 by the Greenlandic trade union Sulinermik Inuussutissarsiateqartut Kattuffiat (SIK) concerning the application of the Convention by Denmark. In its report the Governing Body stated that, in general “the Committee concludes that the measures taken in this respect since 1997 (when the Convention entered into force for Denmark) by the Government are consistent with the Convention. Noting the spirit of consultation and participation that is the hallmark of this instrument, however, it urges the Government and the groups most directly affected, to continue their common search for solutions”.

2. The Governing Body requested the Government to provide information to the Committee of Experts on a certain number of points arising under the representation:

- the decision of the Danish Supreme Court on the appeal taken from the 20 August 1999 decision of the High Court of the Eastern district of Denmark in the case arising out of the 1953 relocation of the population of the Uummannaq community in the Thule district of Greenland;
- any further measures taken or envisaged to compensate the persons relocated from the Uummannaq community for losses incurred as a result of the relocation;
- any consultations as prescribed by sections 12(1) and (2) of the Home Rule Act which are being held or may be held with the Home Rule authorities regarding future use of the land occupied by the Thule Air Base or the use of any other land in the Thule district;
- the measures which have been taken or are contemplated to ensure that no Greenlanders are relocated in the future without their free and informed consent or, if this is not possible, only after appropriate procedures in accordance with *Article 16 of the Convention*.

3. The Committee looks forward to receiving this information in the Government’s next report. It also understands that a procedure on the same situation has been undertaken before the European Court of Human Rights, and looks forward to learning of the outcome of these deliberations.

El Salvador

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1958)

1. The Committee notes the Government’s report and notes that while the report provided information on some of the matters raised in its previous request, it left a number of the Committee’s questions unanswered. The Committee hopes the Government will submit a more complete reply to its queries in its next report.

2. *Articles 11 to 14 of the Convention. Land rights.* The Committee notes also that a communication was received in September 2003 from the *Sindicato Integración Nacional de Indígenas Organizados* (INDIO), a workers' organization registered in the country. INDIO indicated in this comment that the indigenous populations of the country were losing their land rights, in particular to the building of a hydroelectric dam, and that they had been unable to obtain land rights in other contexts as well. The Committee hopes the Government will include information in its next report on the situation of indigenous land rights in the country. Please also indicate any cases in which the indigenous populations have been displaced from their traditional lands for development purposes, and the manner in which they were involved in the decisions taken, and compensation received.

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

Fiji

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1998)

1. The Committee notes the brief further indications provided by the Government in its report in reply to the previous request for additional information.

2. *Articles 13-19 of the Convention. Land rights.* The Committee has received two long communications from the Fiji Commercial Services Union (FCSU) under article 23 of the ILO Constitution which were transmitted to the Government in January and September 2004 respectively. The FCSU indicated that the first of them was supported by the Fiji Mineworkers' Union and the Fiji Peacekeepers' Association. The Government has provided no comments on these communications.

3. The FCSU has provided detailed information on the land rights of indigenous Fijians, which have complex historical roots. The FCSU's description of the legal situation coincides with the information furnished by the Government, though there may be disagreement on the conclusions to be drawn. It may be summarized by saying that all "native lands" are held in common and not through individual ownership, and are held in trusteeship. The right to manage these lands has been entrusted since 1940 to the Native Lands Trust Board (NLTB), with any disputes to be resolved by the Native Lands Commission. The native lands are said to be comprised of many small parcels, but – as the Government also has indicated – 83 per cent of the land in the country is made up of these native lands that are managed together and form the majority of the land in the country.

4. In this regard, the Committee recalls the statement in the Government's first report that "in spite of their numbers and the fact that they own 83 per cent of the land, indigenous people still feel alienated in the country of their birth", and that the "recent political crisis is the result of nationalistic elements of the indigenous population to assert their control over the country".

5. According to the FCSU, the lands are leased to others, mostly to the ethnic Indians in the country, and 20 per cent of the revenues go to the Native Lands Trust Board and 30 per cent are channelled to the chiefs of tribes, who together form the Great Council of Chiefs. Only 50 per cent are distributed to the grassroots members, resulting in uneven income distribution, especially as the rents charged for these lands are said to be extremely low compared with the real value of the land. Increasing urbanization in recent years has led to the estrangement of many "native" Fijians from their rural roots, and the civil unrest of 2000 is attributed to dissatisfaction with the chiefs' continued domination of land rights and revenues. The accompanying ethnic tensions are ascribed in part to the perceived benefit the Indian population of the country has derived from leasing the native lands at unfairly low prices.

6. In this regard, the Committee notes the statement in the Government's report in reply to its previous request for information that "the formation of the NLTB meant that through the influence and persuasive power of traditional authority, the indigenous Fijians agreed to give up direct control of their land ... The NLTB would ensure that the indigenous Fijians had enough land for themselves and that the surplus was available to benefit the national economy".

7. The FCSU states that there is no grievance procedure for resolving the growing number of land claims or disputes on the use to which the NLTB puts native lands, except through the Native Lands Commission, which is said to have too great a vested interest to be able to adjudicate objectively. The FCSU therefore relies on *Article 14, paragraph 3*, of the Convention, which states that "Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned."

8. The Committee takes note of the complex political, legal and social situation that underlies these communications. In the absence of comments from the Government directly on the FCSU communications, a number of questions remain about the situation, and the Convention's applicability to it. The Committee therefore requests the Government to comment on the degree to which it considers it can apply the Convention to management of issues between elements of the indigenous population of the country, and to state whether it considers that the present system for resolving disputes over land rights is adequate to the needs of the population.

[The Government is requested to reply to these comments in detail in 2006.]

India

Indigenous and Tribal Populations Convention, 1957 (No. 107) (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:

1. The Committee notes that the Government has submitted a very brief report in reply to the previous direct request, and that in several respects has indicated that gathering the information requested would take some time and that the information would be submitted when available. The Committee recalls that at its previous session it requested a detailed report for the present session, and hopes the Government will provide such a report for its next session. It is therefore repeating the previous direct request.

2. In addition, the Government has provided no comments on the observations communicated by the Chemical Mazdoor Sabha, a workers' organization, on the situation of tribal people in Narmada Valley, which was sent to the Government on 11 June 2003. The Committee requests the Government to make any comments it may have on this communication, in time for the next session.

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

[The Government is asked to report in detail in 2005.]

Mexico

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1990)

1. The Committee notes the Government's report received in October 2004 and its numerous annexes. The Committee notes that the Government has published much legislation related to the Convention, including: the Federal Act to Prevent and Eliminate Discrimination of 2003; the Act on the National Commission for the Development of Indigenous Peoples of 2003; the General Act on the Linguist Rights of Indigenous Peoples of 2003; and the Act on the National Institute of Indigenous Languages. It also notes the National Programme for the Development of Indigenous Peoples (2001-2006).

2. The Committee notes the report of the committee set up to examine the representations made by the Union of Academics of the National Institute of Anthropology and History (SAINAH), the Union of Workers of the Autonomous University of Mexico (STUNAM), the Independent Union of Workers of La Jornada (SITRAJOR) and the Authentic Labour Front (FAT), which was adopted by the Governing Body in March 2004 (document GB.289/17/3). Paragraphs 108, 139 and 149 of this report contain a mandate to follow up the various aspects of the Convention, which are examined by the Committee of Experts. Due to the large quantity of materials to be examined on the application of the Convention in Mexico, the Committee will confine its comments during the current session to matters directly related to the representation, and will refer to other issues in subsequent sessions. It requests the Government to send, in time for it to be analysed by the Committee at its next session (no later than 1 September 2005) replies to the present comments and any more recent information that may emerge to update the detailed report it sent this year.

3. *Article 6 of the Convention. Consultations.* In paragraph 108 of the report, the Governing Body called upon the Government to made additional and ongoing efforts to overcome the feeling of exclusion that is so apparent in the allegations and to develop, formulate and implement reforms for the full application of *Article 6* of the Convention, based on clear representativity criteria, taking into account as far as possible the proposals of the authors of the representation with regard to the characteristics that consultations should have to be effective and establishing an appropriate consultation mechanism taking into account the values, ideas, times, reference systems and even the ways in which indigenous populations conceive of consultation.

4. The Committee notes the indication in the Government's report that one of the objectives of the National Programme for the Development of Indigenous Peoples (2001-06) is to achieve deep-rooted institutional reform, for which a national consultation was held on indigenous peoples, public policies and institutional reform in July and August 2002. According to the Government, one of the fundamental conclusions reached in this consultation was to consider the consultation mechanism as the centrepiece of a new relationship with indigenous peoples in the determination of policies, institutions and programmes related to their life as peoples, thereby acknowledging their role as fundamental actors in the transformation of the State's current institutions. The result was the establishment of the National Commission for the Development of Indigenous Peoples (CDI), which replaced the National Indigenous Institute. The Act establishing the CDI provides that its functions include developing, within the framework of the Commission, a system of consultation and participation, as section 3 provides that the Commission shall hold consultations whenever the Executive promotes reforms, measures and programmes which have an impact on the conditions of life of indigenous peoples. The Committee also notes that the Commission has established an Advisory Council consisting of 123 indigenous advisers. Please indicate the representativity criteria used for the selection of the 123 indigenous counsellors in the country, the 32 counsellors representing the governments of federated entities, the 12 counsellors representing social organizations, the six counsellors

representing academic and research institutions and the seven counsellors from the members of the officers of the Indigenous Affairs Commissions of both Chambers of the Congress of the Union.

5. The Committee recalls that the report of the Governing Body requested the Government to establish consultation methods for the implementation of constitutional reforms at both the federal and state levels. As the constitutional reforms have given rise to specific situations in respect of which detailed implementation measures still have to be adopted, at both the federal and state levels, the Committee hopes that the Government will provide detailed information on both the consultation methods used (paragraph 108(b) of the report of the Governing Body) and the results achieved.

6. The Committee notes that a second consultation was held as from November 2003 concerning the forms of development and aspirations of indigenous peoples and it notes that it has received the report of this consultation. It hopes to be provided with information on the follow-up to this consultation, the manner in which the development plans and programmes have been formulated and implemented, including information on the manner in which indigenous peoples participated in the various stages of formulation, implementation and follow-up.

7. In paragraph 139 of its report, the committee set up to examine the representation indicates that the extent and general nature of the allegations (which concern principally the following matters: general framework of discrimination, lands, rights and justice, forced sterilization, indigenous children and migrant indigenous workers) have given rise to an unprecedented situation which requires particular treatment and it requests the Committee of Experts to examine the information submitted in the context of the representation and to request further information from the Government and the authors of the representation. The Committee notes that the late arrival of the report has not allowed a detailed analysis of the content of the allegations and the replies thereto, both of which are extremely voluminous, for which reason they will be examined in 2005. It further requests the Government to provide precise information on the points raised in paragraph 139 of the report of the committee set up to examine the representation and asks the authors of the representation to provide the information requested in point (g) of that paragraph.

Content of the reforms

8. In paragraph 141 of its report, the Governing Body requested the Committee of Experts to carry out a thorough study of the compatibility of the constitutional reforms relating to indigenous matters with Convention No. 169 and requested the Government to provide a detailed report in 2004 containing replies to the 2001 comments of the Committee of Experts. In those comments, the Committee of Experts referred essentially to the following matters: definition and self-identification, lands and administration.

9. *Definition and self-identification. Linguistic requirements and physical occupation.* Section 2(5) of the reforms provide that ethno-linguistic criteria and those relating to physical occupation shall be taken into account. The impact of these two criteria, which are not included in the Convention, is unclear. Section 2, paragraph V, of the reforms sets out the responsibility of federated entities for the recognition of indigenous peoples and communities and indicates that they shall take into account, inter alia, ethno-linguistic criteria and criteria of physical occupation. The Committee asks the Government to indicate how it will ensure that the law and practice of all the federated entities are compatible with the Convention and coherent amongst themselves with a view to securing equal protection for all the indigenous peoples in Mexico (*Articles 2 and 33 of the Convention*). The Committee requests it to ensure, when implementing the reforms, that the various states do not include criteria relating to coverage and definition different from those at the federal level which restrict the definition set out in *Article 1* of the Convention and to provide detailed information on this subject.

10. *Lands, and territories and natural resources.* Section 2(A)(VI) of the reform provides that the Constitution recognizes and guarantees the right of indigenous peoples and communities to “have access (...) to the use and preferential exploitation of the natural resources in the areas inhabited and occupied by communities except for those which are strategic areas” under the terms of the Constitution. Strategic areas are defined in article 27 of the Constitution. In this respect, the Government states in its report that “the reform considers that, in supplementing the use and exploitation of the natural resources in their lands and territories, these are understood as the whole of the habitat used and occupied by indigenous communities, except those for which direct control is exercised by the nation and which are enshrined in article 27 of the Constitution”. The legislation in many countries provides that rights over subsurface resources remain the property of the State. In *Article 15, paragraph 2*, of the Convention, in which this legal principle is recognized, the obligation of States is set forth to consult indigenous peoples who may be affected before permitting activities for the exploration or exploitation of subsurface resources located in indigenous territories. This means that the Convention contains specific provisions on the territories traditionally occupied by indigenous peoples which are the property of the State, but does not exclude them from the scope of the Convention. Indeed, *Article 15, paragraph 2*, of the Convention was drawn up precisely for cases in which the State retains ownership of mineral or subsurface resources.

11. The Committee requests the Government to indicate the manner in which effect is given to *Article 15, paragraph 2*, of the Convention in the strategic areas referred to in the provision of the reforms referred to above and in article 27 of the Constitution.

12. Furthermore, the Committee notes the detailed information contained in the report on the measures adopted to resolve specific important disputes relating to land, including matters regarding the issues covered by the representation. The Committee requests the Government to provide full information on any developments in this respect in its next report so that the Committee of Experts can carry out a detailed examination of this matter subsequently.

13. *Administration.* Article 2 of the Convention establishes the obligation of the Government to develop “coordinated and systematic action” to protect the integrity of the indigenous peoples in the country. The Committee notes that some provisions of the reforms delegate the responsibility for regulating these matters to federated entities. For example, section 2 provides that “recognition of indigenous peoples and communities shall be granted in the constitutions and laws of federated entities, which shall take into account, in addition to the general principles established in the previous paragraphs, ethno-linguistic criteria and criteria of physical occupation”. The Committee requests the Government to take the necessary measures to ensure, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of indigenous peoples and to guarantee that, when adopting the relevant legislative and administrative measures, both at the level of the federal Government and of state assemblies, the rights set forth in the Convention are guaranteed as a minimum common denominator, taking into account the considerations expressed by the Committee set up to examine the representation relating to identity, lands and territories, autonomy and natural resources. The Committee asks the Government to keep it informed on this matter.

14. The Committee noted in 2001 various communications received under article 23 of the ILO Constitution concerning the application of the Convention by Mexico, made by the following organizations: the Independent National Trade Union of Colegio de Bachilleres (28 August 2001); the Telephone Workers’ Union, jointly with other workers’ organizations (7 September 2001); and the Mexican Electricians’ Union (28 September 2001), all of which were forwarded to the Government as from September 2001. Due to the late arrival of the Government’s report, the Committee will examine the content of these communications in 2005. The Government may provide any information that it considers appropriate on these communications.

15. Finally, the Committee requests the Government to provide a report in 2005 containing the information requested by the Committee in this observation and to continue providing the information requested in paragraphs 108, 139 and 141 of document GB.289/17/3 and information on the communications referred to in paragraph 14 of this observation.

Pakistan

Indigenous and Tribal Populations Convention, 1957 (No. 107) ***(ratification: 1960)***

The Committee is repeating this year its previous direct request, to which once again no answer has been received. The Government has now not provided detailed information on the application of this Convention in more than a decade. It requests the Government to provide information in its next report on the matters raised in the direct request, and more generally. It recalls in this connection that the Government also has not replied to comments made on the application of the Convention in 2003 by the All-Pakistan Federation of Trade Unions.

More generally, the Committee is aware that the situation in the tribal areas, many of which are located along the border with Afghanistan, has been seriously affected by the war in Afghanistan and the rapid evolution in the situation in these areas. The Committee urges the Government to provide a general appreciation of this situation as it relates to the application of this Convention.

[The Government is asked to reply in detail to the present comments in 2005.]

Panama

Indigenous and Tribal Populations Convention, 1957 (No. 107) ***(ratification: 1971)***

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.

Furthermore, a more detailed request is being addressed directly to the Government on certain matters.

Paraguay

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1993)

1. The Committee notes with regret that once again no report has been communicated following the detailed observation made in 2002 and the long discussion of this case that took place in the Conference Committee on the Application of Standards in June 2003, and in spite of the observation and direct request adopted by this Committee last year.

2. The Committee recalls that the available information indicates serious problems in the application of the Convention in Paraguay, as outlined in the previous comments, and that communication between the Office and the Government on this situation has been restricted. The Committee notes from the information communicated by the Government during the discussion in the Conference Committee that some measures are being taken, but that a great deal remains to be done.

3. The Committee once again recalls the allegations of forced labour being practised against indigenous peoples received from the World Confederation of Labour in 1997, and regrets that the Government also has not provided a report on the application of the Forced Labour Convention, 1930 (No. 29). In this connection it notes, however, that work has been carried out in the country on forced labour, focusing on indigenous peoples, in the context of the action programme to follow up the global report on the Declaration on Fundamental Principles and Rights at Work. The Committee looks forward to receiving detailed information on this work, as well as on other aspects of the Convention's application, in the Government's next report.

4. The Committee is therefore repeating its previous direct request, and hopes to receive a detailed report from the Government for its next session.

[The Government is asked to report in detail in 2005.]

Venezuela

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2002)

1. The Committee notes with interest the Government's first report on the application of this Convention. It notes in particular the significant amount of legislative and policy changes under way before and after the Convention's ratification, much of which appears designed to implement the Convention's provisions.

2. *Legislative measures.* The Committee notes in particular that the Constitution of 1999 proclaimed Venezuela a multi-ethnic and multicultural society, recognized indigenous languages, and recognized the existence of indigenous peoples and communities, inter alia. A certain number of the Convention's requirements are guaranteed directly in the Constitution.

3. The Committee also notes that a number of laws have been adopted since 2001 which contribute to the Convention's implementation, such as the Act on demarcation and guarantee of the habitat and lands of the indigenous peoples (12 January 2001), Decree No. 2686 of 11 November 2003 for the identification of indigenous peoples, and Decree No. 1795 of 27 May 2002 making the use of indigenous languages obligatory in educational institutions in indigenous regions. This list is far from exhaustive and a number of other laws or decrees have been adopted in the last three years.

4. In addition, the Committee notes that the draft Basic Law on indigenous peoples and communities, has been approved in first discussion in the National Assembly. The Committee has not received a copy of the draft.

5. While the Government has submitted a detailed report on the contents of its legislation and on the design of many programmes, it does not for most part include any information on the practical application of this legislation. It states in

several cases that the legislation is undergoing regulation or that the practical arrangements for its implementation have not been concluded.

6. The Committee therefore hopes the Government will begin to provide information in its next report on the practical implementation of this extensive body of legislation, and of the Convention itself. The Committee notes that the intentions expressed in the legislation are broadly in accord with the thrust of the Convention, but that the Committee will only be able to assess the Convention's implementation in fact when it has available information on the ways in which the new laws are being implemented in practice.

7. *Consultation of indigenous representatives.* The Committee notes the participatory spirit of the legislation and of the intentions expressed on most subjects through the report. In this spirit it draws attention to *Part VIII of the report form* adopted by the Governing Body, in which it is suggested that governments consult indigenous organizations in drawing up their reports on the Convention's implementation. It hopes the Government will indicate whether it envisages adopting this procedure which is a recommendation and not a requirement.

[The Government is requested to report in detail in 2006.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 107** (*Angola, Egypt, El Salvador, India, Malawi, Pakistan, Panama*); **Convention No. 169** (*Argentina, Denmark, Paraguay, Venezuela*).

Specific Categories of Workers

Finland

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1979)

The Committee notes the Government's reply to the comments made earlier by the Union of Health Professionals (TEHY) alleging subordination of nursing services to medical activity, insufficient wages, non-equality of payment between men and women, lay-offs and retrenchments within the health-care system and the negative impact these factors produce in the employment relationships of the nursing sector. The Government recognizes that the proportion of personnel that find their work somewhat or entirely stressful is higher in the nursing sector than in other sectors and refers in this respect to the higher number of sick leave days per year observed in the municipal sector in general. The Government indicates, however, that efforts are made to help personnel in the municipal sector cope with their work such as the preparation of a handbook on municipality management and a brochure on coping at work designed specifically for health-care workers. In addition, the Government, while recognizing that there are in practice a large number of temporary substitutions in this sector arising from the fact that most personnel are women and use a lot of statutory childcare leave, job alternation leave and study leave, reports that fixed-term posts have been made permanent on a large scale especially in health care. Finally, the Government notes that there are no major differences between men's and women's pay levels in the sector unless what was meant by inequality of pay in TEHY's comments was that men in male-dominated fields such as engineering may well earn more than nurses under the terms of their collective agreements. The Committee notes the Government's explanations but wishes to receive more concrete information on the extent of lay-offs and retrenchments operated in health care, and the measures taken or envisaged to fight precariousness and promote employment stability of nursing personnel. In relation to the comments on alleged wage differentials between men and women in the sector, the Committee will examine this issue at its next session under Convention No. 100.

The Committee is also addressing a direct request to the Government on certain points.

Netherlands

Home Work Convention, 1996 (No. 177) (ratification: 2002)

The Committee notes with interest the Government's first report, received in September 2004. It also notes the comments supplied by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Confederation for Middle and Higher Level Employees (MHP). The Committee will examine the Government's report and the comments of the organizations in detail at its next session and welcomes any additional information that the Government may wish to provide.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States with regard to: **Convention No. 110** (*Guatemala*); **Convention No. 149** (*Bangladesh, Belarus, Belgium, Denmark, Finland, Ghana, Greece, Italy, Jamaica, Kenya, Kyrgyzstan, Malta, Norway, Philippines, Portugal, Russian Federation, Seychelles, United Republic of Tanzania, Ukraine, Zambia*); **Convention No. 172** (*Cyprus*).

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)

Afghanistan

The Committee trusts that, when the national circumstances permit, the Government will provide information with regard to the submission to the competent authorities of the instruments adopted by the Conference since 1985.

Algeria

The Committee notes with regret that the Government has not replied to its previous comments. It requests the Government to provide all relevant information concerning the submission to the People's National Assembly of all the instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions).

Antigua and Barbuda

The Committee refers to its previous observation and asks the Government to forward the relevant information concerning the submission to the Parliament of Antigua and Barbuda of the instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions).

Armenia

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authority of the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th and 91st Sessions).

2. The Committee further notes that Armenia has been a Member of the Organization since 26 November 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 question. The Committee hopes that the Government will provide all the information required 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.

3. 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 assistance to overcome this serious delay.

Azerbaijan

The Committee asks the Government to provide information with regard to the submission to the National Assembly (the Mili Mejlis) of Recommendation No. 180 (79th Session) and the instruments adopted at the 83rd, 84th, 88th, 89th, 90th and 91st Sessions of the Conference.

Bahamas

1. The Committee asks the Government to supply information on the submission to Parliament of the instruments adopted at the 88th, 89th, 90th and 91st Sessions.

2. The Committee also recalls the information provided by the Government in May 2002 indicating that the instruments adopted by the Conference at its 85th and 86th Sessions had been submitted to the competent authority for transmission to Parliament in accordance with article 19 of the Constitution of the Organization. It asks the Government to provide the remaining information concerning the date of submission, the proposals made by the Government, the decisions taken by Parliament and the communication to the representative organizations of employers and workers in relation to the above instruments.

Bangladesh

1. The Committee notes the information provided in September 2004 indicating that Convention No. 185 is being examined by the different Government agencies and representative organizations of employers and workers. The Government then intends to forward Convention No. 185 to the Tripartite Consultative Council. The Committee also notes that a tripartite seminar was organized in Dhaka in March 2004 to review the compliance by Bangladesh with its reporting obligations. In this context, it wishes to recall the need to forward the instruments adopted by the Conference to the Standing Parliamentary Committee.

2. With reference to its previous observations, the Committee asks 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 and 91st Sessions.

Belize

The Committee again asks the Government to take measures in order to fulfil its constitutional obligation to submit and to supply information on the submission to the competent authorities of the instruments adopted by the Conference at 14 sessions held between 1990 and 2003 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions).

Bolivia

The Committee refers to its previous observations and requests the Government to provide the relevant information on the submission to the competent authorities of the instruments adopted by the Conference since 1990 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference).

Bosnia and Herzegovina

In the light of the historical circumstances, the Committee again invites the Government, together with the Office, to study ways in which the submission of the instruments adopted by the Conference since 1990 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions) could be submitted to the competent authorities in the near future so as to ensure compliance with this essential constitutional obligation.

Botswana

The Committee asks the Government to supply all the relevant information with regard to the submission to the National Assembly of the instruments adopted by the Conference at its 84th, 85th, 88th, 89th, 90th and 91st Sessions.

Brazil

The Committee notes that the instruments adopted at the 89th Session of the Conference were forwarded by the President of the Republic to the National Congress on 12 February 2004. Furthermore, the Labour Inspection (Seafarers) Convention, 1996 (No. 178), and Labour Inspection (Seafarers) Recommendation, 1996 (No. 185), were submitted to the National Congress on 20 May 2004. The Government also reported that the Safety and Health in Mines Convention, 1995 (No. 176), and Safety and Health in Mines Recommendation, 1995 (No. 183), were submitted to the National Congress on

4 July 2003. The Committee welcomes this progress and hopes that the Government will soon be in a position to report that Conventions Nos. 128 to 130, 149 to 151, 156 and 157 and the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd (Protocol of 1995), 83rd, 84th, 85th, 86th, 88th, 90th and 91st Sessions of the Conference have been submitted to the National Congress.

Burundi

The Committee refers to its previous observations and asks the Government to provide the relevant information concerning the submission to the National Assembly of the instruments adopted by the Conference since 1993 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions).

Cambodia

The Committee notes the statement by the Government representative at the Conference Committee (June 2004). It refers to its previous comments and recalls the instruments adopted by the Conference at its 55th (Maritime) Session (October 1970), and at the sessions held from June 1973 to June 1994 (58th (Convention No. 137 and Recommendation No. 145); 59th to 63rd; 64th (Convention No. 151 and Recommendation No. 159); and 65th to 81st Sessions). It reiterates its hope that the Government will soon be in a position to also transmit the relevant information regarding the submission to the National Assembly of the instruments adopted from the 82nd to the 91st Sessions of the Conference, held from 1995 to 2003.

Cameroon

The Committee refers to its previous observations and once again requests the Government to spare no effort in meeting the constitutional requirement of submission. It again asks the Government to provide all the information required concerning the submission to the National Assembly of the instruments adopted by the Conference during 21 sessions held from 1983 to 2003, that is at its 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st 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 since 1995 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions). It reminds the Government that it may seek assistance from the Office in order to fulfil this essential constitutional obligation.

Central African Republic

The Committee notes that submission to the National Assembly of instruments adopted by the Conference at 16 sessions, since 1988 (75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions), has not been made. It hopes that the Government will take appropriate steps to overcome this substantial delay concerning submission to the National Assembly of instruments adopted by the Conference.

Chad

1. The Committee asks the Government to communicate the required information on the submission to the National Assembly of the instruments adopted at sessions of the Conference held between 1993 and 2003 (80th, 81st, 82nd, 83rd, 88th, 89th, 90th and 91st Sessions).

2. The Committee recalls that the Government indicated previously that the instruments adopted by the Conference at its 84th, 85th and 86th Sessions were submitted at the same time as those adopted at the 87th Session. It again asks the Government to provide the other information required by the Memorandum of 1980 on the proposals made by the Government, as well as any decision taken by the National Assembly and the organizations of employers and workers to which the information sent to the Director-General has been communicated, in respect of the instruments adopted at the 84th, 85th and 86th Sessions.

Chile

The Committee notes the detailed information received in January 2004 indicating that the Protocol of 2002 and Recommendation No. 194 were submitted to the Labour Directorate and Recommendation No. 193 to the Cooperatives Department of the Ministry of the Economy, Development and Reconstruction. The Committee requests the Government to indicate whether the above instruments have been submitted to the National Congress and to provide all the information required on the submission to the National Congress of the instruments adopted at the 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Colombia

The Committee recalls that the Government has not provided information on the steps taken to submit to the legislature the instruments adopted at the 75th (Convention No. 168), 79th (Convention No. 173), 81st (Recommendation No. 182), 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference. The Committee trusts that the Government will shortly provide the relevant information concerning the submission to the Congress of the instruments adopted at the above sessions of the Conference.

Comoros

The Committee notes with interest that the ratification of Conventions Nos. 111, 138 and 182 were registered on 17 March 2004. It hopes that the Government will soon announce that all the instruments adopted by the Conference during 12 sessions held since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions) were submitted to the competent authority.

Congo

The Committee notes with concern that the Government has not provided information on the measures taken to overcome the substantial delay in its submission to the National Assembly of the instruments adopted by the Conference. It requests the Government to adopt the necessary measures for the submission 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, 75th (Recommendations Nos. 175 and 176) Sessions, and between 1990 and 2003 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference).

Côte d'Ivoire

The Committee refers to its previous observations and trusts that, when national circumstances so permit, the Government will provide relevant information on the submission to the National Assembly of the instruments adopted at the 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Democratic Republic of the Congo

Referring to its previous observations, the Committee once again requests the Government to provide all relevant information concerning the date of submission to the Transitional Parliament and the content of any decision taken by the latter in relation to the instruments adopted at the 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Djibouti

The Committee refers to its previous observation and recalls that information on the obligation to submit is still missing in respect of the instruments adopted at the 66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th, 85th, 86th, 87th, 88th, 89th, 90th and 91st Sessions of the Conference. The Committee hopes that the Government soon will send the relevant information on the submission to the National Assembly of all the instruments referred to.

Dominica

The Committee refers to its previous observations and reiterates its hope that the Government soon will announce that the instruments adopted by the Conference during 11 sessions held since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions) have been submitted to the House of Assembly.

El Salvador

The Committee notes with interest that the ratification of the Protocol of 2002 was registered on 22 July 2004. In its previous observations, the Committee had recalled 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 concerning certain instruments from the 63rd (Convention No. 148 and Recommendations Nos. 156 and 157), 64th (Convention No. 151 and Recommendations Nos. 158 and 159), 67th (Convention No. 154 and Recommendation No. 163) and 69th (Recommendation No. 167) Sessions. The Committee once again hopes that the Government will be in

a position in the near future to report the submission to the Congress of the Republic of all the remaining instruments, including Recommendations Nos. 193 and 194 (90th Session, 2002) and Convention No. 185 (91st Session, 2003).

Equatorial Guinea

The Committee notes with regret that the Government has not replied to its previous observations. It again asks the Government to provide information on the submission to the competent authorities of the instruments adopted by the Conference at its 80th, 81st, 82nd, 83rd, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

Fiji

The Committee notes the brief statement by the Government received in May 2004 requesting additional time to provide information on the submission of the pending instruments. It trusts that the Government soon will announce that the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions were submitted to the Parliament of Fiji.

Gabon

The Committee notes the communication received in September 2004 indicating that owing to practical difficulties the reports drawn up and the instruments to be submitted had not yet been transmitted to Parliament. The Government also states that it has requested financial assistance from the ILO. The Committee hopes that it will be possible to provide this assistance and that the Government will soon be able to send the relevant information concerning the submission to Parliament of the instruments adopted at the 74th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Gambia

The Committee recalls that the 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 that it will 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 soon provide all the information requested by the questionnaire at the end of the Memorandum about the submission to the National Assembly of instruments adopted by the Conference since 1995 at its 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

Georgia

1. The Committee asks the Government to indicate whether the instruments adopted by the Conference at its 80th, 81st, 82nd, 83rd, 84th, 88th, 89th, 90th and 91st Sessions have been submitted to Parliament.
2. The Committee refers to its previous observation and asks the Government to provide the required information regarding the nature of the competent authorities to which Recommendation No. 189 (86th Session) was submitted.

Grenada

The Committee refers to its 2003 observation and hopes that the Government will soon report on the submission to the Parliament of Grenada of the remaining instruments adopted by the Conference since 1994 at its 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

Guatemala

The Committee notes that, in January and May 2004, all the instruments adopted by the Conference which had not yet been submitted were laid before the Congress of the Republic. The Committee welcomes this progress and hopes that the Government will continue to supply regular information on the submission to the Congress of the Republic of the instruments adopted by the Conference.

Guinea

The Committee notes with regret that the Government has not replied to its previous comments. It asks the Government to provide the information required in respect of the submission to the National Assembly of the instruments adopted at the 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Guinea-Bissau

The Committee notes with interest that on 27 October 2004 the Secretary of State for Civil Service and Labour transmitted certain Conventions, Recommendations, and Protocols for consideration by the Government and the Council of Ministers and for their subsequent submission to the National People's Assembly and ratification, as appropriate by the President of the Republic. The Committee hopes that the Government will be in a position to announce the submission to the National People's Assembly of the pending instruments (79th to 83rd, 85th Sessions: Recommendations Nos. 180 to 184, 189 and 191, Protocol of 1995), and of the instruments adopted at the 84th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Haiti

1. The Committee notes with regret that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference. It recalls that the instruments in respect of which the Government has not provided information on the submission to the competent authorities are the following:

- (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) all the instruments adopted from 1989 to 2003.

2. The Committee reiterates, in the same way as the Conference Committee, that the Office is in a position to provide the necessary technical assistance so that this essential constitutional obligation can be fulfilled.

Kazakhstan

1. The Committee notes that the Government has not communicated information on the submission to the competent authorities of instruments adopted by the Conference since 1993 at its 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

2. The Committee notes that the Republic of Kazakhstan has been a Member of the Organization since 31 May 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 measures to be taken with regard to the instruments that have been submitted.

3. 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.

Kyrgyzstan

1. The Committee notes with interest that the notification of Conventions Nos. 182 and 184 was registered on 10 May 2004. It recalls that the Government has not communicated information on the submission to the competent authorities of the other instruments adopted by the Conference at 11 of the sessions held by the Conference between 1992 and 2003.

2. The Committee recalls 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.

3. 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 with regret that the Government has not replied to its previous comments. It hopes that the Government soon will indicate that the instruments adopted since 1995 (82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, and 91st Sessions of the Conference) have been submitted to the competent authorities.

Latvia

The Committee notes the statement made by the Government representative at the Conference Committee (June 2004). The Committee trusts that the Government soon will be in a position to communicate the information required regarding the submission to Parliament (*Saeima*) of the instruments adopted by the Conference during the 13 sessions held since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th and 91st Sessions).

Libyan Arab Jamahiriya

The Committee recalls that, according to the information provided previously by the Government, all the Conventions adopted at the 83rd, 84th, 85th and 86th Sessions of the Conference had been submitted to the respective sectors. The Committee hopes that the Government will soon be in a position to provide the other information requested concerning the submission to the competent authorities of all the instruments (Conventions, Recommendations and Protocols) adopted at the 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Madagascar

Referring to its previous comments, the Committee recalls that the Governing Council approved, at its meeting on 4 March 2003, the communication by the Minister of Labour and Social Legislation on the submission to the competent authorities of the instruments adopted at the 55th, 69th (Recommendation No. 167), 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference. The Committee also notes that the Government benefited from technical assistance from the Office for the reproduction of the instruments. The Committee hopes that the Government will soon be in a position to provide detailed information on the submission of the above instruments to the National Assembly and of the instruments adopted at the 90th and 91st Sessions of the Conference.

Malawi

The Committee refers to its previous observations and asks the Government to report on the submission to the National Assembly of the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

Mali

The Committee recalls its previous comments and requests the Government to provide the required information with regard to the submission to the National Assembly of the Protocol of 1996, adopted at the 84th (Maritime) Session (October 1996), and the instruments adopted at the 79th, 80th, 81st, 85th, 86th, 89th, 90th and 91st Sessions of the Conference.

Mongolia

The Committee notes that the instruments adopted by the Conference at its 88th and 89th Sessions were submitted to the Standing Committee on Social Policy of the State Great Khural of Mongolia in March 2003. It hopes that the Government will also soon announce that the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th, 86th, 90th and 91st Sessions were also submitted to the State Great Khural.

Mozambique

The Committee recalls its previous comments and asks the Government to provide the requested information concerning the submission to the Assembly of the Republic of the instruments adopted at the 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Nepal

The Committee notes that, because of exceptional circumstances, it has not been possible to submit the instruments adopted by the Conference to the House of Representatives. It trusts that, when national circumstances permit, the

Government will announce that the instruments adopted at the 82nd, 84th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference have been submitted to the House of Representatives.

Niger

The Committee notes the indications concerning the transmission in April 2004 of reports relating to the submission of the instruments adopted at the 86th and 89th Sessions of the Conference from the Ministry of the Public Service and Labour to the Ministry of Foreign Affairs and Cooperation. It has also noted the indications concerning the submissions of the instruments adopted by the Conference at its 90th and 91st Sessions. The Committee refers to its previous comments and requests the Government to specify the date of submission to the National Assembly of the instruments adopted at the 83rd, 84th, 85th, 86th, 89th, 90th and 91st Sessions of the Conference.

Nigeria

The Committee notes with interest that the ratification of Conventions Nos. 178, 179 and 184 was registered in March and August 2004. The Government has also indicated that it has prepared a report in consultation with the social partners through the National Labour Advisory Board on the submission of the instruments adopted by the Conference to the National Assembly. It further notes that the instruments adopted between 1993 and 2004 (80th to 92nd Sessions) have been submitted to the National Assembly for noting. The Committee welcomes this information and hopes that the Government will continue to provide regularly relevant information concerning the submission to the National Assembly of the instruments adopted by the Conference.

Pakistan

1. In its previous observations, the Committee had already noted the various actions taken by the Government to examine the instruments adopted by the Conference.

2. The Committee recalls that the obligation of governments to submit instruments to the competent authorities does not imply any obligation to propose the ratification or acceptance of the instruments in question. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions, Protocols and Recommendations to the competent authorities.

3. Nevertheless, the Committee notes that, as required by article 19 of the Constitution of the Organization, the instruments adopted by the Conference should be submitted to the “competent authorities”. This expression is intended to refer to a legislature, that is, in the case of Pakistan, the Majlis-e-Shoora (Parliament).

4. The Committee refers again to its previous observations and trusts that the Government will report on the measures taken to ensure full compliance with the obligation to submit and will be able to indicate in the near future that the instruments adopted by the Conference since 1994 at its 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions have also been submitted to Parliament.

Paraguay

1. The Committee asks again the Government to state whether the instruments adopted at the 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference have been submitted to the National Congress.

2. The Committee recalls its previous comments and asks the Government to send copies or 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. Please state whether the National Congress has reached a decision on the abovementioned instruments and indicate the representative employers’ and workers’ organizations to which the information sent to the Director-General has been forwarded.

Rwanda

The Committee notes that the Government has stated once again that the instruments adopted at the 80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th and 90th Sessions of the Conference will be submitted to the National Assembly. The Committee hopes that the Government will soon be able to indicate that it has complied in full with the obligation of submission set out in article 19 of the Constitution of the Organization, and that it will be in a position to report that the Conventions, Recommendations and Protocols adopted at the 80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference have actually been submitted to the National Assembly.

Saint Kitts and Nevis

The Committee notes that the Conventions and Recommendations adopted by the Conference at its 89th and 91st Sessions were forwarded, for his information and for Cabinet attention, to the Minister of Labour. It recalls its previous

comments and hopes that the Government will provide all relevant 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 its 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

Saint Lucia

The Committee refers to its previous observations and 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 2003 (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 and 91st 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

1. The Committee refers to its previous comments and asks the Government to report on the submission to the competent authorities of the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th, 88th, 89th, 90th and 91st Sessions.

2. Please also provide the other information on the competent authorities, the date of submission of Recommendation No. 189 and the representative organizations of employers and workers to which relevant information has been communicated.

Sao Tome and Principe

The Committee notes with regret that the Government has not provided the required information on the submission to the competent authorities of the instruments adopted by the Conference between 1990 and 2003. The Committee, in the same way as the Conference Committee, urges the Government to make every effort to fulfil the constitutional obligation of submission and recalls that the Office is available to provide the necessary technical assistance to give effect to this essential obligation.

Senegal

The Committee notes with regret that the Government has not provided the information it has been requesting for several years. It hopes that the Government will be able to indicate the date on which the instruments adopted by the Conference at the nine sessions mentioned in its previous observations (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 88th Sessions) were actually submitted to Parliament. Please indicate whether the instruments adopted by the Conference at its 89th, 90th and 91st Sessions were submitted to Parliament.

Sierra Leone

In a communication received by the Office in September 2004 the Government refers to the national crisis and conflict, combined with lack of capacity building of the Ministry of Labour, especially in submission, application and reporting issues. The Government again asks the Office to provide assistance so as to overcome the material and technical difficulties that have resulted in more than 25 years of delay in submission. The Committee trusts that the competent units of the Office will continue to provide the requested assistance and 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 2003).

Solomon Islands

The Committee notes with regret that the Government has not supplied information on the submission to the competent authorities of the instruments adopted by the Conference between 1984 and 2003. 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 is in a position to provide the necessary technical assistance so that this constitutional obligation could be fulfilled.

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 since October 1976.

Spain

1. In a communication received in May 2004, the Government indicated that the Council of Ministers, at its meeting on 21 July 2000, took note of the instruments on employment promotion and protection against unemployment adopted at the 75th Session (1988) of the Conference. The Committee recalls that in its observation in 2003 it noted that, in the opinion of the Government, through the procedure of the Council of Ministers “taking note” it understood that it had complied with the obligation under article 19 of the Constitution of the ILO. The Government provided the clarification that the Council of Ministers is empowered to propose the ratification of international standards and to submit draft legislation to the *Cortes Generales* of Spain.

2. The Committee notes once again that, by virtue of the relevant provisions of article 19, paragraphs 5, 6 and 7, of the Constitution, the Members of the Organization have undertaken to submit the instruments adopted by the Conference to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. In the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted in 1980, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. Even in the case of instruments not requiring action in the form of legislation, it would be desirable – to ensure that the purpose of submission, which is also to bring Conventions and Recommendations to the knowledge of the public, is fully met – to submit these instruments also to the parliamentary body.

3. The Committee is aware that Spain has ratified 126 Conventions (of which 106 Conventions are in force). The Committee also notes once again that for many years the Government has provided information on the submission of the instruments adopted by the Conference to the *Cortes Generales* after the Council of Ministers has taken note of them. Submission to the *Cortes Generales* does not imply any obligation to propose the ratification of a Convention or Protocol, or the application of a Recommendation. Governments have complete freedom as to the nature of the proposals to be made when submitting instruments to the competent authorities.

4. Furthermore, the proposals to be made to the competent authority or authorities in connection with submission have to be the subject of consultation in accordance with the procedures established by Article 5, paragraph 1(b), of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which has been ratified by Spain.

5. The Committee therefore requests the Government to provide information on the submission to the *Cortes Generales* of certain Conventions and Recommendations adopted by the Conference at its 63rd (Convention No. 149 and Recommendation No. 157) and 75th (Convention No. 168 and Recommendation No. 176) Sessions, as well as all the instruments adopted at the 80th, 81st, 83rd, 84th, 86th, 88th, 89th, 90th and 91st Sessions.

[The Government is asked to supply full particulars to the Conference at its 93rd Session.]

Sudan

The Committee refers to the information provided by the Government in October 2003 indicating that the Council of Ministers endorsed the resolution to ratify Convention No. 184. It hopes that, when national circumstances so permit, the Government will indicate that the instruments adopted by the Conference between 1994 and 2003 were submitted to the National Assembly.

Swaziland

The Committee refers to its previous observation and asks the Government to provide the required information on the submission to Parliament of the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted at the 82nd Session, and of the instruments adopted at the 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Syrian Arab Republic

In reply to previous comments, the Government indicates that dialogue is still ongoing between the Ministry of Social Affairs and the Committee for Consultation and Dialogue with the Social Partners for the examination of international labour Conventions in preparation for their gradual submission to the competent authority. The Committee also notes that Convention No. 185 was transmitted to the Presidency of the Council of Ministers in preparation for its submission to the competent authority. With reference to its 2003 observation, the Committee once again hopes that the Government will be in a position to indicate in the near future that the instruments adopted by the Conference at its 66th and 69th Sessions (Recommendations Nos. 167 and 168), and since 1984 at its 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 90th and 91st Sessions have actually been submitted to the People’s Council (*Majlis al-Chaab*).

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 its 84th, 85th, 88th, 89th, 90th and 91st Sessions has not been received.

United Republic of Tanzania

1. The Committee once again observes that the Government has not provided information on the submission to the competent authorities of the remaining instruments adopted by the Conference at 20 of its sessions from 1980 to 2003 (66th, 67th, 68th, 72nd, 74th, 75th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions).

2. The Committee also recalls that in previous observations it asked the Government to indicate the date on which the instruments adopted at the 54th to the 65th Sessions were submitted to Parliament.

3. The 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.

Thailand

The Committee notes with regret that the Government has not provided information in relation to the submission to the National Assembly (Rathasapha) of the instruments adopted by the Conference since 1996 at its 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

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 since 1996 (83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions).

Turkmenistan

1. The Committee notes with regret that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference at the 11 sessions held since 1994 (81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th and 91st Sessions).

2. The Committee further 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.

3. The Committee of Experts, 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 recalls its previous observations and asks the Government to provide the required information on the submission to Parliament of the instruments adopted by the Conference at its 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

Uruguay

The Committee notes the information provided by the Government in its report on the application of Convention No. 144 in which it indicates that the Tripartite Advisory Working Group concerning international and regional bodies and agencies related to the Ministry of Labour has examined, among other matters, the proposals made to Parliament in relation to the submission of Conventions Nos. 181, 183, 184 and 185. The Committee notes that the ratification of Convention No. 181 was registered on 14 June 2004. The Committee refers to its previous observations and once again requests the Government to provide information on the submission of Convention No. 176 and Recommendation No. 183,

adopted at the 82nd Session of the Conference (1995), and on the submission to the General Assembly of the instruments adopted at the 80th, 83rd, 86th, 88th, 89th, 90th and 91st Sessions of the Conference.

Uzbekistan

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference during the 12 sessions held since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th and 91st Sessions).

2. The Committee further 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 question. 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.

3. 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.

Venezuela

The Committee refers to its previous comments and asks the Government to provide the required information on the submission to the National Assembly of the remaining instruments adopted at the 74th (Conventions Nos. 163, 164, 165 and 166, and Recommendation No. 174), 75th (Convention No. 168 and Recommendation No. 176), 77th (Convention No. 171 and Recommendation No. 178, the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948), 78th (Convention No. 172), 79th, 81st, 82nd (Protocol of 1995 to the Labour Inspection Convention, 1947), 83rd, 84th, 85th, 86th, 89th, 90th and 91st Sessions of the Conference.

Zambia

The Committee refers to its previous comments and hopes that the Government soon will be in a position to provide the required information on the submission to the National Assembly of the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th, 88th, 89th, 90th and 91st Sessions.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Angola, Argentina, Austria, Bahrain, Barbados, Belgium, Burkina Faso, Croatia, Cuba, Cyprus, Denmark, Dominican Republic, Ecuador, Estonia, Ethiopia, Germany, Ghana, Greece, Guyana, Hungary, Iceland, India, Islamic Republic of Iran, Ireland, Israel, Jamaica, Jordan, Kenya, Kiribati, Republic of Korea, Kuwait, Lesotho, Liberia, Malta, Mauritania, Mexico, Morocco, Namibia, Netherlands, Panama, Papua New Guinea, Peru, Portugal, Qatar, Russian Federation, Serbia and Montenegro, Seychelles, Singapore, Slovenia, Sri Lanka, Suriname, Sweden, Togo, Ukraine, Viet Nam, Yemen.*



Appendices

Appendix I. Table of reports received on ratified Conventions as of 10 December 2004 (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 (November 1977) Session, 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 (November 1996) Session, 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.

Afghanistan	14 reports requested
· No reports received: Conventions Nos. 13, 14, 41, 45, 95, 100, 105, 106, 111, 137, 139, 140, 141, 142	
Albania	12 reports requested
· 8 reports received: Conventions Nos. 29, 100, 105, 138, 151, (154), (177), (182)	
· 4 reports not received: Conventions Nos. 16, 111, (150), (178)	
Algeria	20 reports requested
· All reports received: Conventions Nos. 29, 56, 62, 63, 68, 69, 71, 73, 74, 81, 92, 94, 96, 105, 108, 122, 138, 144, 150, 182	
Angola	17 reports requested
· All reports received: Conventions Nos. 19, 27, 29, 68, 69, 73, 74, 81, 92, 98, 105, 106, 107, 108, 111, 138, 182	
Antigua and Barbuda	23 reports requested
· No reports received: Conventions Nos. 14, 17, 29, 81, 87, 98, 101, 105, 108, 111, (122), (131), (135), 138, (142), (144), (150), (151), (154), (155), (158), (161), (182)	
Argentina	20 reports requested
· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 58, 68, 71, 73, 81, 88, 98, 105, 129, 138, 151, 154, 182	
Armenia	7 reports requested
· No reports received: Conventions Nos. (100), (111), (122), (135), (151), (174), (176)	
Australia	15 reports requested
· All reports received: Conventions Nos. 8, 16, 22, 29, 58, 69, 73, 81, 92, 105, 133, 135, 150, 160, 166	
<i>Norfolk Island</i>	10 reports requested
· All reports received: Conventions Nos. 29, 42, 47, 87, 98, 100, 105, 122, 142, 160	
Austria	7 reports requested
· All reports received: Conventions Nos. 29, 81, 105, 135, 138, 160, 182	
Azerbaijan	24 reports requested
· No reports received: Conventions Nos. 16, 23, 29, 69, 73, (81), 87, 92, 105, 108, 119, 120, 122, 126, (129), 133, 134, 135, 138, 142, 147, 151, 154, 160	
Bahamas	8 reports requested
· 5 reports received: Conventions Nos. 29, 81, 105, 138, 144	
· 3 reports not received: Conventions Nos. 22, (147), 182	
Bahrain	4 reports requested
· All reports received: Conventions Nos. 29, 81, 105, 182	
Bangladesh	7 reports requested
· All reports received: Conventions Nos. 16, 22, 29, 81, 98, 105, 182	
Barbados	16 reports requested
· 4 reports received: Conventions Nos. 98, 101, 111, 144	
· 12 reports not received: Conventions Nos. 22, 29, 63, 74, 81, 105, 108, 118, 135, 138, 147, 182	
Belarus	11 reports requested
· All reports received: Conventions Nos. 16, 29, 81, 105, 108, 138, 150, 151, 154, 160, 182	
Belgium	22 reports requested
· 20 reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 68, 69, 73, 74, 81, 92, 105, 129, 138, 147, 151, 154	
· 2 reports not received: Conventions Nos. 56, (182)	

Belize	14 reports requested
· No reports received: Conventions Nos. 8, 16, 22, 29, 58, 81, 105, 108, 135, 138, 150, 151, 154, 182	
Benin	8 reports requested
· 7 reports received: Conventions Nos. 29, 81, 105, 135, 138, 150, 182	
· 1 report not received: Convention No. 160	
Bolivia	11 reports requested
· All reports received: Conventions Nos. 77, 81, 105, 121, 128, 129, 130, 131, 138, 160, 169	
Bosnia and Herzegovina	55 reports requested
· No reports received: Conventions Nos. 8, 9, 11, 12, 13, 14, 16, 19, 22, 23, 24, 25, 27, 29, 32, 45, 53, 56, 69, 73, 74, 81, 87, 90, 91, 92, 97, 98, 102, 103, (105), 106, 111, 113, 114, 119, 121, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, 148, 155, 156, 159, 161, 162, (182)	
Botswana	11 reports requested
· 4 reports received: Conventions Nos. 14, 87, 98, 144	
· 7 reports not received: Conventions Nos. 29, 105, 111, 138, 151, 173, 182	
Brazil	24 reports requested
· All reports received: Conventions Nos. 16, 22, 29, 53, 81, 92, 105, 108, 115, 133, 134, 135, 138, 145, 146, 147, 154, 160, 163, 164, 166, (169), (171), 182	
Bulgaria	18 reports requested
· All reports received: Conventions Nos. 8, 16, 22, 23, 29, 53, 55, 56, 68, 69, 71, 73, 81, 105, 108, 138, (180), 182	
Burkina Faso	8 reports requested
· All reports received: Conventions Nos. 29, 81, 105, 129, 135, 138, 150, 182	
Burundi	12 reports requested
· No reports received: Conventions Nos. 29, 81, 89, 94, 98, 100, 101, 105, 111, 135, 138, (182)	
Cambodia	10 reports requested
· 3 reports received: Conventions Nos. (105), (111), (150)	
· 7 reports not received: Conventions Nos. 4, 13, 29, 87, 98, 122, 138	
Cameroon	20 reports requested
· 19 reports received: Conventions Nos. 9, 14, 16, 29, 78, 81, 87, 89, 98, 100, 105, 106, 108, 111, 132, 135, (138), 146, (182)	
· 1 report not received: Convention No. 122	
Canada	13 reports requested
· All reports received: Conventions Nos. 8, 16, 22, 58, 68, 69, 73, 74, 105, 108, 147, 160, 182	
Cape Verde	6 reports requested
· No reports received: Conventions Nos. 19, 29, 81, 105, 118, 182	
Central African Republic	16 reports requested
· 11 reports received: Conventions Nos. 14, 18, 62, 87, 98, 101, 105, 118, 119, 138, 182	
· 5 reports not received: Conventions Nos. 29, 41, 81, 95, 117	
Chad	11 reports requested
· No reports received: Conventions Nos. 14, 26, 29, 41, 81, 87, 105, (132), 135, 151, (182)	
Chile	14 reports requested
· 8 reports received: Conventions Nos. 8, 16, 22, 63, 105, 135, 138, 182	
· 6 reports not received: Conventions Nos. 9, 29, 103, 115, 140, 151	

China	8 reports requested
· 5 reports received: Conventions Nos. 138, (150), (167), 170, (182)	
· 3 reports not received: Conventions Nos. 16, 22, 23	
Hong Kong Special Administrative Region	18 reports requested
· All reports received: Conventions Nos. 8, 16, 22, 23, 29, 74, 81, 92, 97, 105, 108, 133, 138, 147, 150, 151, 160, (182)	
Macau Special Administrative Region	13 reports requested
· All reports received: Conventions Nos. 29, 68, 69, 73, 74, 81, 92, 105, 108, 138, (150), (167), (182)	
Colombia	17 reports requested
· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 24, 25, 29, 81, 87, 95, 105, 129, 138, 151, 154, 160	
Comoros	11 reports requested
· No reports received: Conventions Nos. 5, 10, 11, 12, 29, 52, 81, 87, 89, 105, 106	
Congo	19 reports requested
· All reports received: Conventions Nos. 13, 14, 26, 29, (81), 87, 89, 95, (98), (100), (105), (111), 119, (138), (144), 149, 150, 152, (182)	
Costa Rica	16 reports requested
· All reports received: Conventions Nos. 8, 16, 29, 81, 92, 98, 105, 129, 134, 135, 138, 145, 147, 150, 160, 182	
Côte d'Ivoire	6 reports requested
· All reports received: Conventions Nos. 29, 81, 105, 129, 133, 135	
Croatia	20 reports requested
· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 56, 69, 73, 74, 81, 91, 92, 105, 129, 135, 138, 147, 182	
Cuba	17 reports requested
· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 63, 81, 92, 105, 108, 135, 138, 145, 150, 151	
Cyprus	17 reports requested
· 4 reports received: Conventions Nos. 111, 142, 171, (182)	
· 13 reports not received: Conventions Nos. 16, 23, 29, 81, 92, 105, 135, 138, 147, 150, 151, 154, 160	
Czech Republic	11 reports requested
· All reports received: Conventions Nos. 29, 87, 98, 105, 108, 135, 150, 160, 163, 164, 182	
Democratic Republic of the Congo	17 reports requested
· 7 reports received: Conventions Nos. (87), (105), (111), (135), (138), (144), (182)	
· 10 reports not received: Conventions Nos. 14, 29, 81, 89, 98, 100, 102, 117, 121, 150	
Denmark	30 reports requested
· 9 reports received: Conventions Nos. 8, 16, 73, 119, 120, 129, 139, 149, 163	
· 21 reports not received: Conventions Nos. 9, 29, 52, 53, 81, 92, 105, 108, 111, 122, 134, 135, 138, 142, 144, 147, 150, 151, 160, 169, 182	
<i>Faeroe Islands</i>	21 reports requested
· 19 reports received: Conventions Nos. 5, 6, 7, 8, 9, 11, 12, 14, 16, 18, 19, 27, 29, 52, 53, 92, 98, 105, 106	
· 2 reports not received: Conventions Nos. 87, 126	
<i>Greenland</i>	9 reports requested
· No reports received: Conventions Nos. 7, 14, 16, 29, 87, 105, 106, 122, 126	
Djibouti	39 reports requested
· No reports received: Conventions Nos. 5, 9, 10, 11, 12, 13, 14, 16, 17, 18, 22, 23, 29, 33, 44, 45, 52, 53, 55, 56, 58, 63, 69, 71, 73, 77, 78, 81, 89, 91, 98, 101, 105, 106, 108, 123, 124, 125, 126	

Dominica	14 reports requested
· No reports received: Conventions Nos. 8, 14, 16, 22, 29, 81, 100, 105, 108, 111, 138, (144), (169), (182)	
Dominican Republic	6 reports requested
· All reports received: Conventions Nos. 29, 81, 105, 138, 150, 182	
Ecuador	7 reports requested
· All reports received: Conventions Nos. 29, 77, 78, 81, 105, 138, 182	
Egypt	24 reports requested
· 23 reports received: Conventions Nos. 9, 22, 23, 29, 53, 55, 56, 63, 68, 69, 73, 74, 81, 92, 94, 105, 134, 135, 138, 145, 147, 150, (182)	
· 1 report not received: Convention No. 71	
El Salvador	8 reports requested
· All reports received: Conventions Nos. 29, 81, 105, 129, 138, 150, 160, 182	
Equatorial Guinea	14 reports requested
· 11 reports received: Conventions Nos. 1, 14, (29), 30, (87), (98), 100, 103, (105), (111), 138	
· 3 reports not received: Conventions Nos. (68), (92), (182)	
Eritrea	7 reports requested
· All reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138	
Estonia	12 reports requested
· All reports received: Conventions Nos. 7, 8, 9, 16, 22, 23, 29, 53, 105, 108, 135, 182	
Ethiopia	2 reports requested
· All reports received: Conventions Nos. 105, 138	
Fiji	11 reports requested
· All reports received: Conventions Nos. 8, 29, 85, (87), 98, (100), 105, 108, (111), 169, (182)	
Finland	28 reports requested
· All reports received: Conventions Nos. 8, 16, 22, 29, 53, 73, 81, 92, 105, 108, 129, 133, 134, 135, 138, 145, 146, 147, 150, 151, 154, 160, 163, 164, 178, 179, (180), 182	
France	30 reports requested
· 20 reports received: Conventions Nos. 9, 16, 29, 55, 56, 68, 69, 71, 73, 74, 81, 82, 105, 129, 133, 134, 135, 138, 142, 182	
· 10 reports not received: Conventions Nos. 8, 22, 23, 53, 63, 92, 108, 145, 146, 147	
<i>French Guiana</i>	28 reports requested
· 19 reports received: Conventions Nos. 9, 16, 29, 55, 56, 58, 68, 69, 71, 73, 74, 81, 105, 112, 113, 125, 129, 133, 135	
· 9 reports not received: Conventions Nos. 8, 22, 23, 53, 92, 108, 145, 146, 147	
<i>French Polynesia</i>	21 reports requested
· All reports received: Conventions Nos. 9, 16, 22, 23, 29, 53, 55, 56, 58, 63, 69, 71, 73, 81, 105, 108, 129, 145, 146, 147, 149	
<i>French Southern and Antarctic Territories</i>	20 reports requested
· 6 reports received: Conventions Nos. 58, 69, 74, 87, 98, 111	
· 14 reports not received: Conventions Nos. 8, 9, 16, 22, 23, 53, 68, 73, 92, 108, 133, 134, 146, 147	
<i>Guadeloupe</i>	28 reports requested
· 15 reports received: Conventions Nos. 9, 16, 55, 56, 58, 68, 69, 71, 73, 74, 81, 112, 113, 125, 133	
· 13 reports not received: Conventions Nos. 8, 22, 23, 29, 53, 92, 105, 108, 129, 135, 145, 146, 147	

<i>Martinique</i>	28 reports requested
· 19 reports received: Conventions Nos. 9, 16, 29, 55, 56, 58, 68, 69, 71, 73, 74, 81, 105, 112, 113, 125, 129, 133, 135	
· 9 reports not received: Conventions Nos. 8, 22, 23, 53, 92, 108, 145, 146, 147	
<i>New Caledonia</i>	36 reports requested
· All reports received: Conventions Nos. 9, 16, 22, 23, 29, 52, 53, 55, 56, 58, 63, 69, 71, 73, 81, 82, 87, 89, 95, 98, 100, 101, 105, 108, 111, 120, 127, 129, 131, 141, 142, 144, 145, 146, 147, 149	
<i>Réunion</i>	28 reports requested
· 19 reports received: Conventions Nos. 9, 16, 29, 55, 56, 58, 68, 69, 71, 73, 74, 81, 105, 112, 113, 125, 129, 133, 135	
· 9 reports not received: Conventions Nos. 8, 22, 23, 53, 92, 108, 145, 146, 147	
<i>St. Pierre and Miquelon</i>	21 reports requested
· 8 reports received: Conventions Nos. 29, 58, 63, 69, 81, 105, 125, 129	
· 13 reports not received: Conventions Nos. 9, 16, 22, 23, 53, 55, 56, 71, 73, 108, 145, 146, 147	
Gabon	8 reports requested
· 6 reports received: Conventions Nos. 29, 81, 105, 135, 150, 154	
· 2 reports not received: Conventions Nos. 158, 182	
Gambia	4 reports requested
· No reports received: Conventions Nos. (29), (105), (138), (182)	
Georgia	14 reports requested
· 3 reports received: Conventions Nos. (88), (181), (182)	
· 11 reports not received: Conventions Nos. 29, 52, 87, 98, 100, 105, 111, 117, 122, 138, 142	
Germany	22 reports requested
· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 56, 73, 81, 92, 105, 129, 133, 134, 135, 138, 147, 150, 160, 164, (182)	
Ghana	29 reports requested
· 13 reports received: Conventions Nos. 1, 14, 30, 87, 89, 94, 100, 106, 107, 111, 149, 150, 151	
· 16 reports not received: Conventions Nos. 8, 16, 22, 23, 29, 58, 69, 74, 81, 92, 98, 103, 105, 108, 117, 182	
Greece	25 reports requested
· All reports received: Conventions Nos. 8, 9, 16, 23, 29, 55, 68, 69, 71, 73, 81, 92, 105, 108, 133, 134, 135, 138, 147, 150, 151, 154, 160, (180), 182	
Grenada	11 reports requested
· No reports received: Conventions Nos. 8, 14, 16, 29, 81, 87, 98, 100, 105, 108, 144	
Guatemala	13 reports requested
· All reports received: Conventions Nos. 16, 29, 58, 81, 87, 105, 108, 129, 138, 144, 154, 160, 182	
Guinea	32 reports requested
· 13 reports received: Conventions Nos. 14, 29, 62, 95, 105, 113, 117, 122, 135, 139, 142, 150, 151	
· 19 reports not received: Conventions Nos. 3, 10, 16, 26, 33, 81, 87, 94, 111, 118, 119, 120, 121, 133, 134, 140, 144, 152, 159	
Guinea-Bissau	11 reports requested
· All reports received: Conventions Nos. 7, 26, 29, 68, 69, 73, 74, 81, 92, 105, 108	
Guyana	11 reports requested
· No reports received: Conventions Nos. 29, 81, 105, 108, 129, 135, 138, 150, 151, 166, 182	
Haiti	18 reports requested
· No reports received: Conventions Nos. 1, 14, 19, 24, 25, 29, 30, 77, 78, 81, 87, 90, 98, 100, 105, 106, 107, 111	

Honduras	6 reports requested
· All reports received: Conventions Nos. 29, 81, 105, 108, 138, 182	
Hungary	15 reports requested
· All reports received: Conventions Nos. 16, 29, 81, 105, 129, 135, 138, 145, 151, 154, 163, 164, 165, 166, 182	
Iceland	7 reports requested
· 6 reports received: Conventions Nos. 29, 105, 108, 111, 147, 182	
· 1 report not received: Convention No. 138	
India	8 reports requested
· 7 reports received: Conventions Nos. 16, 22, 29, 81, 105, 147, 160	
· 1 report not received: Convention No. 107	
Indonesia	7 reports requested
· All reports received: Conventions Nos. 29, 69, (88), 98, 105, 138, 182	
Islamic Republic of Iran	6 reports requested
· 5 reports received: Conventions Nos. 29, 95, 105, 106, (182)	
· 1 report not received: Convention No. 108	
Iraq	45 reports requested
· No reports received: Conventions Nos. 1, 8, 11, 14, 16, 19, 22, 23, 29, 30, 77, 78, 81, 89, 92, 98, 100, 105, 106, 107, 108, 111, 118, 119, 120, 122, 131, 132, 135, 137, 138, 139, 140, 142, 144, 145, 146, 147, 148, 149, 150, 152, 153, (172), (182)	
Ireland	20 reports requested
· All reports received: Conventions Nos. 8, 16, 22, 23, 29, 53, 68, 69, 73, 74, 81, 92, 105, 108, 138, 147, 160, 178, 179, 182	
Israel	18 reports requested
· All reports received: Conventions Nos. 9, 29, 53, 81, 87, 92, 98, 100, 105, 111, 117, 122, 133, 134, 138, 142, 147, 150	
Italy	31 reports requested
· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 68, 69, 71, 73, 74, 81, 92, 105, 108, 129, 133, 134, 135, 138, 145, 146, 147, 150, 151, 160, (164), (170), 182	
Jamaica	6 reports requested
· 5 reports received: Conventions Nos. 8, 16, 29, 105, 150	
· 1 report not received: Convention No. 81	
Japan	13 reports requested
· All reports received: Conventions Nos. 8, 9, 16, 22, 29, 69, 73, 81, 134, 138, (144), 147, 182	
Jordan	6 reports requested
· All reports received: Conventions Nos. 29, 81, 105, 135, 138, 182	
Kazakhstan	13 reports requested
· 4 reports received: Conventions Nos. (29), (100), (105), (138)	
· 9 reports not received: Conventions Nos. 87, 88, 98, 111, 122, 135, 144, 148, 155	
Kenya	10 reports requested
· All reports received: Conventions Nos. 2, 19, 45, 88, 89, 98, 100, 111, 135, 144	
Kiribati	4 reports requested
· No reports received: Conventions Nos. (29), (87), (98), (105)	

Republic of Korea	7 reports requested
· All reports received: Conventions Nos. 88, 100, 111, 122, 135, 144, 159	
Kuwait	6 reports requested
· All reports received: Conventions Nos. 87, 111, 119, 136, 144, 159	
Kyrgyzstan	43 reports requested
· No reports received: Conventions Nos. 11, 14, 16, 23, 27, 29, 32, 45, 47, 52, 69, 73, 77, 78, 79, (81), 87, 90, 92, 95, 98, 100, 103 (105), 106, 108, 111, 113, 115, 119, 120, 122, 124, 126, (133), 134, 138, 142, 147, 148, 149, 159, 160	
Lao People's Democratic Republic	2 reports requested
· No reports received: Conventions Nos. 13, 29	
Latvia	16 reports requested
· All reports received: Conventions Nos. 13, 87, 98, 100, 111, 115, 119, 120, 122, 135, 144, 148, 151, 154, 155, (173)	
Lebanon	13 reports requested
· All reports received: Conventions Nos. 45, 88, 98, 100, 111, 115, 120, 122, 127, 136, 139, 159, 176	
Lesotho	11 reports requested
· 1 report received: Convention No. (155)	
· 10 reports not received: Conventions Nos. 45, 87, 98, 100, (105), 111, 135, 144, (150), 167	
Liberia	17 reports requested
· No reports received: Conventions Nos. 22, 23, 29, 53, 55, 58, 87, 92, 98, 105, 108, 111, 112, 113, 114, (133), 147	
Libyan Arab Jamahiriya	19 reports requested
· 8 reports received: Conventions Nos. 1, 88, 98, 103, 111, 118, 122, 138	
· 11 reports not received: Conventions Nos. 14, 52, 87, 89, 96, 100, 105, 121, 128, 130, 131	
Lithuania	10 reports requested
· All reports received: Conventions Nos. 87, 88, 98, 100, 111, 127, 135, 144, 154, 159	
Luxembourg	13 reports requested
· 12 reports received: Conventions Nos. 2, 13, 29, 87, 88, 96, 98, 100, 111, 151, 155, 159	
· 1 report not received: Convention No. 135	
Madagascar	18 reports requested
· 13 reports received: Conventions Nos. 81, 87, 88, (97), 98, 100, 117, 119, 120, 122, 127, 129, 144	
· 5 reports not received: Conventions Nos. 13, 111, 159, 173, (182)	
Malawi	16 reports requested
· 15 reports received: Conventions Nos. 29, 81, 87, 89, 98, 100, 105, 107, 111, 129, 138, 144, 149, 159, 182	
· 1 report not received: Convention No. 45	
Malaysia	5 reports requested
· All reports received: Conventions Nos. 88, 98, 100, 119, (144)	
Peninsular Malaysia	1 report requested
· All reports received: Convention No. 45	
Mali	12 reports requested
· 10 reports received: Conventions Nos. 13, 14, 81, 87, 98, 100, 111, 135, 151, 159	
· 2 reports not received: Conventions Nos. 19, (138)	

Malta	20 reports requested
· 16 reports received: Conventions Nos. 45, (53), (74), 87, 88, 96, 98, 100, 111, 119, 127, 135, 136, 148, 159, (180)	
· 4 reports not received: Conventions Nos. 2, 13, 62, (147)	
Mauritania	10 reports requested
· All reports received: Conventions Nos. 13, 62, 87, 95, 96, 98, (100), 102, 111, 122	
Mauritius	7 reports requested
· All reports received: Conventions Nos. 2, 26, 98, 99, (100), (111), 144	
Mexico	16 reports requested
· All reports received: Conventions Nos. 13, 45, 87, 96, 100, 111, 115, 120, 135, 144, 155, 159, 161, 167, 169, 170	
Republic of Moldova	15 reports requested
· All reports received: Conventions Nos. (11), 87, 88, 98, 100, 111, 122, 127, 135, 144, 154, 155, 181, (182), (184)	
Mongolia	12 reports requested
· 7 reports received: Conventions Nos. 98, 100, 103, 123, (138), 155, 159	
· 5 reports not received: Conventions Nos. 87, 111, 122, 135, 144	
Morocco	12 reports requested
· All reports received: Conventions Nos. 2, 13, 30, 45, 98, 100, 111, 119, 122, (135), 136, 181	
Mozambique	7 reports requested
· 6 reports received: Conventions Nos. 87, 88, 98, 100, 122, 144	
· 1 report not received: Convention No. 111	
Myanmar	3 reports requested
· All reports received: Conventions Nos. 2, 29, 87	
Namibia	4 reports requested
· All reports received: Conventions Nos. 87, 98, 111, 144	
Nepal	6 reports requested
· All reports received: Conventions Nos. (29), 98, 100, 111, 144, (182)	
Netherlands	23 reports requested
· All reports received: Conventions Nos. 13, 62, 87, 88, 98, 100, 111, 115, 118, 122, 135, 137, 144, 151, 154, 155, 159, 162, 174, (177), (180), 181, (182)	
<i>Aruba</i>	5 reports requested
· No reports received: Conventions Nos. 87, 88, 122, 135, 144	
<i>Netherlands Antilles</i>	8 reports requested
· 5 reports received: Conventions Nos. 14, 29, 101, 106, 172	
· 3 reports not received: Conventions Nos. 87, 88, 122	
New Zealand	6 reports requested
· All reports received: Conventions Nos. 22, 88, 100, 111, 122, 144	
<i>Tokelau</i>	2 reports requested
· All reports received: Conventions Nos. 100, 111	
Nicaragua	16 reports requested
· All reports received: Conventions Nos. 13, 45, 77, 87, 88, 98, 100, 111, 115, 119, 122, 127, 135, 136, 139, 144	

Niger	13 reports requested
· 6 reports received: Conventions Nos. 6, 13, 14, 102, 135, 142	
· 7 reports not received: Conventions Nos. 87, 98, 100, 111, 119, 148, 154	
Nigeria	10 reports requested
· All reports received: Conventions Nos. 45, 87, 88, 98, 100, (111), (138), 144, 155, (182)	
Norway	24 reports requested
· All reports received: Conventions Nos. 13, 87, 88, 94, 98, 100, 111, 115, 119, 120, 122, 135, 137, 139, 144, 148, 151, 154, 155, 159, 162, 167, 170, 176	
Pakistan	17 reports requested
· No reports received: Conventions Nos. 1, 14, 18, 45, 81, 87, 89, 96, 98, (100), 105, 106, 107, 111, 144, 159, (182)	
Panama	13 reports requested
· 12 reports received: Conventions Nos. 13, 45, 87, 88, 98, 100, 111, 119, 120, 127, 159, 181	
· 1 report not received: Convention No. 122	
Papua New Guinea	12 reports requested
· All reports received: Conventions Nos. 2, 45, 87, 98, 100, (103), 105, (111), 122, (138), (158), (182)	
Paraguay	24 reports requested
· No reports received: Conventions Nos. 1, 14, 29, 30, 52, 79, 81, 87, 89, 90, 98, 100, 101, 105, 106, 111, 115, 117, 119, 120, 122, 159, 169, (182)	
Peru	17 reports requested
· All reports received: Conventions Nos. 29, 44, 62, 81, 87, 88, 98, 100, 105, 111, 122, (138), 139, 151, 159, 169, (182)	
Philippines	11 reports requested
· All reports received: Conventions Nos. 87, 88, 89, 98, 100, 110, 111, 122, 144, 159, 176	
Poland	21 reports requested
· All reports received: Conventions Nos. 2, 13, 45, 62, 87, 95, 96, 98, 100, 111, 115, 119, 120, 122, 127, 135, 144, 151, 176, (178), (182)	
Portugal	20 reports requested
· All reports received: Conventions Nos. 45, 87, 88, 98, 100, 111, 115, 120, 122, 127, 135, 139, 144, 148, 151, 155, 159, 162, (176), (181)	
Qatar	1 report requested
· All reports received: Convention No. 111	
Romania	14 reports requested
· All reports received: Conventions Nos. 13, 87, 88, 98, 100, 111, 122, 127, 135, 136, 144, 154, (163), (183)	
Russian Federation	15 reports requested
· 14 reports received: Conventions Nos. 13, 45, 87, 98, 100, 105, 111, 115, 119, 120, 122, 148, 155, 162	
· 1 report not received: Convention No. 159	
Rwanda	6 reports requested
· All reports received: Conventions Nos. 62, 87, 98, 100, 111, 135	
Saint Kitts and Nevis	7 reports requested
· 4 reports received: Conventions Nos. (29), (105), (111), (144)	
· 3 reports not received: Conventions Nos. (87), (98), (100)	

Saint Lucia	10 reports requested
· No reports received: Conventions Nos. 14, 87, 98, 100, 101, 105, 111, (154), (158), (182)	
Saint Vincent and the Grenadines	6 reports requested
· 4 reports received: Conventions Nos. 87, 98, 100, 111	
· 2 reports not received: Conventions Nos. 101, (180)	
San Marino	18 reports requested
· 7 reports received: Conventions Nos. 29, 87, 105, 138, 140, 142, 182	
· 11 reports not received: Conventions Nos. 88, 98, 100, 111, 119, 144, 148, 151, 154, 159, 161	
Sao Tome and Principe	8 reports requested
· No reports received: Conventions Nos. 87, 88, 98, 100, 106, 111, 144, 159	
Saudi Arabia	4 reports requested
· All reports received: Conventions Nos. 45, 100, 111, 174	
Senegal	10 reports requested
· All reports received: Conventions Nos. 13, 87, 96, 98, 100, 111, 120, 121, 122, 135	
Serbia and Montenegro	43 reports requested
· 19 reports received: Conventions Nos. (12), (14), (19), 29, (32), (81), 87, (89), (90), (97), (106), (121), 129, (132), 138, (140), (142), (143), (158)	
· 24 reports not received: Conventions Nos. (11), (13), (24), (25), (27), (45), (88), (98), 100, (102), (111), (113), (114), 119, 122, 135, (136), (139), (148), (155), (156), (159), (161), (162)	
Seychelles	7 reports requested
· No reports received: Conventions Nos. 2, 87, 98, 100, 111, 148, 151	
Sierra Leone	26 reports requested
· All reports received: Conventions Nos. 8, 16, 17, 19, 22, 26, 29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144	
Singapore	4 reports requested
· All reports received: Conventions Nos. 45, 88, 98, (100)	
Slovakia	29 reports requested
· 26 reports received: Conventions Nos. 13, 29, 34, 45, 87, 88, 98, 100, 102, 105, 111, 115, 120, 122, 128, 130, 136, 139, 148, (156), 159, 161, (171), 173, 176, (184)	
· 3 reports not received: Conventions Nos. 144, 155, 167	
Slovenia	23 reports requested
· 17 reports received: Conventions Nos. 13, 45, 87, 135, 136, 138, 139, 140, 142, 148, 155, 159, 161, 162, (173), (175), (182)	
· 6 reports not received: Conventions Nos. 88, 98, 100, 111, 119, 122	
Solomon Islands	15 reports requested
· No reports received: Conventions Nos. 8, 11, 12, 14, 16, 19, 26, 29, 42, 45, 81, 84, 94, 95, 108	
Somalia	5 reports requested
· No reports received: Conventions Nos. 29, 45, 84, 105, 111	
South Africa	7 reports requested
· All reports received: Conventions Nos. 2, 45, 87, 98, 100, 111, 176	
Spain	24 reports requested
· All reports received: Conventions Nos. 13, 45, 62, 87, 88, 98, 100, 111, 115, 119, 120, 122, 127, 135, 136, 144, 148, 151, 154, 155, 159, 162, 176, 181	

Sri Lanka	11 reports requested
· 9 reports received: Conventions Nos. 45, 87, 96, 98, 103, 106, 115, 135, 144	
· 2 reports not received: Conventions Nos. 100, 111	
Sudan	8 reports requested
· All reports received: Conventions Nos. 2, 19, 29, 95, 98, 100, 111, 122	
Suriname	11 reports requested
· All reports received: Conventions Nos. 13, 62, 87, 88, 96, 98, 122, 135, 144, 151, 154	
Swaziland	17 reports requested
· 9 reports received: Conventions Nos. 11, 81, 89, 98, 100, 101, 131, (138), 144	
· 8 reports not received: Conventions Nos. 14, 29, 45, 87, 96, 105, 111, (182)	
Sweden	26 reports requested
· 10 reports received: Conventions Nos. 87, 88, 98, 100, 111, 122, 135, 144, 151, 154	
· 16 reports not received: Conventions Nos. 13, 115, 119, 120, 128, 139, 148, 155, 159, 161, 162, 167, 170, 174, (175), 176	
Switzerland	19 reports requested
· All reports received: Conventions Nos. 2, 45, 62, 87, 88, 98, 100, 111, 115, 119, 120, 136, 139, 142, 144, 151, 154, 159, 162	
Syrian Arab Republic	15 reports requested
· All reports received: Conventions Nos. 2, 45, 87, 88, 96, 98, 100, 111, 115, 119, 120, 135, 136, 139, 144	
Tajikistan	38 reports requested
· No reports received: Conventions Nos. 14, 16, 23, 29, 32, 45, 47, 52, 69, 73, 77, 78, 79, 87, 90, 92, 95, 98, 100, 103, (105), 106, 111, 113, 115, 119, 120, 122, 124, 126, 133, 134, 138, 142, 148, 149, 159, 160	
United Republic of Tanzania	15 reports requested
· 12 reports received: Conventions Nos. 19, 87, 95, 98, (100), (111), 135, 140, 144, 148, 154, 170	
· 3 reports not received: Conventions Nos. 94, 137, 149	
Tanganyika	3 reports requested
· No reports received: Conventions Nos. 45, 88, 101	
Zanzibar	2 reports requested
· No reports received: Conventions Nos. 58, 85	
Thailand	5 reports requested
· All reports received: Conventions Nos. 88, 100, 122, 127, (182)	
The former Yugoslav Republic of Macedonia	59 reports requested
· No reports received: Conventions Nos. 8, 9, 11, 12, 13, 14, 16, 19, 22, 23, 24, 25, 27, 29, 32, 45, 53, 56, 69, 73, 74, 81, 87, 88, 89, 90, 91, 92, 97, 98, 100, 102, 103, 106, 111, 113, 114, 119, 121, 122, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, 148, 155, 156, 158, 159, 161, 162, (182)	
Togo	7 reports requested
· All reports received: Conventions Nos. 13, 87, 98, 100, 105, 111, 144	
Trinidad and Tobago	8 reports requested
· 2 reports received: Conventions Nos. 29, 105	
· 6 reports not received: Conventions Nos. 87, 98, 100, 111, 144, 159	
Tunisia	13 reports requested
· All reports received: Conventions Nos. 13, 45, 62, 87, 88, 98, 100, 111, 119, 120, 122, 127, 159	

Turkey	16 reports requested
<ul style="list-style-type: none"> · 14 reports received: Conventions Nos. 45, 87, 88, 96, 98, 102, 115, 119, 122, 127, 135, 144, 151, 159 · 2 reports not received: Conventions Nos. 100, 111 	
Turkmenistan	6 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. (29), (87), (98), (100), (105), (111) 	
Uganda	18 reports requested
<ul style="list-style-type: none"> · 9 reports received: Conventions Nos. 29, 81, 98, 105, 122, 144, 154, 158, 162 · 9 reports not received: Conventions Nos. 17, 19, 26, 45, 94, 123, 143, 159, (182) 	
Ukraine	13 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 2, 45, 87, 95, 98, 100, 111, 115, 119, 120, 122, 144, 154 	
United Arab Emirates	5 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 1, 29, 100, 105, 111 	
United Kingdom	12 reports requested
<ul style="list-style-type: none"> · 10 reports received: Conventions Nos. 87, 98, 100, 111, 115, 120, 135, 144, 148, 151 · 2 reports not received: Conventions Nos. 2, 122 	
<i>Anguilla</i>	10 reports requested
<ul style="list-style-type: none"> · 9 reports received: Conventions Nos. 14, 29, 58, 82, 87, 98, 101, 105, 140 · 1 report not received: Convention No. 148 	
<i>Bermuda</i>	7 reports requested
<ul style="list-style-type: none"> · 6 reports received: Conventions Nos. 29, 82, 87, 105, 115, 135 · 1 report not received: Convention No. 98 	
<i>British Virgin Islands</i>	2 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 87, 98 	
<i>Falkland Islands (Malvinas)</i>	7 reports requested
<ul style="list-style-type: none"> · 4 reports received: Conventions Nos. 14, 29, 82, 105 · 3 reports not received: Conventions Nos. 45, 87, 98 	
<i>Gibraltar</i>	7 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 2, 45, 87, 98, 100, 135, 151 	
<i>Guernsey</i>	8 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 2, 87, 98, 115, 122, 135, 148, 151 	
<i>Isle of Man</i>	5 reports requested
<ul style="list-style-type: none"> · 1 report received: Convention No. 151 · 4 reports not received: Conventions Nos. 2, 87, 98, 122 	
<i>Jersey</i>	4 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 2, 87, 98, 115 	
<i>Montserrat</i>	8 reports requested
<ul style="list-style-type: none"> · 2 reports received: Conventions Nos. 87, 98 · 6 reports not received: Conventions Nos. 14, 26, 29, 82, 95, 105 	
<i>St. Helena</i>	3 reports requested
<ul style="list-style-type: none"> · No reports received: Conventions Nos. 87, 98, 151 	
United States	2 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 144, 176 	

<i>American Samoa</i>	1 report requested
· All reports received: Convention No. 144	
<i>Guam</i>	1 report requested
· All reports received: Convention No. 144	
<i>Northern Mariana Islands</i>	1 report requested
· All reports received: Convention No. 144	
<i>Puerto Rico</i>	1 report requested
· All reports received: Convention No. 144	
<i>United States Virgin Islands</i>	1 report requested
· All reports received: Convention No. 144	
Uruguay	25 reports requested
· All reports received: Conventions Nos. 13, 62, 87, 94, 96, 98, 100, 103, 111, 115, 119, 120, 122, 131, 136, 137, 139, 144, 148, 151, 154, 155, 159, 161, 162	
Uzbekistan	11 reports requested
· All reports received: Conventions Nos. (29), (47), (52), (98), (100), (103), (105), (111), (122), (135), (154)	
Venezuela	15 reports requested
· All reports received: Conventions Nos. 13, 45, 87, 88, 98, 100, 111, 120, 122, 127, 139, 140, 144, 155, (169)	
Viet Nam	5 reports requested
· All reports received: Conventions Nos. 45, 100, 111, 120, 155	
Yemen	14 reports requested
· 4 reports received: Conventions Nos. 14, 29, 87, (182)	
· 10 reports not received: Conventions Nos. 98, 100, 111, 122, 131, 132, 135, 138, 144, 159	
Zambia	19 reports requested
· No reports received: Conventions Nos. 87, 98, 100, 105, 111, 117, 122, 135, 136, 141, 144, 148, 149, 151, 154, 159, 173, 176, (182)	
Zimbabwe	8 reports requested
· All reports received: Conventions Nos. 45, 98, 100, 111, 135, 144, 159, 170	

Grand Total

A total of 2,569 reports (article 22) were requested, of which 1,645 reports (64.03 per cent) were received.

A total of 331 reports (article 35) were requested, of which 225 reports (67.98 per cent) were received.

**Appendix II. Statistical table of reports received on ratified Conventions as of
10 December 2004
(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 55.9%	761 83.9%
1952	981	268 27.3%	743 75.7%	826 84.2%
1953	1026	212 20.6%	840 81.8%	917 89.3%
1954	1175	268 22.8%	1077 91.7%	1119 95.2%
1955	1234	283 22.9%	1063 86.1%	1170 94.8%
1956	1333	332 24.9%	1234 92.5%	1283 96.2%
1957	1418	210 14.7%	1295 91.3%	1349 95.1%
1958	1558	340 21.8%	1484 95.2%	1509 96.8%
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	1100	256 23.2%	838 76.1%	963 87.4%
1961	1362	243 18.1%	1090 80.0%	1142 83.8%
1962	1309	200 15.5%	1059 80.9%	1121 85.6%
1963	1624	280 17.2%	1314 80.9%	1430 88.0%
1964	1495	213 14.2%	1268 84.8%	1356 90.7%
1965	1700	282 16.6%	1444 84.9%	1527 89.8%
1966	1562	245 16.3%	1330 85.1%	1395 89.3%
1967	1883	323 17.4%	1551 84.5%	1643 89.6%
1968	1647	281 17.1%	1409 85.5%	1470 89.1%
1969	1821	249 13.4%	1501 82.4%	1601 87.9%
1970	1894	360 18.9%	1463 77.0%	1549 81.6%
1971	1992	237 11.8%	1504 75.5%	1707 85.6%
1972	2025	297 14.6%	1572 77.6%	1753 86.5%
1973	2048	300 14.6%	1521 74.3%	1691 82.5%
1974	2189	370 16.5%	1854 84.6%	1958 89.4%
1975	2034	301 14.8%	1663 81.7%	1764 86.7%
1976	2200	292 13.2%	1831 83.0%	1914 87.0%
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	1529	215 14.0%	1120 73.2%	1328 87.0%
1978	1701	251 14.7%	1289 75.7%	1391 81.7%
1979	1593	234 14.7%	1270 79.8%	1376 86.4%
1980	1581	168 10.6%	1302 82.2%	1437 90.8%
1981	1543	127 8.1%	1210 78.4%	1340 86.7%
1982	1695	332 19.4%	1382 81.4%	1493 88.0%
1983	1737	236 13.5%	1388 79.9%	1558 89.6%
1984	1669	189 11.3%	1286 77.0%	1412 84.6%
1985	1666	189 11.3%	1312 78.7%	1471 88.2%

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
1986	1752	207 11.8%	1388 79.2%	1529 87.3%
1987	1793	171 9.5%	1408 78.4%	1542 86.0%
1988	1636	149 9.0%	1230 75.9%	1384 84.4%
1989	1719	196 11.4%	1256 73.0%	1409 81.9%
1990	1958	192 9.8%	1409 71.9%	1639 83.7%
1991	2010	271 13.4%	1411 69.9%	1544 76.8%
1992	1824	313 17.1%	1194 65.4%	1384 75.8%
1993	1906	471 24.7%	1233 64.6%	1473 77.2%
1994	2290	370 16.1%	1573 68.7%	1879 82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.				
1995	1252	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	1806	362 20.5%	1145 63.3%	1413 78.2%
1997	1927	553 28.7%	1211 62.8%	1438 74.6%
1998	2036	463 22.7%	1264 62.1%	1455 71.4%
1999	2288	520 22.7%	1406 61.4%	1641 71.7%
2000	2550	740 29.0%	1798 70.5%	1952 76.6%
2001	2313	598 25.9%	1513 65.4%	1672 72.2%
2002	2368	600 25.3%	1529 64.5%	1701 71.8%
2003	2344	568 24.2%	1544 65.9%	1701 72.6%
2004	2569	659 25.6%	1645 64.0%	

Appendix III. List of observations made by employers' and workers' organizations

Albania

- Confederation of Trade Unions of Albania (CTUA)

on Conventions Nos.

26, 29, 87, 95, 98, 100, 138, 144, 151, 154

Argentina

- Confederation of Argentinian Workers (CTA)
- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

87, 98
87

Austria

- Federal Chamber of Labour (BAK)

on Conventions Nos.

29, 81, 105, 135, 138, 160, 182

Bangladesh

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

98

Barbados

- Barbados Employers' Confederation (BEC)
- Congress of Trade Unions and Staff Associations of Barbados (CTUSAB)

on Conventions Nos.

98, 144
144

Belarus

- Belarusian Congress of Democratic Trade Unions

on Conventions Nos.

87, 98

Bolivia

- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

169

Bosnia and Herzegovina

- Confederation of Independent Trade Unions of Bosnia and Herzegovina

on Conventions Nos.

87, 98, 111

Brazil

- Association of Labour Inspectors Agents of Minas Gerais (AAIT/MG)
- Association of Labour Inspectors of Parana (AAIT/PR)
- Gaucha Association of Labour Inspectors (AGITRA)
- International Confederation of Free Trade Unions (ICFTU)
- National Association of Occupational Safety and Health Workers (ANAHST)
- Teachers Union of Itajaí and Region
- Trade Union of Maritime Workers of the Port of Rio Grande

on Conventions Nos.

81
29, 105
29, 81, 105, 131, 138
29
81, 137
111
22, 95, 146, 147

Bulgaria

- World Confederation of Labour (WCL)

on Conventions Nos.

87, 98

Burundi

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

98

Cameroon

- Confederation of Public Service Unions (CSP)
- General Union of Cameroon Workers
- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

81, 87, 135
81, 135
87

Canada

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

87

Cape Verde

- Cape Verde Confederation of Free Trade Unions (CCSL)

on Convention No.

118

Chile

	on Conventions Nos.
• Association of Public Employees to Remedy the Prejudice to Social Insurance	35, 36, 37, 38
• Autonomous Confederation of Workers of Chile	121, 161
• Latin-American Confederation of Workers (CLAT)	121, 161
• National Association of Fiscal Employees (ANEF)	151
• National Confederation of Municipal Employees of Chile (ASEMUCH)	87, 98, 151
• National inter-entreprises Union of Metallurgists, Energy and other Branches	87, 98, 135
• World Confederation of Labour (WCL)	121, 161

Colombia

	on Conventions Nos.
• Confederation of Workers of Colombia (CTC)	87, 98
• General Confederation of Democratic Workers (CGTD)	87, 98
• International Confederation of Free Trade Unions (ICFTU)	87, 98
• Single Confederation of Workers of Colombia (CUT)	87, 98
• Union of Maritime and Inland Water Transport Industry Workers (UNIMAR)	95
• Union of the Administradora de Seguridad Limitada (SINTRACONSEGURIDAD)	95

Costa Rica

	on Conventions Nos.
• Confederation of Workers Rerum Novarum (CTRN)	1, 87, 98
• International Confederation of Free Trade Unions (ICFTU)	87, 98

Croatia

	on Convention No.
• Association of the Workers Affected by Asbestosis - Vranjic	162

Cuba

	on Conventions Nos.
• International Confederation of Free Trade Unions (ICFTU)	87

Czech Republic

	on Conventions Nos.
• Czech-Moravian Confederation of Trade Unions (CM KOS)	29, 87, 98, 135, 150

Democratic Republic of the Congo

	on Conventions Nos.
• Confederation of Trade Unions of Congo (CSC)	81, 87, 98, 135, 144
• World Confederation of Labour (WCL)	81, 87, 98, 135, 144

Denmark

	on Conventions Nos.
• Danish Confederation of Trade Unions (LO)	87, 98
• Danish Masters' Association	29
• Unemployed Copenhagen Division of the Danish Union of Lawyers and Economists (SFA/DJOF Copenhagen)	29

Ecuador

	on Conventions Nos.
• Confederation of Workers of Ecuador (CTE)	98
• International Confederation of Free Trade Unions (ICFTU)	87, 139, 148
• World Federation of Trade Unions (WFTU)	98

Ethiopia

	on Convention No.
• International Confederation of Free Trade Unions (ICFTU)	87

Fiji

	on Conventions Nos.
• Fiji Commercial Cleaning Services Union	169
• Fiji Mine Workers Union	98
• Fiji Trades Union Congress (FTUC)	87, 98

Finland

	on Conventions Nos.
• Central Organization of Finnish Trade Unions (SAK)	81, 135

France	
<hr/>	on Conventions Nos.
• Association L611-10	129
• Council of French Polynesian Employers	87, 142
• French Democratic Confederation of Labour (CFDT)	182
Georgia	
<hr/>	on Conventions Nos.
• Georgian Trade Union Amalgamation (GTUA)	88, 181
Germany	
<hr/>	on Convention No.
• International Confederation of Free Trade Unions (ICFTU)	87
Greece	
<hr/>	on Convention No.
• Panhellenic Federation of University Graduate Engineer Civil servant Unions (POEMDYDAS)	154
Guatemala	
<hr/>	on Conventions Nos.
• General Confederation of Workers of Guatemala (CGTG)	169
• International Confederation of Free Trade Unions (ICFTU)	87
• Trade Union Confederation of Guatemala (UNSTRAGUA)	26, 29, 81, 87, 99, 105, 129, 131, 144, 154, 182
• Trade Union of Workers of Operators of Plants, Wells and Guards of the Municipal Water Company	1, 29, 105
• World Confederation of Labour (WCL)	29, 87, 98, 105
India	
<hr/>	on Conventions Nos.
• Agricultural Workers Welfare Sangam	118
• Centre of Indian Trade Unions (CITU)	81
• Forward Seamen's Union of India (FSUI)	22
• Hind Mazdoor Sabha (HMS)	160
• National Union of Seafarers of India (NUSI)	22
Indonesia	
<hr/>	on Conventions Nos.
• Indonesian Trade Union Congress	29
• International Confederation of Free Trade Unions (ICFTU)	29, 98
Japan	
<hr/>	on Conventions Nos.
• All Japan Shipbuilding and Engineering Union (ALSEU)	29
• Federation of Korean Trade Unions (FKTU) and Korean Confederation of Trade Unions (KCTU)	29
• Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN)	87
• Japan National Hospital Workers' Union (JNHUJ)	98, 100, 156
• Japanese Trade Union Confederation (JTUC-RENGO)	87, 98, 156
• National Network of Fire Fighters (FFN)	87
• Zentoitsu Workers Union	87, 98
Kenya	
<hr/>	on Convention No.
• International Confederation of Free Trade Unions (ICFTU)	98
Latvia	
<hr/>	on Convention No.
• Latvian Free Trade Union Federation (LBAS)	87
Lithuania	
<hr/>	on Conventions Nos.
• Lietuvos Darbo Federacija (LDF)	87, 88, 98, 100, 111, 127, 135, 144, 154, 159
• Trade Union of Constables and Police Employees	47

Mauritania

- Free Confederation of Mauritanian Workers (CLTM)
- International Confederation of Free Trade Unions (ICFTU)
- World Confederation of Labour (WCL)

on Conventions Nos.

29, 105
29
29, 105

Mexico

- Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)

on Conventions Nos.

13, 45, 87, 96, 100, 115, 135, 144,
155, 161, 167, 170

Republic of Moldova

- Confederation of Trade Unions of the Republic of Moldova

on Conventions Nos.

29, 81, 105

Myanmar

- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

29, 87

Netherlands

- National Federation of Christian Trade Unions (CNV)
- Netherlands Trade Union Confederation (FNV)
- Trade Union Confederation of Middle and Higher Level Employees Unions (MHP)

on Conventions Nos.

87, 88, 98, 118, 122, 135, 137, 151,
154, 155, 174, 177
81, 98, 100, 101, 111, 118, 122, 129,
135, 137, 144, 155, 159, 162, 177, 182
87, 88, 98, 111, 115, 118, 122, 135,
137, 144, 151, 155, 159, 162, 177,
180, 181

New Zealand

- Business New Zealand
- New Zealand Council of Trade Unions (NZCTU)

on Conventions Nos.

22, 88, 100, 111, 122, 144
22, 88, 100, 111, 122

Nicaragua

- Trade Union of Employees of Nicaragua
- Trade Union Sandinist Confederation of Nicaragua (CST)
- Trade Union Unification Confederation (CUS)
- Trade Union Workers Confederation

on Conventions Nos.

131
131
87, 98
26, 131

Niger

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

29

Nigeria

- Organisation of African Trade Union Unity (OATUU)

on Conventions Nos.

87, 98

Norway

- Confederation of Trade Unions (LO)
- Norwegian Federation of Oil Workers' Unions (OFS)

on Conventions Nos.

30, 81, 115
87

Panama

- National Board of Private Enterprise of Panama (CONEP)

on Conventions Nos.

87, 98

Paraguay

- National Union of Workers (CNT)

on Convention No.

169

Peru

- Medical Social Security Association of Peru
- Trade Union of Fishing Boat Owners of Puerto Supe and Associates (SCPPPSA)

on Conventions Nos.

98, 151
55, 56, 70, 81, 102

Portugal

- Confederation of Portuguese Industry (CIP)
- General Confederation of Portuguese Workers (CGTP)
- General Union of Workers (UGT)

on Conventions Nos.

87, 98, 144
87, 98, 100, 122, 139, 148, 155, 162
87, 100, 111, 115, 120, 122, 127, 139,
144, 159, 176

Rwanda

- Association of Christian Trade Unions (UMURIMO)
- Congress of Labour and Brotherhood of Rwanda (COTRAF-RWANDA)
- National Council of Free Trade Union Organizations of Rwanda (COSYLI)
- Workers' Trade Union Confederation of Rwanda (CESTRAR)

on Conventions Nos.

62, 81, 87, 98, 100, 105, 111, 135,
138, 182
87, 98, 111, 135
62, 87, 98, 100, 111, 135
62, 87, 98, 100, 111, 135

Saudi Arabia

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

111

Serbia and Montenegro

- Confederation of Autonomous Trade Unions of Serbia
- International Confederation of Free Trade Unions (ICFTU)
- World Confederation of Labour (WCL)

on Conventions Nos.

111
87, 98
14, 103, 106, 111, 131, 158

Slovakia

- Confederation of Trade Unions of the Slovak Republic (KOZ SR)

on Conventions Nos.

34, 98, 100, 122, 144

Spain

- Democratic Federation of Workers

on Convention No.

97

Sri Lanka

- International Confederation of Free Trade Unions (ICFTU)
- Lanka Jathika Estate Workers' Union (LJEWU)

on Conventions Nos.

29, 87, 98, 100, 105, 111, 138, 182
87, 182

Sudan

- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

29

Swaziland

- International Confederation of Free Trade Unions (ICFTU)
- Swaziland Federation of Trade Unions (SFTU)

on Conventions Nos.

87, 98
87, 144

Sweden

- Swedish Municipal Workers' Union

on Convention No.

129

Switzerland

- Union of Swiss Employers (UPS)

on Conventions Nos.

87, 98, 100, 111, 144, 159

Thailand

- National Congress of Thai Labour

on Conventions Nos.

29, 105

Turkey

- Confederation of Progressive Trade Unions of Turkey (DISK)
- Confederation of Public Servants Trade Unions (KESK)
- Confederation of Turkish Real Trade Unions (HAK-IS)
- Confederation of Turkish Trade Unions (TÜRK-IS)
- International Confederation of Free Trade Unions (ICFTU)
- Turkish Confederation of Employers' Associations (TISK)
- Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen)

on Conventions Nos.

45, 87, 96, 98, 115, 119, 122, 144,
151, 158
87, 98, 144
144
87, 88, 96, 98, 122, 138, 144, 151
29, 87, 98, 100, 105, 111, 182
45, 88, 96, 98, 115, 119, 122, 144, 182
45, 87, 88, 96, 98, 115, 119, 122, 144,
151

Ukraine

-
- Confederation of Free Trade Unions of Ukraine (KSPU)
 - Federation of Trade Unions of Ukraine
 - Ukrainian Union of Leaseholders (SOPU)

on Conventions Nos.

87, 95, 98, 100, 122, 138, 144, 154
87
87

United Arab Emirates

-
- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

29, 138, 182

United States

-
- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
 - International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.

144
182

Uruguay

-
- Inter-Union Assembly of Workers - National Convention of Workers (PIT-CNT)
 - Latin-American Confederation of Labour Inspectors (CIIT)

on Conventions Nos.

131
81

Venezuela

-
- International Confederation of Free Trade Unions (ICFTU)
 - International Organization of Employers (OIE)
 - National Single Federation of Public Employees (FEDE-UNEP)

on Conventions Nos.

87
87, 98
111

Zimbabwe

-
- International Confederation of Free Trade Unions (ICFTU)

on Convention No.

98

Appendix IV. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities

(31st to 91st Sessions of the International Labour Conference, 1948-2003)

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.

Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972) and 73rd Session (June 1987).

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Afghanistan	31-56, 58-70	71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Albania	31-49, 80-81, 82(C176; R183), 83, 84(C178; R186), 85, 87-88, 90(P155)	78, 79, 82(P081), 84(C179; C180; P147; R185; R187), 86, 89, 90(R193; R194), 91
Algeria	47-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
Angola	61-72, 74-78, 79(C173), 80-81, 82(C176; R183), 83-85, 87-90	79(R180), 82(P081), 86, 91
Antigua and Barbuda	68-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
Argentina	31-56, 58-72, 74-83, 87, 89	84, 85, 86, 88, 90, 91
Armenia	-	80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Australia	31-56, 58-72, 74-90	91
Austria	31-56, 58-72, 74-90	91
Azerbaijan	79(C173), 80-82, 85-87	79(R180), 83, 84, 88, 89, 90, 91
Bahamas	61-72, 74-84, 86-87	85, 88, 89, 90, 91
Bahrain	63-72, 74-87	88, 89, 90, 91
Bangladesh	58-72, 74-76, 77(C171; R178), 78, 80, 84(C178; C180; P147), 85(C181), 87	77(C170; P089; R177), 79, 81, 82, 83, 84(C179; R185; R186; R187), 85(R188), 86, 88, 89, 90, 91

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Barbados	51-56, 58-72, 74-89, 90(R193), 91	90(P155; R194)
Belarus	37-56, 58-72, 74-91	-
Belgium	31-56, 58-72, 74-88, 90	89, 91
Belize	68-72, 74-76, 87	77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Benin	45-56, 58-72, 74-91	-
Bolivia	31-56, 58-72, 74-79, 87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Bosnia and Herzegovina	87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Botswana	64-72, 74-87	88, 89, 90, 91
Brazil	31-50, 51(C127; R128; R129; R130; R131), 53(R133; R134), 54-56, 58-62, 63(C148; R156; R157), 64(R158; R159), 65-66, 67(C154; C155; R163; R164; R165), 68(C158; P110; R166), 69-72, 74-77, 80, 82(C176; R183), 84(C178; R185), 87, 89	51(C128), 52, 53(C129; C130), 63(C149), 64(C150; C151), 67(C156), 68(C157), 78, 79, 81, 82(P081), 83, 84(C179; C180; P147; R186; R187), 85, 86, 88, 90, 91
Bulgaria	31-56, 58-72, 74-91	-
Burkina Faso	45-56, 58-72, 74-87	88, 89, 90, 91
Burundi	47-56, 58-72, 74-77, 78(R179), 79-81, 82(C176; P081), 87	78(C172), 82(R183), 83, 84, 85, 86, 88, 89, 90, 91
Cambodia	53-54, 56, 58(C138; R146), 64(C150; R158)	55, 58(C137; R145), 59, 60, 61, 62, 63, 64(C151; R159), 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Cameroon	44-56, 58-68, 72, 74, 87	69, 70, 71, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Canada	31-56, 58-72, 74-90	91
Cape Verde	65-72, 74-81, 87	82, 83, 84, 85, 86, 88, 89, 90, 91
Central African Republic	45-56, 58-72, 74, 87	75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Chad	45-56, 58-72, 74-79, 84-87	80, 81, 82, 83, 88, 89, 90, 91
Chile	31-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
China	31-56, 58-72, 74-91	-
Colombia	31-56, 58-72, 74, 75(C167; R175; R176), 76-78, 79(R180), 80, 81(C175), 87	75(C168), 79(C173), 81(R182), 82, 83, 84, 85, 86, 88, 89, 90, 91
Comoros	65-72, 74-78, 87	79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Congo	45-53, 54(C131; C132), 55(C133; C134), 56, 58(C138; R146), 59, 60(C142; R150), 61, 63(C148; C149; R157), 64-66, 67(C154; C155; C156), 68(C158), 71(C160; C161), 75(C167; C168), 76, 87	54(R135; R136), 55(R137; R138; R139; R140; R141; R142), 58(C137; R145), 60(C141; C143; R149; R151), 62, 63(R156), 67(R163; R164; R165), 68(C157; P110; R166), 69, 70, 71(R170; R171), 72, 74, 75(R175; R176), 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Costa Rica	31-56, 58-72, 74-91	-
Côte d'Ivoire	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
Croatia	80-85, 87	86, 88, 89, 90, 91
Cuba	31-56, 58-72, 74-88	89, 90, 91
Cyprus	45-56, 58-72, 74-90	91
Czech Republic	80-91	-
Democratic Republic of the Congo	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
Denmark	31-56, 58-72, 74-88, 91	89, 90
Djibouti	64-65, 67, 71-72, 83	66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91
Dominica	68-72, 74-79, 87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Dominican Republic	31-56, 58-72, 74-90	91
Ecuador	31-56, 58-72, 74-88, 90(P155)	89, 90(R193; R194), 91

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Egypt	31-56, 58-72, 74-91	-
El Salvador	31-56, 58-61, 63(C149), 64(C150), 67(C155; C156; R164; R165), 69(C159; R168), 71-72, 74-81, 87, 90(P155)	62, 63(C148; R156; R157), 64(C151; R158; R159), 65, 66, 67(C154; R163), 68, 69(R167), 70, 82, 83, 84, 85, 86, 88, 89, 90(R193; R194), 91
Equatorial Guinea	67-72, 74-79, 84, 87	80, 81, 82, 83, 85, 86, 88, 89, 90, 91
Eritrea	80-91	-
Estonia	79-90	91
Ethiopia	31-56, 58-72, 74-87, 88(C183), 89	88(R191), 90, 91
Fiji	59-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
Finland	31-56, 58-72, 74-91	-
France	31-56, 58-72, 74-91	-
Gabon	45-56, 58-72, 75-81, 87	74, 82, 83, 84, 85, 86, 88, 89, 90, 91
Gambia	87	82, 83, 84, 85, 86, 88, 89, 90, 91
Georgia	85, 86-87	80, 81, 82, 83, 84, 88, 89, 90, 91
Germany	34-56, 58-72, 74, 75(C167; R175), 76, 80-91	75(C168; R176), 77, 78, 79
Ghana	40-56, 58-72, 74-79, 83, 84(C178; C179; C180; P147; R187), 85-87	80, 81, 82, 84(R185; R186), 88, 89, 90, 91
Greece	31-56, 58-72, 74-91	-
Grenada	66-72, 74-80, 82(C176), 83(C177), 84(C178), 87	81, 82(P081; R183), 83(R184), 84(C179; C180; P147; R185; R186; R187), 85, 86, 88, 89, 90, 91
Guatemala	31-56, 58-72, 74-91	-
Guinea	43-56, 58-72, 74-83	84, 85, 86, 87, 88, 89, 90, 91

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Guinea-Bissau	63-72, 74-78, 79(C173), 80(C174), 81(C175), 82(C176), 84(C179), 85(C181), 87	79(R180), 80(R181), 81(R182), 82(P081; R183), 83, 84(C178; C180; P147; R185; R186; R187), 85(R188), 86, 88, 89, 90, 91
Guyana	50-56, 58-72, 74-85, 87-89	86, 90, 91
Haiti	31-56, 58-66, 67(C156; R165), 69-72, 74, 75(C167)	67(C154; C155; R163; R164), 68, 75(C168; R175; R176), 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Honduras	39-56, 58-72, 74-91	-
Hungary	31-56, 58-72, 74-90	91
Iceland	31-56, 58-72, 74-88	89, 90, 91
India	31-56, 58-72, 74-91	-
Indonesia	33-56, 58-72, 74-91	-
Islamic Republic of Iran	31-56, 58-72, 74-83, 85, 87-89	84, 86, 90, 91
Iraq	31-56, 58-72, 74-84, 85(C181), 86-87, 89	85(R188), 88, 90, 91
Ireland	31-56, 58-72, 74-87	88, 89, 90, 91
Israel	32-56, 58-72, 74-90	91
Italy	31-56, 58-72, 74-91	-
Jamaica	47-56, 58-72, 74-87	88, 89, 90, 91
Japan	35-56, 58-72, 74-91	-
Jordan	39-56, 58-72, 74-91	-
Kazakhstan	87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Kenya	48-56, 58-72, 74-81, 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-87	82(P081), 84(P147), 88, 89, 90, 91
Kiribati	-	88, 89, 90, 91

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Republic of Korea	79-89	90, 91
Kuwait	45-56, 58-72, 74-76, 78-79, 80(C174), 81-85, 87-88, 90	77, 80(R181), 86, 89, 91
Kyrgyzstan	87, 89	79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91
Lao People's Democratic Republic	48-56, 58-72, 74-81	82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Latvia	79-80	81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Lebanon	31-56, 58-72, 74-91	-
Lesotho	51-53, 66-72, 74-81, 82(C176; R183), 83-87	82(P081), 88, 89, 90, 91
Liberia	31-56, 58-72, 74-76, 77(C170; C171; R177; R178), 78-81, 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-87	77(P089), 82(P081), 84(P147), 88, 89, 90, 91
Libyan Arab Jamahiriya	35-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
Lithuania	79-91	-
Luxembourg	31-56, 58-72, 74-91	-
Madagascar	45-54, 56, 58-68, 69(C159; R168), 70, 79, 87	55, 69(R167), 71, 72, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Malawi	49-56, 58-72, 74-81, 87	82, 83, 84, 85, 86, 88, 89, 90, 91
Malaysia	41-56, 58-72, 74-91	-
Mali	44-56, 58-72, 74-78, 82-83, 84(C178; C179; C180; R185; R186; R187), 87-88	79, 80, 81, 84(P147), 85, 86, 89, 90, 91
Malta	49-56, 58-72, 74-90	91
Mauritania	45-56, 58-72, 74-80, 81(C175), 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-91	81(R182), 82(P081), 84(P147)
Mauritius	53-56, 58-72, 74-90	91
Mexico	31-56, 58-72, 74-89	90, 91

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Republic of Moldova 79-91	-
Mongolia 52-56, 58-72, 74-81, 87-89	82, 83, 84, 85, 86, 90, 91
Morocco 39-56, 58-72, 74-91	-
Mozambique 61-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
Myanmar 31-56, 58-72, 74-91	-
Namibia 78-87, 89(C184), 90(R194)	88, 89(R192), 90(P155; R193), 91
Nepal 51-56, 58-72, 74-81, 83, 85, 87	82, 84, 86, 88, 89, 90, 91
Netherlands 31-56, 58-72, 74-89	90, 91
New Zealand 31-56, 58-72, 74-91	-
Nicaragua 40-56, 58-72, 74-91	-
Niger 45-56, 58-72, 74-82, 87-88	83, 84, 85, 86, 89, 90, 91
Nigeria 45-56, 58-72, 74-91	-
Norway 31-56, 58-72, 74-91	-
Oman 81-91	-
Pakistan 31-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Panama 31-56, 58-72, 74-87, 88(R191), 89(R192), 90(R193; R194)	88(C183), 89(C184), 90(P155), 91
Papua New Guinea 61-72, 74-87	88, 89, 90, 91
Paraguay 40-56, 58-72, 74-84, 87	85, 86, 88, 89, 90, 91
Peru 31-56, 58-72, 74-83, 85-87	84, 88, 89, 90, 91
Philippines 31-56, 58-72, 74-91	-

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Poland	31-56, 58-72, 74-91	-
Portugal	31-56, 58-72, 74-87	88, 89, 90, 91
Qatar	58-72, 74-91	-
Romania	39-56, 58-72, 74-91	-
Russian Federation	37-56, 58-72, 74-88	89, 90, 91
Rwanda	47-56, 58-72, 74-79, 81, 87	80, 82, 83, 84, 85, 86, 88, 89, 90, 91
Saint Kitts and Nevis	87	83, 84, 85, 86, 88, 89, 90, 91
Saint Lucia	67(C154; R163), 68(C158; R166), 87	66, 67(C155; C156; R164; R165), 68(C157; P110), 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Saint Vincent and the Grenadines	86, 87	82, 83, 84, 85, 88, 89, 90, 91
San Marino	69-72, 74-91	-
Sao Tome and Principe	68-72, 74-76	77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Saudi Arabia	61-72, 74-91	-
Senegal	44-56, 58-72, 74-78, 87	79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Serbia and Montenegro	89	90, 91
Seychelles	63-72, 74-88	89, 90, 91
Sierra Leone	45-56, 58-61, 62(C145; C147; R153; R155)	62(C146; R154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Singapore	50-56, 58-72, 74-90	91
Slovakia	80-83, 86-91	84, 85
Slovenia	79-83, 84(C180; P147; R187), 87-91	84(C178; C179; R185; R186), 85, 86

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Solomon Islands	
74	70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Somalia	
45-56, 58-72, 74-75	76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
South Africa	
31-50, 68, 74, 81-91	-
Spain	
39-56, 58-62, 63(C148; R156), 64-72, 74, 75(C167; R175), 76-79, 82, 85, 87	63(C149; R157), 75(C168; R176), 80, 81, 83, 84, 86, 88, 89, 90, 91
Sri Lanka	
31-56, 58-72, 74-87	88, 89, 90, 91
Sudan	
39-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Suriname	
61-72, 74-89	90, 91
Swaziland	
60-72, 74-81, 82(C176; R183), 83, 87	82(P081), 84, 85, 86, 88, 89, 90, 91
Sweden	
31-56, 58-72, 74-89	90, 91
Switzerland	
31-56, 58-72, 74-90	91
Syrian Arab Republic	
31-56, 58-65, 67-69, 71-72, 74-76, 87-89	66, 70, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 90, 91
Tajikistan	
81-83, 86	84, 85, 87, 88, 89, 90, 91
United Republic of Tanzania	
46-56, 58-65, 67(C154; R163), 69-71, 76, 77(C170; R177), 82(P081), 87	66, 67(C155; C156; R164; R165), 68, 72, 74, 75, 77(C171; P089; R178), 78, 79, 80, 81, 82(C176; R183), 83, 84, 85, 86, 88, 89, 90, 91
Thailand	
31-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
The former Yugoslav Republic of Macedonia	
80-82, 87	83, 84, 85, 86, 88, 90, 91
Togo	
44-56, 58-72, 74-87, 89	88, 90, 91
Trinidad and Tobago	
47-56, 58-72, 74-91	-
Tunisia	
39-56, 58-72, 74-91	-
Turkey	
31-56, 58-72, 74-91	-

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Turkmenistan	
-	81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Uganda	
47-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90, 91
Ukraine	
37-56, 58-72, 74-90	91
United Arab Emirates	
58-72, 74-91	-
United Kingdom	
31-56, 58-72, 74-91	-
United States	
31-56, 58-60, 66-72, 74-90	91
Uruguay	
31-56, 58-72, 74-79, 81, 82(P081), 84-85, 87	80, 82(C176; R183), 83, 86, 88, 89, 90, 91
Uzbekistan	
-	80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91
Vanuatu	
-	91
Venezuela	
31-56, 58-72, 74(R173), 75(C167; R175), 76, 77(C170; R177), 78(R179), 80, 82(C176; R183), 87-88	74(C163; C164; C165; C166; R174), 75(C168; R176), 77(C171; P089; R178), 78(C172), 79, 81, 82(P081), 83, 84, 85, 86, 89, 90, 91
Viet Nam	
33-56, 58-63, 80-90	91
Yemen	
49-56, 58-72, 74-87, 88(C183), 89(C184)	88(R191), 89(R192), 90, 91
Zambia	
49-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91
Zimbabwe	
66-72, 74-91	-

**Appendix V. Overall position of member States with regard to
the submission to the competent authorities of
the instruments adopted by the Conference
(as of 10 December 2004)**

Sessions of the ILC	Number of States in which, according to the information supplied by the Government:			ILO Member States at the time of the session
	All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
<i>All the instruments adopted between the 31st and the 50th Sessions have been submitted to the competent authorities by member States</i>				
51st (June 1967)	116	1		117
52nd (June 1968)	117		1	118
53rd (June 1969)	120	1		121
54th (June 1970)	119	1		120
55th (October 1970)	117	1	2	120
56th (June 1971)	120			120
58th (June 1973)	121	2		123
59th (June 1974)	124		1	125
60th (June 1975)	123	1	2	126
61st (June 1976)	129		2	131
62nd (October 1976)	127	1	3	131
63rd (June 1977)	128	4	2	134
64th (June 1978)	131	3	1	135
65th (June 1979)	133		4	137
66th (June 1980)	135		7	142
67th (June 1981)	134	6	3	143
68th (June 1982)	138	3	6	147
69th (June 1983)	139	3	6	148
70th (June 1984)	139		10	149
71st (June 1985)	140	1	8	149
72nd (June 1986)	140		9	149
74th (September 1987)	138	1	10	149
75th (June 1988)	132	6	11	149
76th (June 1989)	135		12	147
77th (June 1990)	126	4	17	147
78th (June 1991)	127	2	20	149
79th (June 1992)	128	4	24	156
80th (June 1993)	132	2	33	167
81st (June 1994)	128	3	40	171
82nd (June 1995)	114	14	45	173
83rd (June 1996)	110	1	63	174
84th (October 1996)	97	11	66	174
85th (June 1997)	104	3	67	174
86th (June 1998)	100		74	174
87th (June 1999)	159		15	174
88th (May 2000)	86	3	86	175
89th (June 2001)	80	3	92	175
90th (June 2002)	65	6	104	175
91st (June 2003)	50		126	176

Appendix VI. 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 ¹

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.

The Governing Body having approved, at its 267th Session (November 1996), new measures of rationalization and simplification, 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 90th (June 2002) and 91st (June 2003) Sessions. The period of 12 months provided for the submission to the competent authorities of the Recommendations and Protocol adopted at the 90th Session expired on 20 June 2003, and the period of 18 months on 20 December 2003.

The period of 12 months provided for the submission to the competent authorities of the Seafarers' Identity Documents (Revised) Convention, 2003 (No. 185), expired on 19 June 2004, and the period of 18 months will expire on 19 December 2004.

The summarized information below consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 92nd Session of the Conference (Geneva, June 2004) and which could not therefore be laid before the Conference at that session.

Albania. The ratification of Convention No. 155 and its Protocol of 2002 has been registered on 9 February 2004.

Austria. The instruments adopted at the 90th Session of the Conference were submitted to the National Council on 9 June 2004.

Barbados. Recommendation No. 193 and Convention No. 185 were submitted to Parliament on 28 October 2003 and 20 April 2004, respectively.

Belarus. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the National Assembly on 4 January 2003 and 6 February 2004, respectively.

Belgium. The instruments adopted at the 90th Session of the Conference were submitted to the House of Representatives and the Senate on 12 July 2004.

Benin. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the National Assembly on 1 July 2003 and on 16 June 2004, respectively.

Bulgaria. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the National Assembly on 25 May 2003 and 22 March 2004, respectively.

Canada. The instruments adopted at the 90th Session of the Conference were submitted to the House of Commons and the Senate on 5 November 2003.

China. The instruments adopted at the 90 and 91st Sessions of the Conference have been submitted to the State Council and the Permanent Commission of the National People's Congress.

Costa Rica. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Legislative Assembly on 15 January 2003 and 1 September 2004, respectively.

¹ This summary relates to the instruments adopted at the following sessions of the Conference:

90th Session (2002)

Protocol of 2002 to the Occupational Safety and Health Convention, 1981.

Promotion of Cooperatives Recommendation (No. 193);

List of Occupational Diseases Recommendation (No. 194);

91st Session (2003)

Seafarers' Identity Documents Convention (Revised), 2003 (No. 185).

Cyprus. The instruments adopted by the Conference at its 90th Session were submitted to the House of Representatives on 23 November 2004.

Czech Republic. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to Parliament on 11 June 2003 and 9 July 2004, respectively.

Denmark. The Convention adopted by the Conference at its 91st Session was submitted to Parliament (Folketinget) in December 2003.

Dominican Republic. The instruments adopted at the 90th Session of the Conference were submitted to the National Congress on 11 May 2003.

Egypt. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the People's Assembly on 19 January 2003 and 10 December 2003, respectively.

Ecuador. The instruments adopted at the 90th Session of the Conference were submitted to the National Congress on 26 March 2003.

El Salvador. The ratification of the Protocol of 2002 was registered on 22 July 2004.

Eritrea. The instruments adopted at the 82nd, 84th, 90th and 91st Sessions of the Conference were submitted to the National Assembly on 14 September 2004.

Estonia. The instruments adopted at the 90th Session of the Conference were submitted to Parliament on 11 September 2003.

Finland. The instruments adopted by the Conference at its 90th and 91st Sessions were submitted to Parliament on 18 September 2003 and 8 October 2004, respectively.

France. The ratification of Convention No. 185 was registered on 27 April 2004. The instruments adopted by the Conference at its sessions held between 1997 and 2002 were submitted on 15 February 2004 to the Presidents of the National Assembly and the Senate.

Germany. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Bundestag and the Bundesrat on 31 July 2003 and 26 January 2004, respectively.

Greece. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Hellenic Chamber of Deputies on 17 December 2003 and 24 August 2004, respectively.

Guatemala. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Congress of the Republic on 3 November 2003 and 13 May 2004, respectively.

Honduras. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Congress of the Republic on 28 July 2003 and 19 January 2004, respectively.

Hungary. The instruments adopted at the 90th Session of the Conference were submitted to the National Assembly on 24 November 2003 and 17 May 2004.

India. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the House of the People and the Council of States on 18 and 22 December 2003 and 23 and 26 August 2004, respectively.

Indonesia. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the House of Representatives on 16 December 2002 and 6 December 2004, respectively.

Israel. The instruments adopted at the 90th Session of the Conference were submitted to the Knesset on 13 October 2003.

Italy. The instruments adopted by the Conference at its 90th and 91st Sessions were submitted to the Chair of the House of Representatives and of the Senate.

Japan. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Diet on 13 June 2003 and 4 June 2004, respectively.

Jordan. The ratification of Convention No. 185 was registered on 9 August 2004.

Kuwait. The instruments adopted at the 90th Session of the Conference have been submitted to the Council of Ministers and the National Assembly.

Lebanon. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the National Assembly on 24 October 2003 and on 7 October 2004, respectively.

Lithuania. The instruments adopted by the Conference at its 90th and 91st Sessions were submitted to the Seimas on 10 September 2003 and 14 October 2004, respectively.

Luxembourg. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Chamber of Deputies on 14 February 2003 and 1 October 2004, respectively.

Malaysia. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to Parliament on 6 March 2003 and 20 October 2003, respectively.

Mauritania. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the competent authorities in May 2004.

Mauritius. The instruments adopted at the 90th Session of the Conference were submitted to the National Assembly on 14 October 2003.

Republic of Moldova. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to Parliament on 22 December 2003 and 17 August 2004, respectively.

Morocco. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to Parliament on 6 September 2004.

Myanmar. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to a competent authority on 2 October 2003 and 24 February 2004, respectively.

Namibia. The instruments adopted at the 90th Session of the Conference have been submitted to the National Assembly.

Netherlands. The instruments adopted at the 90th Session of the Conference were submitted to Parliament on 14 May 2003.

New Zealand. The instruments adopted by the Conference at its 90th and 91st Sessions were submitted to the House of Representatives on 19 November 2003 and 13 October 2004, respectively.

Nicaragua. Recommendation No. 183 and the Protocol of 2002 were submitted to the National Assembly on 5 May 2003, and Recommendation No. 194 was submitted on 9 July 2003. The Convention adopted at the 91st Session of the Conference was submitted to the National Assembly on 25 November 2003.

Nigeria. The ratification of Convention No. 185 was registered on 19 August 2004.

Norway. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Storting (Parliament) on 20 June 2003 and 24 November 2004, respectively.

Oman. The instruments adopted at the 90th and 91st Sessions of the Conference have been submitted to the Council of Ministers and notified to the Consultative Council.

Panama. The Recommendations adopted at the 90th Session of the Conference were submitted to the Legislative Assembly on 24 May 2004.

Philippines. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the House of Representatives and the Senate on 4 December 2002 and 16 February 2004, respectively.

Poland. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Sejm on 13 March 2003 and 1 June 2004, respectively.

Qatar. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Council of Ministers and the Consultative Council in April 2004.

Romania. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the House of Representatives and the Senate in February/March 2003 and on 8/9 March 2004, respectively.

San Marino. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Great and General Council on 4 May 2004.

Saudi Arabia. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Council of Ministers and to the Consultative Council on 30 May 2003 and 21 August 2004, respectively.

Singapore. The instruments adopted at the 90th Session of the Conference were submitted to Parliament in July 2003.

Slovakia. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the National Council on 18 December 2002 and 15 December 2003, respectively.

Slovenia. The instruments adopted at the 90th and 91st Sessions of the Conference have been submitted to the National Assembly.

South Africa. The instruments adopted at the 86th, 88th, 89th, 90th and 91st Sessions of the Conference were submitted to Parliament in September 2004.

Switzerland. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to Parliament on 29 October 2003 and 8 September 2004, respectively.

Trinidad and Tobago. The instruments adopted by the Conference at its 90th and 91st Sessions were submitted to the Senate on 29 April 2003 and 6 June 2004, and to the House of Representatives on 2 May 2003 and 18 June 2004, respectively.

Tunisia. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the House of Representatives on 27 December 2002 and 16 December 2003, respectively.

Turkey. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to the Grand National Assembly on 27 March 2003 and 22 December 2003, respectively.

Ukraine. The instruments adopted at the 90th Session of the Conference were submitted to the Supreme Council in January 2003.

United Arab Emirates. The instruments adopted at the 90th and 91st Sessions of the Conference have been submitted to a competent authority.

United Kingdom. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to Parliament in June 2003 and July 2004, respectively.

United States. The instruments adopted at the 90th Session of the Conference were submitted to the Senate and the House of Representatives on 20 May 2003.

Viet Nam. The instruments adopted at the 90th Session of the Conference were submitted to the National Assembly on 7 April 2003.

Zimbabwe. The instruments adopted at the 90th and 91st Sessions of the Conference were submitted to Parliament on 20 December 2002 and 12 February 2004, respectively.

The Committee has deemed it necessary in certain cases to request additional information on the nature of the competent authorities to which instruments adopted by the Conference have been submitted, as well as other particulars required by the Memorandum of 1980.

Appendix VII. Comments made by the Committee, by country

*The comments referred to below have been drawn up in the form of either "observations", which are reproduced in this report, or "direct requests", which are not published but are communicated directly to the governments concerned.
This table also lists acknowledgements by the Committee of responses received to direct requests.*

Afghanistan	<p>General Report, paragraphs nos. 20, 31, 61, 67 General observation Observations on Conventions Nos. 105, 111 <i>Direct requests on Conventions Nos. 13, 41, 95, 105, 139</i> Observation on Submission</p>
Albania	<p><i>General direct request</i> Observations on Conventions Nos. 144, 151 <i>Direct requests on Conventions Nos. 26, 52, 95, 98, 100, 138, 154</i> <i>Direct request on Submission</i></p>
Algeria	<p>Observations on Conventions Nos. 29, 32, 62, 68, 89, 92, 105, 138, 144 <i>Direct requests on Conventions Nos. 17, 29, 56, 63, 69, 73, 78, 81, 105, 108, 150, 182</i> Observation on Submission</p>
Angola	<p>Observations on Conventions Nos. 27, 81, 98 <i>Direct requests on Conventions Nos. 14, 74, 81, 89, 92, 98, 106, 107, 138, 182</i> <i>Direct request on Submission</i></p>
Antigua and Barbuda	<p>General Report, paragraphs nos. 20, 31 General observation Observations on Conventions Nos. 17, 87, 138 <i>Direct requests on Conventions Nos. 14, 29, 81, 101, 111, 138</i> Observation on Submission</p>
Argentina	<p>Observations on Conventions Nos. 81, 87, 88, 98, 138, 169 <i>Direct requests on Conventions Nos. 81, 169, 182</i> <i>Response received to a direct request on Convention No. 16</i> <i>Direct request on Submission</i></p>
Armenia	<p>General Report, paragraphs nos. 20, 27, 61 General observation Observation on Submission</p>
Australia	<p>Observation on Convention No. 98 <i>Direct requests on Conventions Nos. 8, 81, 98, 135, 160</i> <i>Response received to direct requests on Conventions Nos. 69, 73, 150, 166</i></p>
Norfolk Island	<p><i>Direct request on Convention No. 160</i></p>
Austria	<p>Observations on Conventions Nos. 29, 81 <i>Direct requests on Conventions Nos. 135, 138, 160, 182</i> <i>Direct request on Submission</i></p>
Azerbaijan	<p>General Report, paragraphs nos. 27, 31 General observation <i>General direct request</i> Observations on Conventions Nos. 87, 138, 151 <i>Direct requests on Conventions Nos. 16, 23, 29, 47, 69, 73, 105, 108, 120, 122, 126, 134, 135, 138, 140, 142, 144, 147, 148, 154, 160</i> Observation on Submission</p>
Bahamas	<p>General Report, paragraph no. 27 General observation Observation on Convention No. 105 <i>Direct requests on Conventions Nos. 22, 81, 100, 103, 111, 138, 144, 182</i> Observation on Submission</p>
Bahrain	<p><i>Direct requests on Conventions Nos. 81, 105, 182</i> <i>Direct request on Submission</i></p>

Bangladesh	<p>Observations on Conventions Nos. 29, 89, 98, 105, 107, 111, 182 <i>Direct requests on Conventions Nos. 81, 105, 111, 149, 182</i> Observation on Submission</p>
Barbados	<p>General Report, paragraph no. 31 <i>General direct request</i> Observations on Conventions Nos. 63, 81, 108, 118, 144 <i>Direct requests on Conventions Nos. 81, 98, 105, 111, 138, 147, 182</i> <i>Direct request on Submission</i></p>
Belarus	<p>Observations on Conventions Nos. 87, 98, 144 <i>Direct requests on Conventions Nos. 14, 47, 106, 111, 142, 149, 154, 155, 182</i> <i>Response received to a direct request on Convention No. 151</i></p>
Belgium	<p>Observation on Convention No. 105 <i>Direct requests on Conventions Nos. 82, 122, 129, 138, 149, 171</i> <i>Direct request on Submission</i></p>
Belize	<p>General Report, paragraphs nos. 31, 62 <i>General direct request</i> Observations on Conventions Nos. 81, 105 <i>Direct requests on Conventions Nos. 29, 97, 103, 105, 138, 140, 150, 151, 154, 182</i> Observation on Submission</p>
Benin	<p>Observations on Conventions Nos. 81, 150 <i>Direct requests on Conventions Nos. 29, 81, 138, 144, 150, 160, 182</i></p>
Bolivia	<p>General Report, paragraph no. 62 Observations on Conventions Nos. 14, 77, 81, 88, 89, 105, 106, 122, 129, 131, 138, 169 <i>Direct requests on Conventions Nos. 14, 105, 106, 124, 138, 159, 160</i> Observation on Submission</p>
Bosnia and Herzegovina	<p>General Report, paragraphs nos. 27, 31, 62, 67 General observation <i>General direct request</i> Observations on Conventions Nos. 81, 87, 98, 111 <i>Direct requests on Conventions Nos. 8, 87, 88, 100, 122</i> Observation on Submission</p>
Botswana	<p>General Report, paragraph no. 31 <i>General direct request</i> Observations on Conventions Nos. 87, 98 <i>Direct requests on Conventions Nos. 29, 87, 98, 105, 138, 144, 151, 173, 182</i> Observation on Submission</p>
Brazil	<p>Observations on Conventions Nos. 29, 81, 105, 111, 122, 131, 137, 138, 142, 148, 182 <i>Direct requests on Conventions Nos. 81, 119, 136, 138, 139, 140, 148, 154, 182</i> Observation on Submission</p>
Bulgaria	<p>Observations on Conventions Nos. 81, 87, 100, 111 <i>Direct requests on Conventions Nos. 81, 98, 100, 111, 138, 144, 182</i></p>
Burkina Faso	<p>Observations on Conventions Nos. 81, 129, 182 <i>Direct requests on Conventions Nos. 81, 111, 138, 144, 182</i> <i>Direct request on Submission</i></p>
Burundi	<p>General Report, paragraph no. 31 <i>General direct request</i> Observations on Conventions Nos. 29, 87, 94 <i>Direct requests on Conventions Nos. 29, 81, 87, 89, 98, 100, 101, 105, 111, 135, 138, 144</i> Observation on Submission</p>
Cambodia	<p>General Report, paragraphs nos. 31, 61 <i>General direct request</i> <i>Direct requests on Conventions Nos. 4, 13, 87, 98, 111, 122, 138</i> Observation on Submission</p>

Cameroon	<p>General Report, paragraphs nos. 62, 67</p> <p>Observations on Conventions Nos. 29, 78, 81, 87, 105, 132, 135</p> <p>Direct requests on Conventions Nos. 14, 29, 81, 89, 98, 100, 106, 111, 122</p> <p>Observation on Submission</p>
Canada	<p>Observations on Conventions Nos. 1, 87, 105</p> <p>Direct requests on Conventions Nos. 1, 111, 160, 162, 182</p>
Cape Verde	<p>General Report, paragraph no. 31</p> <p>General direct request</p> <p>Observation on Convention No. 81</p> <p>Direct requests on Conventions Nos. 19, 29, 81, 100, 111, 182</p> <p>Observation on Submission</p>
Central African Republic	<p>General Report, paragraphs nos. 31, 62</p> <p>Observations on Conventions Nos. 29, 41, 62, 81, 87, 94, 95, 105, 119</p> <p>Direct requests on Conventions Nos. 13, 26, 29, 81, 95, 98, 100, 105, 111, 117, 138, 182</p> <p>Observation on Submission</p>
Chad	<p>General Report, paragraphs nos. 27, 31</p> <p>General observation</p> <p>General direct request</p> <p>Observations on Conventions Nos. 26, 29, 81, 87, 105, 111</p> <p>Direct requests on Conventions Nos. 14, 26, 29, 41, 81, 105, 111, 144, 151, 173</p> <p>Observation on Submission</p>
Chile	<p>Observations on Conventions Nos. 1, 29, 30, 103, 121, 161</p> <p>Direct requests on Conventions Nos. 1, 29, 30, 63, 87, 98, 105, 115, 121, 122, 136, 138, 140, 151, 182</p> <p>Response received to a direct request on Convention No. 135</p> <p>Observation on Submission</p>
China	<p>Observation on Convention No. 122</p> <p>Direct requests on Conventions Nos. 22, 23, 122</p>
Hong Kong Special Administrative Region	<p>Observations on Conventions Nos. 97, 160</p> <p>Direct requests on Conventions Nos. 29, 81, 97, 122, 138, 144, 147, 151, 160</p> <p>Response received to direct requests on Conventions Nos. 16, 22, 23, 74, 150</p>
Macau Special Administrative Region	<p>Direct requests on Conventions Nos. 68, 69, 74, 81, 122, 138, 144</p>
Colombia	<p>Observations on Conventions Nos. 81, 87, 95, 98, 105, 106, 129</p> <p>Direct requests on Conventions Nos. 81, 129, 138, 151, 154, 160</p> <p>Observation on Submission</p>
Comoros	<p>General Report, paragraphs nos. 31, 62</p> <p>General direct request</p> <p>Observations on Conventions Nos. 1, 26, 29, 81, 99, 122</p> <p>Direct requests on Conventions Nos. 1, 52, 100, 101, 105</p> <p>Response received to a direct request on Convention No. 14</p> <p>Observation on Submission</p>
Congo	<p>General Report, paragraphs nos. 62, 67</p> <p>Observations on Conventions Nos. 29, 87, 95, 150</p> <p>Direct requests on Conventions Nos. 26, 81, 89, 98, 144, 152</p> <p>Observation on Submission</p>
Costa Rica	<p>Observations on Conventions Nos. 1, 14, 81, 87, 89, 95, 98, 106, 129, 134, 135, 138</p> <p>Direct requests on Conventions Nos. 1, 81, 129, 138, 145, 160, 182</p>
Côte d'Ivoire	<p>General Report, paragraph no. 31</p> <p>Direct requests on Conventions Nos. 13, 133, 159</p> <p>Observation on Submission</p>
Croatia	<p>Observations on Conventions Nos. 119, 162</p> <p>Direct requests on Conventions Nos. 8, 29, 81, 119, 138, 182</p> <p>Direct request on Submission</p>

Cuba	<p>Observations on Conventions Nos. 52, 87, 101, 150 <i>Direct requests on Conventions Nos. 105, 138, 150</i> <i>Direct request on Submission</i></p>
Cyprus	<p>General Report, paragraph no. 31 <i>General direct request</i></p> <p>Observations on Conventions Nos. 95, 105, 111 <i>Direct requests on Conventions Nos. 23, 29, 97, 111, 150, 160, 171, 172, 182</i> <i>Direct request on Submission</i></p>
Czech Republic	<p>Observations on Conventions Nos. 98, 100, 122, 182 <i>Direct requests on Conventions Nos. 1, 87, 100, 115, 135, 139, 140, 150, 171, 182</i> <i>Response received to direct requests on Conventions Nos. 108, 163, 164</i></p>
Democratic Republic of the Congo	<p>General Report, paragraphs nos. 31, 67 <i>General direct request</i></p> <p>Observations on Conventions Nos. 29, 81, 87, 98, 121, 144 <i>Direct requests on Conventions Nos. 29, 87, 98, 100, 102, 135, 150</i> Observation on Submission</p>
Denmark	<p>General Report, paragraph no. 31 <i>General direct request</i></p> <p>Observations on Conventions Nos. 29, 53, 87, 98, 169 <i>Direct requests on Conventions Nos. 52, 81, 102, 118, 120, 122, 138, 144, 149, 160, 169, 182</i> <i>Response received to direct requests on Conventions Nos. 119, 129</i> <i>Direct request on Submission</i></p>
Faeroe Islands	<p><i>Response received to direct requests on Conventions Nos. 9, 16, 53</i></p>
Greenland	<p>General Report, paragraphs nos. 20, 31 General observation <i>Direct requests on Conventions Nos. 14, 106, 122</i></p>
Djibouti	<p>General Report, paragraphs nos. 31, 61 <i>General direct request</i></p> <p>Observations on Conventions Nos. 56, 71, 81, 122 <i>Direct requests on Conventions Nos. 22, 23, 29, 53, 55, 63, 69, 73, 91, 105, 106, 108, 125</i> Observation on Submission</p>
Dominica	<p>General Report, paragraphs nos. 27, 31, 62 General observation <i>General direct request</i></p> <p>Observations on Conventions Nos. 29, 138 <i>Direct requests on Conventions Nos. 8, 16, 26, 29, 81, 100, 105, 111</i> Observation on Submission</p>
Dominican Republic	<p>General Report, paragraph no. 67 Observations on Conventions Nos. 29, 81, 138, 182 <i>Direct requests on Conventions Nos. 1, 29, 81, 105, 106, 122, 138, 144, 150, 182</i> <i>Direct request on Submission</i></p>
Ecuador	<p>Observations on Conventions Nos. 77, 78, 87, 98, 105, 122, 136, 142 <i>Direct requests on Conventions Nos. 105, 138, 182</i> <i>Direct request on Submission</i></p>
Egypt	<p>Observations on Conventions Nos. 55, 62, 92 <i>Direct requests on Conventions Nos. 22, 23, 56, 62, 63, 100, 107, 111, 118, 134, 138, 142, 144, 145, 147, 150</i> <i>Response received to a direct request on Convention No. 73</i></p>
El Salvador	<p>Observations on Conventions Nos. 81, 107, 129, 138, 155, 182 <i>Direct requests on Conventions Nos. 81, 107, 129, 138, 150, 160, 182</i> Observation on Submission</p>

Equatorial Guinea	<p>General Report, paragraph no. 27 General observation Observations on Conventions Nos. 1, 30 <i>Direct requests on Conventions Nos. 1, 30, 87, 98, 100, 103, 111, 138</i> Observation on Submission</p>
Eritrea	<p>Observation on Convention No. 111 <i>Direct requests on Conventions Nos. 29, 87, 98, 100, 105, 111, 138</i></p>
Estonia	<p><i>Direct request on Convention No. 182</i> <i>Direct request on Submission</i></p>
Ethiopia	<p>Observations on Conventions Nos. 14, 87 <i>Direct requests on Conventions Nos. 105, 138</i> <i>Direct request on Submission</i></p>
Fiji	<p>Observations on Conventions Nos. 98, 169 <i>Direct requests on Conventions Nos. 8, 26, 29, 85, 87, 98, 105, 144</i> Observation on Submission</p>
Finland	<p>Observations on Conventions Nos. 81, 122, 129, 140, 142, 149, 150, 160 <i>Direct requests on Conventions Nos. 111, 135, 149, 160, 182</i> <i>Response received to a direct request on Convention No. 138</i></p>
France	<p>Observations on Conventions Nos. 22, 42, 53, 81, 111, 134, 138 <i>Direct requests on Conventions Nos. 22, 63, 69, 100, 102, 111, 129, 144, 182</i> <i>Response received to direct requests on Conventions Nos. 113, 140</i></p>
French Guiana	<p>Observations on Conventions Nos. 42, 53, 129 <i>Direct requests on Conventions Nos. 3, 69, 81, 120</i></p>
French Polynesia	<p>Observations on Conventions Nos. 63, 81, 129 <i>Direct requests on Conventions Nos. 69, 89, 122, 129, 144</i></p>
French Southern and Antarctic Territories	<p>General Report, paragraph no. 31 General observation <i>General direct request</i> Observations on Conventions Nos. 8, 98, 147 <i>Direct requests on Conventions Nos. 53, 58, 68, 69, 87, 108, 111</i></p>
Guadeloupe	<p>General Report, paragraph no. 31 Observations on Conventions Nos. 42, 53, 129 <i>Direct request on Convention No. 69</i></p>
Martinique	<p>General Report, paragraph no. 31 Observations on Conventions Nos. 22, 42, 53 <i>Direct request on Convention No. 69</i></p>
New Caledonia	<p><i>Direct requests on Conventions Nos. 63, 69, 81, 89, 95, 100, 111, 122, 129, 131, 142, 144</i></p>
Réunion	<p>General Report, paragraph no. 31 Observations on Conventions Nos. 22, 42, 53 <i>Direct request on Convention No. 69</i></p>
St. Pierre and Miquelon	<p>General Report, paragraph no. 31 <i>General direct request</i> Observations on Conventions Nos. 22, 53, 63 <i>Direct requests on Conventions Nos. 16, 69, 81, 122</i></p>
Gabon	<p>Observations on Conventions Nos. 81, 144, 158, 182 <i>Direct requests on Conventions Nos. 81, 135, 154, 182</i> Observation on Submission</p>
Gambia	<p>General Report, paragraph no. 27 General observation <i>General direct request</i> <i>Direct requests on Conventions Nos. 100, 111</i> Observation on Submission</p>

Georgia	<p>General Report, paragraph no. 31 <i>General direct request</i> <i>Direct requests on Conventions Nos. 29, 87, 98, 100, 105, 117, 122, 138, 142</i></p> <p>Observation on Submission</p>
Germany	<p>Observations on Conventions Nos. 81, 87 <i>Direct requests on Conventions Nos. 9, 129</i> <i>Response received to direct requests on Conventions Nos. 138, 150</i> <i>Direct request on Submission</i></p>
Ghana	<p>General Report, paragraph no. 31 <i>General direct request</i></p> <p>Observations on Conventions Nos. 87, 89, 94, 103, 105 <i>Direct requests on Conventions Nos. 22, 29, 74, 81, 100, 105, 111, 117, 149, 182</i> <i>Direct request on Submission</i></p>
Greece	<p>Observations on Conventions Nos. 95, 111, 150 <i>Direct requests on Conventions Nos. 81, 111, 138, 149, 154, 160, 182</i> <i>Response received to a direct request on Convention No. 134</i> <i>Direct request on Submission</i></p>
Grenada	<p>General Report, paragraphs nos. 20, 31, 62 General observation <i>Direct requests on Conventions Nos. 81, 87, 100, 105, 144</i></p> <p>Observation on Submission</p>
Guatemala	<p>Observations on Conventions Nos. 1, 29, 81, 87, 98, 122, 129, 138, 144, 182 <i>Direct requests on Conventions Nos. 13, 81, 105, 110, 122, 129, 131, 138, 154, 160, 182</i></p> <p>Observation on Submission</p>
Guinea	<p>General Report, paragraphs nos. 31, 61, 67 <i>General direct request</i></p> <p>Observations on Conventions Nos. 26, 81, 87, 111, 118, 120, 121, 122, 140, 142, 144 <i>Direct requests on Conventions Nos. 3, 13, 16, 62, 95, 111, 118, 139, 152, 159</i></p> <p>Observation on Submission</p>
Guinea-Bissau	<p>General Report, paragraph no. 62 <i>Direct requests on Conventions Nos. 7, 26, 89, 108, 111</i></p> <p>Observation on Submission</p>
Guyana	<p>General Report, paragraphs nos. 31, 67 <i>General direct request</i></p> <p>Observations on Conventions Nos. 29, 129 <i>Direct requests on Conventions Nos. 81, 98, 129, 138, 150, 166, 182</i> <i>Direct request on Submission</i></p>
Haiti	<p>General Report, paragraphs nos. 20, 31, 61 General observation Observations on Conventions Nos. 14, 24, 25, 29, 81, 87, 98, 106 <i>Direct requests on Conventions Nos. 77, 78, 81, 87, 100</i></p> <p>Observation on Submission</p>
Honduras	<p>Observations on Conventions Nos. 81, 122, 138 <i>Direct requests on Conventions Nos. 81, 106, 182</i> <i>Response received to a direct request on Convention No. 14</i></p>
Hungary	<p>Observations on Conventions Nos. 111, 142 <i>Direct requests on Conventions Nos. 14, 111, 138, 140, 163, 164</i> <i>Response received to direct requests on Conventions Nos. 16, 154</i> <i>Direct request on Submission</i></p>
Iceland	<p><i>Direct requests on Conventions Nos. 29, 108, 111, 138, 182</i> <i>Response received to a direct request on Convention No. 102</i> <i>Direct request on Submission</i></p>

India	Observations on Conventions Nos. 29, 81, 89, 107, 111 <i>Direct requests on Conventions Nos. 22, 105, 107, 111, 122, 160</i> <i>Response received to a direct request on Convention No. 16</i> <i>Direct request on Submission</i>
Indonesia	Observations on Conventions Nos. 29, 98, 138, 144, 182 <i>Direct requests on Conventions Nos. 98, 138, 182</i>
Islamic Republic of Iran	Observations on Conventions Nos. 95, 122 <i>Direct requests on Conventions Nos. 29, 106, 108</i> <i>Direct request on Submission</i>
Iraq	General Report, paragraphs nos. 20, 27, 31 General observation Observation on Convention No. 8 <i>Direct requests on Conventions Nos. 22, 23, 108, 120, 147</i>
Ireland	<i>Direct requests on Conventions Nos. 23, 29, 81, 105, 138, 139, 160, 182</i> <i>Response received to a direct request on Convention No. 16</i> <i>Direct request on Submission</i>
Israel	<i>Direct requests on Conventions Nos. 100, 111, 117, 134</i> <i>Response received to a direct request on Convention No. 98</i> <i>Direct request on Submission</i>
Italy	Observations on Conventions Nos. 14, 122 <i>Direct requests on Conventions Nos. 81, 105, 106, 111, 129, 138, 149, 175, 182</i>
Jamaica	Observations on Conventions Nos. 29, 105 <i>Direct requests on Conventions Nos. 81, 149, 150</i> <i>Direct request on Submission</i>
Japan	Observations on Conventions Nos. 29, 87, 98, 100, 147, 156 <i>Direct requests on Conventions Nos. 16, 81, 138, 144, 147, 182</i> <i>Response received to direct requests on Conventions Nos. 9, 73</i>
Jordan	Observation on Convention No. 135 <i>Direct requests on Conventions Nos. 81, 122, 138, 182</i> <i>Direct request on Submission</i>
Kazakhstan	General Report, paragraphs nos. 31, 62, 67 <i>General direct request</i> Observation on Convention No. 148 <i>Direct requests on Conventions Nos. 81, 87, 88, 98, 100, 111, 122, 129, 135, 138, 144</i> Observation on Submission
Kenya	Observations on Conventions Nos. 98, 105 <i>Direct requests on Conventions Nos. 2, 45, 88, 89, 98, 100, 105, 111, 132, 140, 144, 149, 182</i> <i>Direct request on Submission</i>
Kiribati	General Report, paragraphs nos. 20, 27 General observation <i>Direct request on Submission</i>
Republic of Korea	<i>Direct requests on Conventions Nos. 19, 135, 138, 144, 156, 182</i> <i>Direct request on Submission</i>
Kuwait	Observations on Conventions Nos. 29, 87 <i>Direct requests on Conventions Nos. 29, 89</i> <i>Direct request on Submission</i>

Kyrgyzstan	<p>General Report, paragraphs nos. 27, 31, 62, 67</p> <p>General observation</p> <p>General direct request</p> <p>Observations on Conventions Nos. 87, 95, 122, 159</p> <p>Direct requests on Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 95, 98, 100, 124, 148, 149, 160</p> <p>Observation on Submission</p>
Lao People's Democratic Republic	<p>General Report, paragraph no. 61</p> <p>General direct request</p> <p>Direct requests on Conventions Nos. 13, 29</p> <p>Observation on Submission</p>
Latvia	<p>General Report, paragraph no. 61</p> <p>Observations on Conventions Nos. 81, 111, 115, 119, 120, 158</p> <p>Direct requests on Conventions Nos. 9, 13, 87, 98, 100, 105, 108, 111, 115, 119, 120, 122, 129, 135, 142, 144, 151, 154, 155, 158</p> <p>Observation on Submission</p>
Lebanon	<p>Observation on Convention No. 98</p> <p>Direct requests on Conventions Nos. 1, 17, 58, 81, 89, 105, 122, 142, 147, 159, 182</p>
Lesotho	<p>General Report, paragraphs nos. 27, 31</p> <p>General observation</p> <p>General direct request</p> <p>Observation on Convention No. 98</p> <p>Direct requests on Conventions Nos. 29, 81, 87, 100, 111, 138, 144, 158, 182</p> <p>Direct request on Submission</p>
Liberia	<p>General Report, paragraphs nos. 20, 27, 31, 67</p> <p>General observation</p> <p>Observations on Conventions Nos. 22, 29, 55, 58, 87, 92, 98, 105, 111, 112, 113, 114, 133</p> <p>Direct requests on Conventions Nos. 29, 53, 147</p> <p>Direct request on Submission</p>
Libyan Arab Jamahiriya	<p>General Report, paragraph no. 31</p> <p>General direct request</p> <p>Observations on Conventions Nos. 95, 98, 102, 111, 118, 121, 128, 130, 131</p> <p>Direct requests on Conventions Nos. 29, 52, 87, 100, 102, 118, 121, 128, 130, 138, 182</p> <p>Observation on Submission</p>
Lithuania	<p>Observations on Conventions Nos. 47, 87, 127, 159</p> <p>Direct requests on Conventions Nos. 87, 98, 100, 111, 135, 142, 154</p>
Luxembourg	<p>Observation on Convention No. 87</p> <p>Direct requests on Conventions Nos. 13, 26, 92, 96, 98, 100, 111, 142, 150, 158, 159, 182</p>
Madagascar	<p>General Report, paragraphs nos. 27, 62</p> <p>General observation</p> <p>Observations on Conventions Nos. 81, 87, 100, 119, 120, 127, 129</p> <p>Direct requests on Conventions Nos. 41, 87, 98, 100, 111, 138, 144, 159, 173</p> <p>Observation on Submission</p>
Malawi	<p>Observations on Conventions Nos. 81, 138, 144</p> <p>Direct requests on Conventions Nos. 87, 89, 107, 129, 138, 159, 182</p> <p>Response received to a direct request on Convention No. 98</p> <p>Observation on Submission</p>
Malaysia	<p>Observation on Convention No. 98</p> <p>Direct requests on Conventions Nos. 95, 100, 144</p>
Peninsular Malaysia	<p>Observation on Convention No. 17</p> <p>Direct request on Convention No. 45</p>

Mali	<p>General Report, paragraphs nos. 62, 67 Observation on Convention No. 87 <i>Direct requests on Conventions Nos. 13, 14, 18, 81, 87, 100, 111, 151, 159</i> Observation on Submission</p>
Malta	<p>Observations on Conventions Nos. 87, 100, 111 <i>Direct requests on Conventions Nos. 45, 87, 96, 98, 100, 111, 149, 182</i> <i>Direct request on Submission</i></p>
Mauritania	<p>Observations on Conventions Nos. 29, 53, 62, 87, 100, 111, 138 <i>Direct requests on Conventions Nos. 14, 26, 29, 87, 89, 96, 98, 100, 111, 138, 182</i> <i>Response received to direct requests on Conventions Nos. 22, 114</i> <i>Direct request on Submission</i></p>
Mauritius	<p>Observations on Conventions Nos. 29, 98, 105 <i>Direct requests on Conventions Nos. 26, 29, 99, 144</i></p>
Mexico	<p>Observations on Conventions Nos. 87, 169, 182 <i>Direct requests on Conventions Nos. 45, 96, 159, 161, 167, 173, 182</i> <i>Direct request on Submission</i></p>
Republic of Moldova	<p>Observations on Conventions Nos. 95, 105 <i>Direct requests on Conventions Nos. 47, 81, 87, 95, 98, 105, 108, 142, 144, 154, 181</i></p>
Mongolia	<p>General Report, paragraph no. 67 <i>Direct requests on Conventions Nos. 87, 98, 100, 111, 122, 123, 135, 144, 159, 182</i> Observation on Submission</p>
Morocco	<p>Observations on Conventions Nos. 100, 105, 111, 119, 135, 136, 182 <i>Direct requests on Conventions Nos. 13, 30, 45, 98, 100, 108, 111, 136, 182</i> <i>Direct request on Submission</i></p>
Mozambique	<p>General Report, paragraph no. 31 Observation on Convention No. 87 <i>Direct requests on Conventions Nos. 98, 100, 111, 144</i> Observation on Submission</p>
Myanmar	<p>Observations on Conventions Nos. 17, 26, 29, 52, 87 <i>Direct request on Convention No. 2</i> <i>Response received to a direct request on Convention No. 16</i></p>
Namibia	<p>Observation on Convention No. 87 <i>Direct requests on Conventions Nos. 98, 111, 144</i> <i>Direct request on Submission</i></p>
Nepal	<p>Observation on Convention No. 144 <i>Direct request on Convention No. 98</i> Observation on Submission</p>
Netherlands	<p>Observations on Conventions Nos. 87, 98, 101, 106, 115, 118, 128, 137, 155, 162, 174, 177 <i>Direct requests on Conventions Nos. 29, 106, 135, 154, 162, 175, 180</i> <i>Response received to a direct request on Convention No. 62</i> <i>Direct request on Submission</i></p>
Aruba	<p>General Report, paragraph no. 31 <i>General direct request</i></p>
Netherlands Antilles	<p>Observations on Conventions Nos. 87, 101, 144 <i>Direct requests on Conventions Nos. 87, 88, 89, 95, 122, 135, 142</i> General Report, paragraph no. 31 <i>Direct requests on Conventions Nos. 87, 106, 122</i></p>
New Zealand	<p>Observations on Conventions Nos. 22, 26, 29, 99, 160 <i>Direct requests on Conventions Nos. 29, 144, 160, 182</i></p>
Nicaragua	<p>Observations on Conventions Nos. 26, 77, 87, 98, 119, 127, 131 <i>Direct requests on Conventions Nos. 13, 29, 45, 115, 127, 144, 182</i></p>

Niger	<p>General Report, paragraph no. 31 <i>General direct request</i></p> <p>Observations on Conventions Nos. 87, 95, 98, 131, 182 <i>Direct requests on Conventions Nos. 95, 100, 111, 119, 142, 148, 182</i></p> <p>Observation on Submission</p>
Nigeria	<p>Observations on Conventions Nos. 87, 88 <i>Direct requests on Conventions Nos. 45, 98, 100, 144, 155</i></p> <p>Observation on Submission</p>
Norway	<p>Observations on Conventions Nos. 30, 81, 87, 98, 129, 170 <i>Direct requests on Conventions Nos. 13, 94, 100, 111, 148, 149, 154, 159, 182</i></p>
Oman	<p>Observations on Conventions Nos. 29, 182 <i>Direct requests on Conventions Nos. 29, 182</i></p>
Pakistan	<p>General Report, paragraphs nos. 27, 31 General observation <i>General direct request</i></p> <p>Observations on Conventions Nos. 81, 87, 96, 98, 100, 105, 107, 111, 144 <i>Direct requests on Conventions Nos. 18, 22, 87, 98, 105, 107</i></p> <p>Observation on Submission</p>
Panama	<p>Observations on Conventions Nos. 30, 87, 88, 89, 98, 107 <i>Direct requests on Conventions Nos. 45, 87, 107, 122, 181</i> <i>Direct request on Submission</i></p>
Papua New Guinea	<p>Observations on Conventions Nos. 98, 105 <i>Direct requests on Conventions Nos. 29, 45, 87, 100, 103, 111, 122, 138, 182</i> <i>Direct request on Submission</i></p>
Paraguay	<p>General Report, paragraphs nos. 20, 27, 31 General observation</p> <p>Observations on Conventions Nos. 29, 79, 81, 87, 90, 98, 111, 115, 120, 169 <i>Direct requests on Conventions Nos. 1, 30, 52, 81, 89, 100, 117, 119, 122, 159, 169</i></p> <p>Observation on Submission</p>
Peru	<p>Observations on Conventions Nos. 24, 25, 52, 55, 56, 71, 81, 87, 88, 98, 102, 151, 159 <i>Direct requests on Conventions Nos. 52, 81, 101, 102, 106, 122, 139</i> <i>Response received to a direct request on Convention No. 105</i> <i>Direct request on Submission</i></p>
Philippines	<p>Observations on Conventions Nos. 87, 89, 98, 100, 111, 182 <i>Direct requests on Conventions Nos. 87, 100, 111, 144, 149, 159, 182</i></p>
Poland	<p>Observations on Conventions Nos. 87, 95 <i>Direct requests on Conventions Nos. 45, 62, 96, 115, 119, 120, 127, 142, 144, 151</i></p>
Portugal	<p>Observations on Conventions Nos. 22, 87, 98, 122, 159 <i>Direct requests on Conventions Nos. 45, 98, 120, 132, 148, 149, 171, 182</i> <i>Direct request on Submission</i></p>
Qatar	<p>Observations on Conventions Nos. 29, 182 <i>Direct requests on Conventions Nos. 29, 182</i> <i>Direct request on Submission</i></p>
Romania	<p>Observations on Conventions Nos. 1, 14, 81, 87, 129 <i>Direct requests on Conventions Nos. 1, 9, 13, 14, 87, 98, 105, 129, 144, 154, 163</i></p>
Russian Federation	<p>Observations on Conventions Nos. 29, 87 <i>Direct requests on Conventions Nos. 13, 29, 47, 81, 98, 119, 142, 148, 149, 155, 159, 162</i> <i>Direct request on Submission</i></p>
Rwanda	<p>Observations on Conventions Nos. 62, 87, 98, 105 <i>Direct requests on Conventions Nos. 87, 98, 105, 135</i></p> <p>Observation on Submission</p>

Saint Kitts and Nevis	<p>General Report, paragraph no. 27 General observation <i>Direct requests on Conventions Nos. 111, 182</i> Observation on Submission</p>
Saint Lucia	<p>General Report, paragraphs nos. 27, 31, 62 General observation <i>General direct request</i> <i>Direct requests on Conventions Nos. 87, 100, 111</i> Observation on Submission</p>
Saint Vincent and the Grenadines	<p>General Report, paragraph no. 67 Observation on Convention No. 16 <i>Direct requests on Conventions Nos. 29, 87, 98, 100, 101, 111, 182</i> Observation on Submission</p>
San Marino	<p><i>General direct request</i> <i>Direct requests on Conventions Nos. 29, 88, 100, 142, 182</i> <i>Response received to a direct request on Convention No. 138</i></p>
Sao Tome and Principe	<p>General Report, paragraphs nos. 31, 61, 67 <i>General direct request</i> Observations on Conventions Nos. 18, 87, 88 <i>Direct requests on Conventions Nos. 98, 100, 111, 144, 159</i> Observation on Submission</p>
Saudi Arabia	<p>Observation on Convention No. 111 <i>Direct requests on Conventions Nos. 1, 30, 89, 100, 111, 182</i></p>
Senegal	<p>General Report, paragraph no. 62 Observations on Conventions Nos. 13, 87, 98, 120 <i>Direct requests on Conventions Nos. 52, 96, 100, 111, 122</i> Observation on Submission</p>
Serbia and Montenegro	<p>General Report, paragraphs nos. 27, 31 General observation <i>General direct request</i> Observations on Conventions Nos. 87, 98, 111 <i>Direct requests on Conventions Nos. 14, 29, 87, 89, 90, 92, 97, 100, 102, 103, 106, 122, 126, 132, 135, 143</i> <i>Direct request on Submission</i></p>
Seychelles	<p>General Report, paragraph no. 31 <i>General direct request</i> Observation on Convention No. 87 <i>Direct requests on Conventions Nos. 98, 100, 111, 149, 151</i> <i>Direct request on Submission</i></p>
Sierra Leone	<p>General Report, paragraphs nos. 61, 67 Observations on Conventions Nos. 8, 17, 29, 59, 81, 88, 98, 101, 105, 111, 144 <i>Direct requests on Conventions Nos. 26, 29, 81, 87, 95, 99, 100</i> Observation on Submission</p>
Singapore	<p>Observations on Conventions Nos. 29, 98 <i>Direct requests on Conventions Nos. 29, 45, 88, 182</i> <i>Direct request on Submission</i></p>
Slovakia	<p>General Report, paragraph no. 67 Observation on Convention No. 144 <i>Direct requests on Conventions Nos. 34, 45, 102, 124, 128, 130, 140, 142, 155, 173</i></p>
Slovenia	<p>Observations on Conventions Nos. 100, 111 <i>Direct requests on Conventions Nos. 13, 16, 22, 45, 69, 73, 74, 87, 89, 98, 100, 111, 122, 136, 138, 139, 142, 148, 162, 175</i> <i>Direct request on Submission</i></p>

Solomon Islands	<p>General Report, paragraphs nos. 20, 31, 61, 67</p> <p>General observation</p> <p>Observation on Convention No. 8</p> <p><i>Direct requests on Conventions Nos. 14, 16, 26, 29, 81, 95</i></p> <p>Observation on Submission</p>
Somalia	<p>General Report, paragraphs nos. 20, 61</p> <p>General observation</p> <p>Observation on Submission</p>
South Africa	<p>Observations on Conventions Nos. 45, 100</p> <p><i>Direct requests on Conventions Nos. 2, 26, 29, 100, 105, 111</i></p>
Spain	<p>Observations on Conventions Nos. 1, 14, 30, 87, 97, 100, 106, 111, 159</p> <p><i>Direct requests on Conventions Nos. 13, 45, 97, 100, 101, 111, 132, 142, 151, 173, 181, 182</i></p> <p>Observation on Submission</p>
Sri Lanka	<p>Observations on Conventions Nos. 95, 96, 98, 100, 144, 182</p> <p><i>Direct requests on Conventions Nos. 45, 58, 87, 100, 106, 111, 115, 135, 182</i></p> <p><i>Direct request on Submission</i></p>
Sudan	<p>Observations on Conventions Nos. 29, 98, 105, 111</p> <p><i>Direct requests on Conventions Nos. 2, 100, 111</i></p> <p>Observation on Submission</p>
Suriname	<p><i>Direct requests on Conventions Nos. 13, 62, 144, 154</i></p> <p><i>Direct request on Submission</i></p>
Swaziland	<p>Observations on Conventions Nos. 29, 87, 96, 98</p> <p><i>Direct requests on Conventions Nos. 11, 87, 89, 111, 131</i></p> <p>Observation on Submission</p>
Sweden	<p>General Report, paragraph no. 31</p> <p><i>General direct request</i></p> <p>Observations on Conventions Nos. 115, 129, 155, 161, 167</p> <p><i>Direct requests on Conventions Nos. 100, 111, 115, 120, 128, 137, 139, 148, 155, 159, 161, 162, 170, 182</i></p> <p><i>Direct request on Submission</i></p>
Switzerland	<p>Observation on Convention No. 98</p> <p><i>Direct requests on Conventions Nos. 14, 87, 100, 111, 115, 120, 139, 154</i></p> <p><i>Response received to direct requests on Conventions Nos. 62, 136</i></p>
Syrian Arab Republic	<p>Observations on Conventions Nos. 87, 115</p> <p><i>Direct requests on Conventions Nos. 89, 98, 138, 144</i></p> <p><i>Response received to direct requests on Conventions Nos. 1, 136</i></p> <p>Observation on Submission</p>
Tajikistan	<p>General Report, paragraphs nos. 20, 27, 31, 67</p> <p>General observation</p> <p>Observations on Conventions Nos. 87, 138, 142</p> <p><i>Direct requests on Conventions Nos. 14, 29, 47, 52, 77, 78, 95, 98, 100, 103, 115, 124, 126, 138, 159, 160</i></p> <p>Observation on Submission</p>
United Republic of Tanzania	<p>Observations on Conventions Nos. 87, 98, 134, 137, 140, 144, 154</p> <p><i>Direct requests on Conventions Nos. 16, 63, 87, 94, 95, 98, 148, 149, 154, 182</i></p> <p>Observation on Submission</p>
Tanganyika	<p><i>General direct request</i></p>
Zanzibar	<p>Observation on Convention No. 88</p> <p>General Report, paragraph no. 20</p> <p>General observation</p> <p><i>Direct request on Convention No. 58</i></p>
Thailand	<p>Observation on Convention No. 105</p> <p><i>Direct requests on Conventions Nos. 88, 105</i></p> <p>Observation on Submission</p>

The former Yugoslav Republic of Macedonia	<p>General Report, paragraphs nos. 20, 31, 67 General observation Observations on Conventions Nos. 87, 98 Direct request on Convention No. 98 Observation on Submission</p>
Togo	<p>General Report, paragraph no. 67 Observations on Conventions Nos. 29, 87, 144 Direct requests on Conventions Nos. 13, 29, 100, 105, 111, 182 Direct request on Submission</p>
Trinidad and Tobago	<p>General Report, paragraph no. 31 General direct request Observations on Conventions Nos. 87, 98, 100, 105, 111 Direct requests on Conventions Nos. 29, 100, 111, 144, 159</p>
Tunisia	<p>Observations on Conventions Nos. 87, 127 Direct requests on Conventions Nos. 45, 62, 87, 89, 100, 111, 120, 159, 182</p>
Turkey	<p>Observations on Conventions Nos. 14, 29, 87, 88, 96, 98, 105, 111, 115, 118, 119, 122, 142, 144, 158, 182 Direct requests on Conventions Nos. 14, 29, 45, 87, 98, 100, 105, 111, 127, 135, 151, 159, 182 Response received to a direct request on Convention No. 102</p>
Turkmenistan	<p>General Report, paragraphs nos. 20, 27, 61, 67 General observation Observation on Submission</p>
Uganda	<p>General Report, paragraphs nos. 27, 67 General observation Observations on Conventions Nos. 17, 29, 81, 98, 105, 158, 162 Direct requests on Conventions Nos. 26, 94, 123, 143, 144, 154, 159 Observation on Submission</p>
Ukraine	<p>Observations on Conventions Nos. 87, 95, 119, 144 Direct requests on Conventions Nos. 32, 98, 100, 106, 120, 132, 142, 149, 154 Direct request on Submission</p>
United Arab Emirates	<p>Observations on Conventions Nos. 81, 182 Direct requests on Conventions Nos. 81, 89, 100, 111, 182</p>
United Kingdom	<p>Observations on Conventions Nos. 87, 98, 144 Direct requests on Conventions Nos. 68, 87, 98, 120, 122, 135, 138, 140, 182 Response received to a direct request on Convention No. 151 Direct requests on Conventions Nos. 29, 140, 148</p>
Anguilla	Direct request on Convention No. 98
Bermuda	Response received to a direct request on Convention No. 115
British Virgin Islands	General direct request
Gibraltar	Observation on Convention No. 29 Direct requests on Conventions Nos. 58, 100, 133
Guernsey	Direct requests on Conventions Nos. 98, 122, 182
Isle of Man	General Report, paragraph no. 31 General direct request Direct requests on Conventions Nos. 98, 122, 133, 151
Jersey	Direct requests on Conventions Nos. 87, 98, 140
Montserrat	General Report, paragraph no. 31 General direct request Direct requests on Conventions Nos. 26, 29, 95, 98
St. Helena	General direct request
United States	<p>Observations on Conventions Nos. 105, 144, 182 Direct request on Convention No. 105</p>

Uruguay	<p>Observations on Conventions Nos. 81, 98, 131, 151 <i>Direct requests on Conventions Nos. 1, 29, 30, 132, 137, 148, 159, 162, 182</i> <i>Response received to a direct request on Convention No. 120</i></p> <p>Observation on Submission</p>
Uzbekistan	<p>General Report, paragraphs nos. 61, 67 <i>Direct requests on Conventions Nos. 98, 135, 154</i></p> <p>Observation on Submission</p>
Venezuela	<p>Observations on Conventions Nos. 1, 87, 98, 111, 155, 169 <i>Direct requests on Conventions Nos. 1, 14, 87, 100, 111, 120, 169</i></p> <p>Observation on Submission</p>
Viet Nam	<p>Observation on Convention No. 81 <i>Direct requests on Conventions Nos. 14, 45, 81, 100, 111, 120, 155, 182</i> <i>Direct request on Submission</i></p>
Yemen	<p>General Report, paragraph no. 31 <i>General direct request</i></p> <p>Observations on Conventions Nos. 81, 87, 98 <i>Direct requests on Conventions Nos. 29, 100, 105, 111, 122, 132, 135, 138, 144, 159</i> <i>Direct request on Submission</i></p>
Zambia	<p>General Report, paragraphs nos. 27, 31, 67 General observation <i>General direct request</i></p> <p>Observations on Conventions Nos. 29, 87, 95 <i>Direct requests on Conventions Nos. 29, 87, 98, 100, 111, 122, 131, 136, 144, 148, 149, 159, 173</i></p> <p>Observation on Submission</p>
Zimbabwe	<p>Observations on Conventions Nos. 98, 100, 144 <i>Direct requests on Conventions Nos. 29, 45, 100, 105, 111, 140, 159</i></p>